

REPRINT

LAND AND TITLES ACT (CAP. 133)

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For list of amendments see Endnotes

AN ACT TO AMEND, DECLARE AND CONSOLIDATE THE LAW RELATING TO THE TENURE OF LAND, THE ACQUISITION OF LAND, THE REGISTRATION OF INTERESTS IN LAND, TO OTHER LIKE PURPOSES AND TO MATTERS INCIDENTAL THERETO AND CONNECTED THEREWITH

LAND AND TITLES ACT (CAP. 133)

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PART I PRELIMINARY

1 Short title

This Act may be cited as the *Land and Titles Act*.

2 Interpretation

(1) In this Act, except where the context otherwise requires:

“Adjudication Officer” means a person appointed as Adjudication Officer pursuant to section 19;

“advertise” means to publish, whether through an agent or otherwise, a statement or indication that an interest in land (including any interest in land forming part of the assets of any company or other corporate body) is for sale or that offers may be made for such interest or company or other corporate body and includes:

- (a) publication in a newspaper, magazine, periodical, circular or other writing intended to be made available to the public or prospective purchasers or prospective purchasers or offerors; and
- (b) publication on radio, television or other media, of such a statement or indication and **“advertisement”** and **“advertise any interest in land”** shall be construed accordingly;

“allocate” in respect of land means to:

- (a) transfer, grant or lease an estate whether by public auction, tender, ballot or directly;
- (b) grant a temporary occupation licence; or
- (c) grant a right of way over public land, and

“allocation” has a corresponding meaning;

“appoint”, in relation to a personal representative, means to make a grant of probate of a will, or of letters of administration of the estate, of a deceased person; and **“appointment”** in relation to a personal representative has a corresponding meaning;

“authorised officer” means a person, or a member of a class of persons, specified to be an authorised officer by regulations made pursuant to section 260;

“Board” means the Land Board established by section 8B(1).

“boundary mark” means any survey stone, metal pipe or spike, wooden peg or post, concrete post or pillar, or other survey mark used for the purpose of indicating a boundary;

“building” includes any structure or erection and any part of a building, structure or erection, and any plant or machinery which is embedded or otherwise rigidly attached in its place;

“caveator” means a person who has lodged, under Part XXII, a caveat which has not lapsed or been withdrawn or removed from the land register;

“charge” means an interest in land securing the payment of money or money’s worth and includes a subcharge and the instrument creating a charge;

“chargee” means the owner of a charge;

“chargor” means the owner of a charged interest;

“commencement date” means the date of commencement of this Act;

“the Commissioner” means the Commissioner of Lands;

“court” means any court which has jurisdiction in relation to the subject-matter of the proceeding in question;

“current customary usage” means the usage of Solomon Islanders obtaining in relation to the matter in question at the time when that

question arises, regardless of whether that usage has obtained from time immemorial or any lesser period;

“customary land” means any land (not being registered land, other than land registered as customary land, or land in respect of which any person becomes or is entitled to be registered as the owner of an estate pursuant to the provisions of Part III) lawfully owned, used or occupied by a person or community in accordance with current customary usage, and shall include any land deemed to be customary land by paragraph 23 of the Second Schedule to the repealed Act;

“dealing” includes disposition and transmission;

“Demarcation Officer” means a Demarcation Officer appointed pursuant to section 32 (2);

“demarcation plan” means a plan prepared in pursuance of section 42;

“disposition” means any act *inter vivos* by an owner whereby his rights in or over the land comprised in his interest are affected, but does not include an agreement to transfer, lease or charge;

“document of title” means a grant, lease or other document evidencing title to an interest other than an interest in land held under current customary usage;

“easement” means a right attached to a parcel of land either to use other land in a particular manner or to restrict its use to a particular extent, but does not include a profit;

“economic tree” means a tree which, or the products of which, have a cash value;

“estate”, except in section 253 (2), means a perpetual estate or a fixed-term estate as defined in Part VIII;

“file” means place in the relevant parcel file;

“guardian” means a person who, according to law, is empowered to act on behalf of a person who is either under the age of twenty-

one years or incapable, by reason of mental infirmity, of acting;

“inheritance” does not include acquisition under the terms of a will;

“instrument” includes any deed, judgment, decree, order, declaration or other document;

“interest”, where used in relation to land, includes, unless the context otherwise requires, an estate, a lease, a profit, an easement and a charge; and **“person interested”** has a corresponding meaning;

“land” includes land covered by water, all things growing on land and buildings and other things permanently fixed to land but does not include any minerals (including oils and gases) or any substances in or under land which are of a kind ordinarily worked for removal by underground or surface working;

“land register” means the land register compiled under Division 2 of Part VI;

“lease” means the grant, with or without consideration, by the owner of an estate of the right to the exclusive possession of the land comprised in that estate or any part thereof, and includes the right so granted and the instrument granting it, and includes a sublease and any periodic tenancy, but does not include an agreement for lease;

“lessee” means the owner of a lease;

“lessor” means the person who has granted a lease or his successor in title;

“licence” means a permission given by the owner of an estate or by a lessee which allows the licensee to do some act in relation to the land comprised in the estate or the lease which would otherwise be a trespass, but does not include a lease, an easement or a profit;

“local court” means a court established under the *Local Courts Act*;

“owner”, in relation to a registered interest, means the person in whose name the interest is for the time being registered; and, in relation to customary land, it means the person or persons who is or

are, according to current customary usage, regarded as the owner or owners of the land; and **“own”** has a corresponding meaning;

“parcel”, in relation to registered land, means an area of land separately demarcated on the registry map;

“preservation order” means an order made pursuant to section 250 (1);

“a profit” means a right to go on the land of another to take a particular substance from that land, whether the soil or the products of the soil, and includes the taking of wild animals;

“public land” means land which is shown by the register to be vested for a perpetual estate in the Commissioner for and on behalf of the Government;

“public road” has the meaning ascribed to it in the *Roads Act*;

“public service” means the service of the Government;

“Recording Officer” means a Recording Officer appointed pursuant to section 32 (2);

“road” includes a public road;

“the register” means the leaf of the land register kept in respect of a registered estate or lease;

“to register” means to make an entry in the land register under this Act, and **“registered”** **“unregistered”** and **“registration”** bear a corresponding meaning;

“registrable”, in relation to an instrument, means required to be registered or capable of registration under this Act;

“the Registrar” means the Registrar of Titles or, where a Deputy Registrar or Assistant Registrar has been authorised under section 7 (1) to perform or exercise any particular duty or power, that Deputy Registrar or Assistant Registrar so far as concerns that duty or power;

“registry map” means the map or series of maps referred to in

section 93;

“the repealed Act” means the *Land and Titles Act* repealed by section 238(1)*;

*This reference is to s. 238(1) of Act No. 6 of 1968 - See Cap. 93, 1969 Revised Edition (Page 3767).

“river” includes a stream, canal, creek, or other watercourse, natural or artificial, the bed of which is normally not less than ten feet in width;

“settlement area” means a land settlement area designated under section 31;

“Settlement Officer” means a Land Settlement Officer appointed pursuant to section 32(1);

“Settlement Record” means a Settlement Record prepared under section 47;

“settlement section” means a settlement section constituted under section 35;

“Solomon Islander” means a person born in Solomon Islands who has two grand-parents who were members of a group, tribe or line indigenous to Solomon Islands;

“statutory trusts” means the trusts declared by section 214(1);

“survey” includes boring and the digging of trial holes and taking of levels;

“Survey Officer” means a Survey Officer appointed pursuant to section 32(2);

“Surveyor” means a Surveyor registered under section 4(2) of the *Land Surveys Act* or appointed under section 3;

“the Surveyor-General” means the chief surveyor in the public service;

“transfer” means the passing of an interest by act of the parties and not by operation of law, and also the instrument by which such passing is effected;

“transmission” means the passing of an interest from one person to another by operation of law on death or insolvency or otherwise howsoever, and includes the compulsory acquisition of interests in land under any law for the time being in force in Solomon Islands;

“value” includes marriage, but does not include a nominal consideration;

“will” includes a codicil and any other testamentary instrument.

- (2) Where an interest exists in any land, that land is said to be comprised in that interest.
- (3) Where an interest in land is held subject to the payment of any rent or the performance of any obligation, that rent or that obligation is said to be incident to that interest.
- (4) An obligation is a requirement of the performance, or of the abstention from performance, of an act or series of acts; and a person who complies with the requirement is said to perform the obligation.

PART II ADMINISTRATION

3 The Commissioner of Lands and his officers

This Act shall be administered by a Board and a Commissioner of Lands who shall be assisted by a Registrar of Titles and such and so many Deputy Commissioners of Lands, Surveyors, Deputy Registrars, Assistant Registrars, Title Examiners and other officers.

4 Duties and powers of Commissioner

- (1) It shall be the duty of the Commissioner, in addition to his other duties specified in this Act, to advise the Minister, as often as he may be requested so to do, concerning land policy in Solomon Islands.
- (2) The Commissioner may, by notice, delegate the control and management, subject to such conditions and restrictions (if any) as he may specify in such notice, of any interest in land vested in him to any officer in the public service or any Local Government Council.

- (3) The Commissioner shall have the power to institute or defend any proceedings under his official title.
- (4) Subject to the provisions of this Act and any general or special direction of the Board the Commissioner shall, for and on behalf of the Government, have power:
 - (a) to hold and deal in interest in land subject to section 8(C); and
 - (b) to execute any instrument relating to an interest in land and such other powers as are provided for under the provisions of this Act.
- (5) In exercise of his powers under subsection (2) of section 143, section 144, subsection (2) of section 172 and Part XIV the Commissioner shall act in accordance with the advice of the Board:

Provided that the Minister may by notice in writing to the Commissioner dispense with the requirement of this subsection in any case or class of cases as may be specified in the notice.

5 Duties and powers of Commissioner's officers

- (1) Every officer (other than the Commissioner) referred to in section 3 shall, except in respect of any power or duty specifically conferred or imposed upon him by this Act, be subject to the directions of the Commissioner and shall, subject to such directions, perform such duties and exercise such powers of the Commissioner as may be specified in the conditions of his appointment or as may be from time to time assigned or delegated to him by the Commissioner.
- (2) Any person aggrieved by a decision of any of the officers (other than the Commissioner or the officers mentioned in section 6 (1)) referred to in section 3 may refer the matter to the Commissioner, who may confirm or rescind the decision or substitute for it any decision which could lawfully be given in accordance with the provisions of this Act.
- (3) The Surveyor-General shall have the power to institute or defend any proceedings under his official title.

6 The Registrar and his officers

- (1) The land registries shall be administered by the Registrar of Titles, who shall be assisted by such and so many Deputy Registrars, Assistant Registrars, Title Examiners and other officers as may be appointed.
- (2) The Registrar shall have the power to institute or defend any proceedings under his official title.

7 Duties of Registrar's officers

Every officer (other than the Registrar) referred to in section 6 (1) shall be subject to the directions of the Registrar and shall, subject to such directions, perform such duties and exercise such powers of the Registrar as may be specified in the conditions of his appointment or as may be from time to time assigned or delegated to him by the Registrar.

8 Protection of officers

No action shall be brought against any of the officers referred to in sections 3 and 6 in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this Act.

PART IIA ESTABLISHMENT OF THE LAND BOARD AND ITS POWERS AND FUNCTIONS

8A Objects of this Part

The object of this Part is to establish a Land Board and to confer on it all powers and functions relating to the allocation of interest in land, the development of land and to ensure that the administration of land is carried out in a fair, transparent and equitable manner, to meet the needs and welfare of the people of Solomon Islands.

8B Establishment of Land Board and Power to appoint members

- (1) There is hereby established for the purpose of this Act a Land Board (hereinafter referred to as the "Board").

- (2) The Board shall be constituted in accordance with the Second Schedule.

8C Powers and functions of the Board in land allocation

- (1) The Board has power to:
- (a) allocate interest in any land in accordance with the provisions of this Act;
 - (b) approve any method of allocation of land and the terms and conditions to be applied;
 - (c) receive and determine any application for land allocation, subject to the provisions of subsection (6) of this section;
 - (d) consider and approve the level of rent, premium and covenants in respect of Perpetual estates and Fixed-term estates subject to any powers conferred on the Surveyor General or any other person under any other law;
 - (e) in respect of land repossessed by forfeiture, voluntary surrender or any other like act, determine its availability for allocation;
 - (f) receive, consider and grant temporary occupation licences subject to the provisions of section 82;
 - (g) subject to Cabinet approval, allocate government land as compensation for customary land acquired for and on behalf of the Government and grant rights of way over public land;
 - (h) require the Commissioner to submit to it reports on the status of any dealing, current or otherwise, under this Act; and
 - (i) make rules and issue guidelines, directions and statements governing matters within its power specified in this section.
- (2) Subject to the provisions of this Act the Board may in writing delegate any of the powers and functions in subsection (1) to the Commissioner.

- (3) The Commissioner shall in the exercise of a delegated power or

function in this Act, have regard to any rules, guidelines, directions or statements made or issued by the Board.

(4) In allocating land the Board shall:

(a) where it decides to allocate land by tender, public auction or by ballot, direct the Commissioner to:

- (i) cause the land to be advertised by whatever mode it deems appropriate in the circumstances;
- (ii) undertake any administrative action required for allocation;
- (iii) ensure that any applicable requirement under any other law is complied with fully;
- (iv) provide a report to the Board on the actions taken in sub-paragraphs (i) to (iii) together with recommendations; and
- (v) soon after allocation, inform the applicants and the public of the result.

(b) where it decides to allocate land directly, direct the Commissioner to:

- (i) carry out the acts in subparagraphs (a)(i),(ii) and (iii);
- (ii) cause a search to confirm the capability of the selected applicant; to fulfil the obligations attached to the allocation; and
- (iii) undertake any other action as it deems necessary.

(5) Unless directed by the Board any land recovered by forfeiture, resumption or voluntary surrender under this Act, shall not be allocated within a period of six months.

(6) The Commissioner shall only exercise a power or carry out any function in subsection (4) if:

- (a) there is a written directive from the Board to the Commissioner;

and

- (b) it is satisfied taking into account all necessary considerations that the method of allocation will not have any adverse consequences.

8D Provincial land

- (1) Subject to the provisions of the *Provincial Government Act 1997* or any other law applicable, any land owned by the Commissioner in a provincial land boundary is held subject to the provisions of this Act.
- (2) Where a land under subsection (1) is required either by the Provincial Executive or the Commissioner to be allocated for whatever purpose, the Chairperson of the Provincial Town and Country Planning Board or the Commissioner as the case may be, shall inform the Board accordingly and the Board shall in the exercise of its powers under section 8C(1)(b) issue directives on the prescribed process of allocation to be applied.
- (3) The Board may require the Provincial Town and Country Planning Board or the Commissioner under subsection (2) to make oral submissions on any specific case of allocation.
- (4) Notwithstanding any powers conferred on the Provincial Government under any other law in respect of land within a provincial land boundary owned by the Commissioner, the Board may refuse to allocate land under this section if the proposed allocation:
 - (i) does not meet with any legal requirements under law; or
 - (ii) does not fall within the objectives of this Act; or
 - (iii) is determined not to be in the best interest of the public.

8E Annual Report

- (1) The Board shall provide to the Minister:
 - (a) by 31 March in each year, a report on the performance of the Board in relation to its functions during the year ended 31 December of the previous year; and

- (b) such other reports produced in relation to the functions of the Board as may be requested by the Minister.
- (2) The Report shall, *inter alia*, state:
 - (a) all land allocated during the year;
 - (b) the names of all applicants who applied for the allocated land;
 - (c) the names of successful applicants;
 - (d) the premiums and rentals imposed;
 - (e) the conditions and covenants applied; and
 - (f) the method of allocation by which each parcel of land was allocated.
- (3) As soon as practicable after receipt of the report, the Minister shall:
 - (a) forward a copy to the Speaker for presentation to Parliament;
 - (b) make available copies for public inspection or purchase.

PART III SETTLEMENT OF UNREGISTERED DOCUMENTARY TITLES

9 Definitions

- (1) In this Part:

“assignment” means a transaction whereby the ownership of an existing leasehold interest in land passes from one person to another person, or from one person to himself and another person jointly, other than a transaction as an immediate result of which the leasehold interest merges in the reversion expectant thereon and is extinguished, or a transaction which is a mortgage;

“conveyance” means a transaction (not being a mortgage) whereby the ownership of a freehold interest in land passes from one person to another person, or from one person to himself and another person jointly;

“deeds register” means a register book, register or file of memorials within the meaning of the *Land Registration Act*;

“freehold interest in land” means an estate in fee simple absolute in possession or any interest in land of a similar nature and based upon a document of title;

“leasehold interest in land” means the interest of a tenant arising by virtue of a lease of land;

“mortgage” means a transaction whereby a freehold interest, or an existing registrable leasehold interest, in land becomes charged with the payment of a sum of money by the owner thereof to some other person, or to himself and some other person jointly, or whereby a freehold interest, or an existing registrable leasehold interest, in land passes, subject to a right of redemption (whether express or implied), from one person to another person, or from one person to himself and another person jointly; but it does not include a mere deposit of deeds for securing the payment of a sum of money;

“native land” has the meaning assigned to it by the *Land Act*;

“the previous law” means the law in force immediately before the 1st February, 1963;

“registrable leasehold interest in land” means a leasehold interest in land created by a lease which, if made after the 1st February, 1963, would be required to be registered;

“repealed Regulation” means a Regulation or Act repealed by the repealed Act, or a Regulation or Act repealed before the 1st February, 1963.

- (2) For the purposes of this Part, a transaction is deemed to have occurred when a devise or bequest of an interest in land takes effect beneficially (whether by assent thereto or otherwise), or when an interest in land to which some person becomes beneficially entitled (that is to say, otherwise than merely as administrator) on the death of another person intestate (so far as that interest is concerned) becomes vested in the first-mentioned person beneficially.

10 Voluntary application for first registration

- (1) Any person who claims to hold otherwise than by way of mortgage, a freehold interest or a leasehold interest in any land may apply to be registered as the owner of the interest; every such application shall be made to the Registrar in the prescribed form, which shall contain an application to the Surveyor-General to provide the necessary survey information and an undertaking to pay the fees for any survey work required, where such information is not furnished with the application.
- (2) The Registrar shall not register the applicant as the owner of an interest until the survey information and any other data he requires is available.
- (3) An application for registration may be made in pursuance of subsection (1) by a corporation whether sole or aggregate notwithstanding any provision to the contrary contained in or implied by the terms of its articles or memorandum of association, charter or other constitution, and any such application, together with any statutory declaration appertaining thereto, may be made on behalf of the corporation by a director or the secretary of the corporation or by an attorney appointed in that behalf by the corporation under its common seal, or in the case of a local authority by the clerk of the authority.
- (4) The Commissioner may apply to be registered as the owner on behalf of the Government of the perpetual estate in such land:
 - (a) below mean low water; and
 - (b) between the points of mean high water and mean low water,as vested in him under paragraphs (a) and (b) of section 47 (1) of the repealed Act.
- (5) The filing with the Registrar of an application for registration of an interest in land under subsection (1) shall, for the purposes of Order 53 of the High Court (Civil Procedure) Rules, made pursuant to the powers conferred by the Western Pacific (Courts) Order in Council 1961 (which said Order 53 relates to injunctions and interim preservation of property) be deemed to be the issue of a writ in an

action, and any person who may *prima facie* appear to the High Court to object or be likely to object to the registration of the interest according to the tenor of the application, shall be deemed to be a defendant to the action.

- (6) This section is to be read and construed and be subject to the provisions of Part VII and subsections (3) and (4) of section 112.

11 Registration without application

The Registrar may, without any application being made to him in that behalf, register as owner of an interest in land any person who, according to satisfactory information in his possession, would be entitled, under the provisions of this Part, to be registered as such owner upon making application to the Registrar.

12 Compulsory application for first registration on conveyance or assignment

Every conveyance of a freehold interest and every assignment of a registrable leasehold interest in land executed after the 1st February, 1963 shall be ineffectual until application for registration in respect of the interest conveyed or assigned, shall have been made under section 10 by the grantee, that is to say, the person who is entitled to be registered as the owner of that interest by virtue of the conveyance or assignment, and for the purposes of this section, in relation to any conveyance or assignment that would otherwise have been void under paragraph 4 of the Second Schedule to the repealed Act, the Registrar shall be deemed to have extended indefinitely, under paragraph 6 (1) of the said Second Schedule, the period of six months within which application for registration was required to be made.

13 Compulsory application for first registration on lease or mortgage

Every grant of a lease executed after the 1st February, 1963, being a grant whereby a registrable leasehold interest is created, and every mortgage executed after the 1st February, 1963, shall be ineffectual until application for registration in respect of the interest out of which the lease or mortgage is created, shall have been made under section 10 by the grantor or mortgagor, that is to say, the person who

is entitled to be registered as the owner of that interest, and for the purposes of this section, in relation to any grant or mortgage that would otherwise have been void under paragraph 5 of the Second Schedule to the repealed Act, the Registrar shall be deemed to have extended indefinitely, under paragraph 6 (1) of the said Second Schedule, the period of six months within which application for registration was required to be made:

Provided that, subject to section 15, such application may be made by the grantee or mortgagee.

14 Compulsory application for registration and penalty

- (1) Any person claiming to be the owner of a freehold or leasehold interest shall prior to the 1st December 1977 make an application to the Registrar (which may not be withdrawn) either to register his freehold or leasehold interest or to surrender the whole or any part of his freehold or leasehold interest to the Commissioner and in default of so doing shall be liable for each day after the 1st December 1977 to a fine of 50 penalty units which shall be deemed to be on the date when judgment is obtained a debt due to the Commissioner and a charge in his name over such freehold or leasehold interest.
- (2) On application for registration in accordance with subsection (1) any survey fees which become payable consequent upon the application shall be payable over a period of five years or over such longer period in cases of genuine hardship as the Commissioner may agree.
- (3) Where any person applies under subsection (1) to surrender the whole or any part of his freehold or leasehold interest then the Commissioner shall provide a document for execution by any such person to give effect to the surrender.
- (4) Any person who applies to surrender any part of his freehold or leasehold interest shall not thereby avoid the requirement of subsection (1) to apply for the registration of the remainder of his freehold or leasehold interest and a person claiming to be the owner of both freehold and leasehold interests must register both.

15 Costs

- (1) The costs of and incidental to an application under section 10 shall

be paid by the applicant and may be required by the Registrar to be paid in advance.

- (2) The Registrar may, subject to subsection (3), order any person who appears to him to benefit from the registration of any interest owned by that person, to pay the costs of and incidental to such registration.
- (3) The grantor or mortgagor shall, in the absence of any agreement to the contrary, be liable to pay the costs of and incidental to any application under the proviso to section 13.
- (4) For the purposes of this section the costs of and incidental to registration shall include reasonable costs incurred by persons required by the Registrar to furnish information, statutory declarations and affidavits and to produce documents.

16 Application on behalf of joint owners

- (1) Where a freehold interest or a leasehold interest in any land is or becomes vested in two or more persons as joint owners, any one of such persons may apply for the registration of all of such persons as joint owners of the interest under this Act.
- (2) The Registrar shall, upon receiving such application, take such steps as he may consider appropriate to bring the application to the attention of such of the joint owners as did not make the application.

17 Protection of owners in certain cases

- (1) The Registrar shall not register any person applying for registration as owner of an interest otherwise than in accordance with the tenor of the application, or refuse to register such person as owner of an interest, unless he has previously afforded that person an opportunity to be heard, nor shall the Registrar dispose of any application by a grantee or mortgagee under the proviso to section 13 without first giving the grantor or mortgagor an opportunity to be heard.
- (2) The Registrar shall not register as owner of an interest any person who has not applied to be so registered, unless he has previously afforded that person an opportunity to be heard.
- (3) The provisions of subsections (1) and (2) shall not apply to any case

in which the Registrar acts pursuant to an order of the High Court.

18 Procedure, and powers of Registrar

- (1) Before registering any person as owner of an interest under this Part, the Registrar shall satisfy himself as to all matters requisite for the purpose of effecting the registration.
- (2) For the purpose of so satisfying himself the Registrar may in addition to exercising any other power he may possess:
 - (a) accept as evidence recitals, statements and descriptions of the facts, matters and parties in deeds, documents or statutory declarations not less than twenty years old, copies of orders of any court, memorials of registration under any Regulation or Act concerning the registration of instruments relating to or affecting land, and any other matter contained or recorded in any deeds register;
 - (b) give effect to any judgment or order of a court affecting land, notwithstanding that a memorial thereof was not registered in the manner required by the *Land Registration Act*;
 - (c) inspect or cause to be inspected any land, with a view to ascertaining the nature of the interest therein (if any) owned by any person appearing to be in lawful occupation thereof;
 - (d) publish in the *Gazette* or in such manner as he shall consider to be adequate or most effective for the purpose of bringing them to the attention of all persons affected thereby, advertisements of his intention to effect the registration, and accept as evidence any information gained by him as a result of any response, or the lack of any response, to such advertisements;
 - (e) refer any matter or question to the Commissioner or to the Provincial Secretary for report or decision, and accept as evidence such report or decision when made or given;
 - (f) refer any matter or question to an Adjudication Officer for report or decision, and accept as evidence such report when made.

- (3) Where the Registrar refers any matter or question for report or decision pursuant to the powers conferred upon him by subsection (2), any person who has been afforded, by the person to whom such matter or question is referred, an opportunity to be heard during the course of the investigation or decision of the matter or question shall, for the purpose of section 17, be deemed to have been afforded an opportunity to be heard by the Registrar.

19 Adjudication Officer

- (1) The Registrar may appoint any person to be an Adjudication Officer for the purposes of section 18(2)(f).
- (2) Where the Registrar refers any question to the Adjudication Officer for decision, the Adjudication Officer shall, (subject to any regulations which may be made) adopt such procedure for deciding the question as it appears to him to be appropriate, and he shall not be bound by any rules of evidence.
- (3) The decision of the Adjudication Officer shall be in writing, and copies of it shall be served upon every person affected by it.
- (4) If any person aggrieved by the decision of the Adjudication Officer desires to question it, or any part of it, on the ground that it is erroneous in point of law or that the Adjudication Officer has failed to comply with any procedural requirement of this Act, he may, within three months from the service upon him a copy of the decision, appeal to the High Court.
- (5) On any such appeal the Court may, if satisfied that the decision is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by the failure of the Adjudication Officer to comply with any procedural requirement of this Act, quash the decision, either wholly or in part, and substitute for the decision, or the part thereof quashed, such decision as in its opinion ought to have been given by the Adjudication Officer and may under section 229 order rectification of the land register.
- (6) The decision of the Court on such application shall be in writing, and copies of it shall be furnished by the Court to the appellant and the Adjudication Officer, and by the Adjudication Officer to every other person who appears to him to be affected by such decision.

- (7) A decision or order of the Court on such an appeal, and, subject to the provisions of this section relating to appeal, a decision of the Adjudication Officer under this section, shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

20 Personal representatives and guardians

Any application which could be made under the provisions of this Part by any person, and any opportunity to be heard which ought under such provisions to be afforded to any person, and any notice which is required by such provisions to be served on any person, may or shall, if that person be dead or under a disability by reason of age or mental infirmity, be made by or afforded to or served on his personal representative or guardian.

21 Interests to be registered

- (1) Every freehold interest in land subsisting at the 1st February, 1963 shall when registered take effect as a perpetual estate in that land.

- (2) Every leasehold interest in land subsisting at the 1st February, 1963 and created by:

- (a) any certificate of occupation granted in the exercise of any power conferred by any repealed Regulation; or
- (b) any lease granted by the Government other than a lease of native land,

shall upon registration take effect, subject to section 23, as a fixed-term estate for a period equivalent to the unexpired residue of the term created by the certificate of occupation or lease.

- (3)

- (a) Every leasehold interest in land subsisting at the 1st February, 1963, and arising out of a lease of native land shall, subject to the provisions of this Act, continue in force according to its terms and conditions and shall upon registration take effect as a lease of customary land.

- (b) Upon the registration of such a leasehold interest as a lease of

customary land, the native land in which it subsists shall be registered as customary land.

(4)

- (a) Subject to the provisions of this section, all land which during the period of twelve years immediately preceding the 1st February, 1963 had been continuously dealt with as public land within the meaning of the *Land Act*, shall, upon submission to the Registrar of a statutory declaration to that effect by the Commissioner, be registered as public land, unless it is proved that such land was not public land within the meaning aforesaid.
- (b) No land shall be registered as public land in pursuance of this subsection unless notice has been published by the Registrar in such manner as he thinks fit:
 - (i) of the application by the Commissioner; and
 - (ii) calling for objections or claims to the contrary to be made within such period, not being less than thirty days, as shall be specified.
- (c) The Registrar shall, where any claim or objection is made under subsection (4) (b) of this section, and in any other case may, refer to an Adjudication Officer under section 18 (2) (f), the question of whether or not the land was public land within the meaning of the *Land Act*.

22 Matters affecting interests registered under this Part

- (1) Every estate or lease which takes effect by virtue of the provisions of this Part shall take effect and may only be registered subject to such leases, charges and other rights and interests as are, by virtue of this Act, applicable thereto.
- (2) Every fixed-term estate and every lease which takes effect by virtue of section 21, and every perpetual estate which is registered pursuant to section 23, shall, subject to the provisions of this Act, take effect and be registered subject to the same rent and obligations (if any) as the interest in substitution for which it takes effect.

23 Conversion of certain leases

Where, on the 1st February, 1963, the unexpired residue of the term of any leasehold interest (being a leasehold interest held immediately of the High Commissioner) such as is mentioned in section 21(2) exceeded nine hundred years, the Registrar shall, if so directed by the Commissioner (who shall not be bound to give any such direction), register the owner thereof as owner of a perpetual estate.

24 Public land

Where a fixed-term estate is registered pursuant to the provisions of this Part, the Commissioner shall be registered for and on behalf of the Government as the owner of the perpetual estate in the land comprised therein.

26 Estates deemed to have been transferred or granted by Commissioner

Every estate registered pursuant to the provisions of this Part shall be deemed to have been transferred or granted by the Commissioner.

27 Conversion of mortgages, leases and other interests

- (1) Subject to the provisions of this Part upon registration thereof:
 - (a) every mortgage validly made under the previous law shall take effect as a charge under the provisions of this Act;
 - (b) every lease validly made under the previous law shall take effect as a lease under the provisions of this Act;
 - (c) every other transaction affecting land or an interest therein shall, if it was validly made under the previous law, have the like effect as it would have had under the provisions of this Act if it had been effected after the 1st February, 1963.
- (2) All personal rights and obligations existing by virtue of any such mortgage, lease or other transaction as is mentioned in subsection (1) shall, subject to the provisions of this Act, continue in full force and effect.

28 Commissioner to account for rent

The Commissioner shall in respect of every leasehold interest as is mentioned in section 21 (3) (a) account for the rent received by him in like manner as if the previous law had continued in force.

29 Limitation

- (1) For the avoidance of doubt it is hereby declared that subject to subsection (2) and Part XXIII (which relates to prescription), in determining who is or was at any time the owner of a freehold or leasehold interest in any land, regard shall be had to the provisions of the *Limitation Act*, or of any enactment repealed thereby, as the case may require, and for this purpose such provisions shall be deemed to apply and to have applied to such interests in the same manner as they apply and applied, to land in England.
- (2) The provisions of section 227 (2) (which exclude from adverse possession the period between the 1st February, 1963 and the 3rd August, 1965) shall apply *mutatis mutandis* to the ascertainment of the aggregate period of limitation under subsection (1).

30 Delivery and custody of deeds registers

- (1) Every person having the custody or control of any deeds register shall when required by the Registrar hand over such deeds register to the Registrar.
- (2) The Registrar shall be responsible for the safe custody of every deeds register handed over to him

PART IV SYSTEMATIC SETTLEMENT

31 Designation of land settlement areas

- (1) The Minister may by order designate any area as a land settlement area.
- (2) Any order made under subsection (1) may at any time, by order, be:
 - (a) revoked or modified by the Minister; or
 - (b) modified by the Settlement Officer if it appears to him that the

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settlement area includes part only of a parcel of customary land separately owned, by varying the limits of such area to include or exclude the parcel.

- (3) Every order shall state the situation and general limits of the land affected.
- (4) Every order shall be published in the *Gazette*.
- (5) Notwithstanding the terms of any order made under this section, no registered land, save and except land registered as customary land, shall form part of any settlement area.

32 Appointment of officers

- (1) When an order has been made under section 31, the Minister shall appoint a Land Settlement Officer for the settlement area.
- (2) The Settlement Officer shall appoint:
 - (a) such Demarcation Officers;
 - (b) with the approval of the Surveyor-General, such Survey Officers; and
 - (c) such Recording Officers,

as he may consider necessary for carrying out the demarcation and survey of parcels and the settlement and recording of claims to interests in land within the settlement area.

33 General powers of officers engaged in settlement

- (1) The Settlement Officer shall exercise general supervision and control over the settlement proceedings and for this purpose he may issue to the officers engaged therein such general or particular directions as he thinks necessary for carrying out the provisions of this Part.
- (2) The Settlement Officer and a Recording Officer shall be legally competent to administer oaths in any inquiry conducted for the purposes of this Act and to issue summonses, notices or orders requiring the attendance of any person or the production of any document as may be needed for the carrying out of the settlement.

- (3) A Demarcation Officer and a Survey Officer shall have all the powers of a Surveyor under Part XXV.

34 Staying of action and restriction on dealings

- (1) Except with the consent in writing of the Settlement Officer, no proceedings concerning any interests in land within a settlement area shall be instituted in any court until proceedings under this Part have been completed.
- (2) Any such proceedings instituted before the designation as such of the settlement area under section 31 shall, where practicable, be heard and determined before settlement of the parcel affected has commenced; proceedings which have not been so heard and determined shall, unless the court otherwise directs, be transferred for determination by the Settlement Officer.
- (3) Except with the consent in writing of the Settlement Officer no dealings in any land within a settlement area shall be effected until the Settlement Record has become final and any dealing effected in breach of this subsection shall be void and of no effect.

35 Settlement sections

Within each settlement area the Settlement Officer shall constitute settlement sections which may be the whole or divisions of the settlement area, and shall give each settlement section a distinctive name or number.

36 Notice by Settlement Officer

- (1) The Settlement Officer shall prepare a separate notice in respect of each settlement section and in each such notice he shall:
 - (a) specify as nearly as possible the situation and limits of the settlement section;
 - (b) declare that all interests in land within the settlement section will be ascertained and recorded in accordance with the provisions of this Act;
 - (c) require any person who claims any interest in land within the

settlement section to make a claim thereto either in person or by a duly authorised representative within the period, to the person, at the place, and in the manner specified in the notice; and

- (d) require all claimants to an interest in land within the settlement section to cut, mark, or point out the boundaries of the land affected by his claim in such manner and before such date as the Demarcation Office shall specify.

(2) The Settlement Officer shall:

- (a) publish such notice in writing at such places as he may consider expedient; and
- (b) cause the substance of such notice to be made known throughout the settlement area in such manner as he shall consider to be adequate or most effective for the purpose of bringing it to the attention of all persons affected thereby.

37 Making of claims and attendance

- (1) Every person claiming any interest in land within the settlement section shall make his claim in the manner and within the period specified in the notice published under section 36.
- (2) Every person whose presence is required by the Settlement Officer or any Demarcation Officer, Survey Officer or Recording Officer shall attend in person or by a duly authorised representative at the time and place required by such Officer and shall produce any document or plan in his possession affecting any land within the settlement section.
- (3) If any such person fails to attend in person or by a duly authorised representative, the demarcation, survey, recording, or settlement, as the case may be, may proceed in his absence.

38 Safeguarding of rights of persons under disability or absent

- (1) If the Settlement Officer or any Demarcation Officer or Recording Officer is satisfied that any person who has not made a claim, has a claim to any interest in the land within the settlement section, such

Officer may, but shall not be bound to, proceed as if a claim had been made.

- (2) Where one or more of several heirs of a deceased owner or claimant, or one or more of a group of heirs having a separate interest from another group or other groups appears, his or their appearance shall be deemed to be the appearance of all the heirs unless the Settlement Officer directs otherwise.
- (3) If the Settlement Officer, Demarcation Officer or Recording Officer is satisfied that a claim might be established by a person under a disability by reason of age or mental infirmity and no person has been appointed to represent the person under disability, he shall appoint a person or persons to represent the person under disability and shall proceed as if a claim had been made.

39 Local committees

If it appears expedient to the Settlement Officer, he may, in consultation with the Provincial Secretary, appoint a committee of not less than three persons from among any persons resident in the locality:

- (a) to advise him on any point of current customary usage;
- (b) to represent the interests of absent persons, minors and persons under disability;
- (c) to bring to the attention of officers engaged in the settlement, any claim which for any reason may not have been made; and
- (d) to assist generally in the settlement and in any re-parcelling of land which may be required.

40 Notice of demarcation

- (1) At least two weeks before the demarcation of any settlement section is begun, the Demarcation Officer shall, in such manner as the Settlement Officer considers to be adequate or most effective for the purpose of bringing the matter to the attention of the persons affected by it, give notice of the intended demarcation, stating the time and place at which it will begin.

- (2) Such notice shall require every claimant to indicate the boundaries of the land affected by his claim in the manner specified in the notice.

41 Duties of Demarcation Officer

Subject to any general or particular directions issued by the Settlement Officer, the duties of the Demarcation Officer shall be:

- (a) to see that the boundaries of each separate parcel are properly demarcated or indicated in accordance with the requirements of the notice given under section 40;
- (b) to demarcate rights of way and of water, roads and the boundaries of all vacant land; and
- (c) to submit to the Settlement Officer any boundary dispute which he is unable to resolve.

42 Duties of Survey Officer

Subject to any general or particular directions issued by the Settlement Officer and to any directions relating to survey standards and requirements issued by the Surveyor-General the duties of the Survey Officer shall be to make a survey of each settlement section and cause to be prepared a demarcation plan on which shall be shown:

- (a) every separate parcel of land identified by a distinguishing number (except that roads and rivers shall not require to be identified by a number); and
- (b) such other details as the Recording Officer may direct.

43 Special powers of Demarcation Officer

In the performance of his duties the Demarcation Officer may:

- (a) where any boundary between separate parcels is curved or irregular or where the layout of the parcels is inconvenient or uneconomic for the reasonable use of the land, lay out a fresh boundary and before completion of the Settlement Record adjust the rights of the owners of interests in the land adjoining such boundary by exchange of land, by the payment of money

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by one owner to another, or by the creation of a charge;

- (b) demarcate any right of way giving access to a road, way, river, creek or foreshore affording reasonable means of access, in favour of any parcel of land completely surrounded by other parcels;
- (c) make such alignment of parcels abutting on a road, way, river or foreshore as may be required in the public interest; and
- (d) with the agreement of the owner or owners of interests therein, reparcel land, by way of exchange or otherwise.

44 Previously registered land

Upon the making of an order under section 31 designating a settlement area, the Registrar shall furnish the Settlement Officer with such particulars of every parcel of registered land situate within the perimeter of the settlement area as will enable each such parcel to be identified on the demarcation plan.

45 Duties of Recording Officer

- (1) Subject to any general or particular directions issued by the Settlement Officer, the Recording Officer shall consider claims made in pursuance of any notice published under section 36 and after such enquiry as he thinks necessary, he shall compile records in accordance with the provisions of sections 46 and 47.
- (2) If there are two or more claimants to any interest in any land and the Recording Officer is unable to effect agreement between them, he shall submit the case, with particulars of the claims, to the Settlement Officer to hear and decide.
- (3) Where in any parcel of customary land any economic trees are in accordance with current customary usage owned by a person other than the owner of the land itself, the Recording Officer before completion of the Settlement Record may adjust the rights of such owners by the exchange of land, the payment of money by one owner to another, the creation of a charge or the grant of a lease or a profit for the estimated unexpired life of the trees so that the ownership of the land and the ownership of the trees shall be vested in the same

person subject to any charge, lease or profit created as aforesaid.

- (4) The Recording Officer shall rectify the records in accordance with any order made by the Settlement Officer.

46 Principles on which record is to be made

- (1) In preparing the record under section 47 the Recording Officer shall, if he is satisfied:

- (a) that any person has, in accordance with current customary usage, exercised rights over customary land which amount to, or can be deemed to amount to, rights equivalent to those of the owner of a perpetual estate in land, record that person as entitled to be registered as the owner of a perpetual estate in that land:

Provided that:

- (i) where, in respect of any parcel, there are more than one but not more than five such persons he shall:
 - (A) record whether the rights held by them are such that they are to be registered as joint owners or as owners in common;
 - (B) where they are to be registered as joint owners, record the nature of the beneficial interests held by them; and
 - (C) where they are to be registered as owners in common, record the share of each;
 - (ii) where, in respect of any parcel, there are more than five such persons he shall:
 - (A) record which of them, being not less than two and not more than five in number, have been appointed by a majority of the whole number to be registered as joint owners holding on trust for the whole number;
 - (B) record the details of the beneficial interests; and

- (C) arrange for the persons appointed to be registered as joint owners to make a statutory declaration in public for the purpose of section 195(3);
- (b) that no person is entitled to be registered as the owner of a perpetual estate in any particular parcel, record that parcel as vacant land or as customary land as the case may require;
- (c) that any person is entitled to any interest which should be registered as an encumbrance affecting any interest in land which is the subject of record under paragraph (a) or as vacant land under paragraph (b), record such particulars as may be necessary to define the nature, incidents and extent of the interest and to enable it to be registered in the name of the person entitled to the benefit thereof and for this purpose, where there is more than one such person, the proviso to paragraph (a) shall apply, *mutatis mutandis*;
- (d) that any interest in land which is the subject of record under paragraph (a) or paragraph (c) is subject to any roads, any rights of way or rights of water, record the latter as encumbrances affecting such interest;
- (e) that any land is used for:
 - (i) a village residential area;
 - (ii) a burial ground or other place held to be sacred; or
 - (iii) a village nut or fruit grove, water hole or any other special purpose of a village or other community,

record it as customary land used for that purpose.

- (2) In preparing the record, the Recording Officer may give effect to any judgment or order of a court of competent jurisdiction affecting the land, notwithstanding that a memorial thereof has not been registered in the manner required by any law in force in Solomon Islands.

47 Settlement Record

- (1) The Recording Officer shall prepare and sign in respect of each parcel shown on the demarcation plan (other than a parcel which is registered) a record in the prescribed form containing the following details:
 - (a) the number of the parcel as shown on the demarcation plan;
 - (b) either the name and description of the person entitled to be registered as the owner of the perpetual estate in the parcel, with particulars of any restriction on his power of dealing with it, or the fact that the parcel is vacant land or customary land;
 - (c) such particulars of every other registrable interest affecting the parcel, whether by virtue of current customary usage or otherwise, as will enable it to be registered as a lease, charge, easement or profit, as the case may be, together with the name and description of every person entitled to the benefit thereof and particulars of any restriction on his power of dealing with it;
 - (d) any obligations to which any interest recorded under paragraphs (b) and (c) is subject, and any encumbrances recorded in pursuance of section 46 (1) (d), to which such an interest is subject;
 - (e) where the owner of any registrable interest in the land is under a disability by reason of age or mental infirmity, the name of his guardian or recognised representative and the nature of the disability;
 - (f) a list of the documents, if any, produced to the Recording Officer and retained by him; and
 - (g) the date on which the prescribed form aforesaid is completed.
- (2) Where there are more than five persons entitled, other than as owners in common, to be registered as owners of an estate or interest under this section:
 - (a) if such persons can be identified by a group name such name may be recorded in place of the name and description of each

such person;

- (b) the record shall in any event contain the names and descriptions of those of such persons who have been appointed to be registered as joint owners of the interest; and
 - (c) there shall be annexed to the record the statutory declaration made in pursuance of paragraph (ii)(C) of the proviso to section 46(1)(a).
- (3) The completed forms and the demarcation plan shall together be known as the Settlement Record in respect of the section to which they relate.

48 Special powers of Settlement Officer

- (1) The Settlement Officer shall hear and decide:
- (a) any dispute as to ownership of any interest in or boundaries of any land within the settlement section submitted to him by the Recording Officer under section 45 or by the Demarcation Officer under section 41; and
 - (b) any petition under section 54.
- (2) In the hearing of any dispute or petition the Settlement Officer shall make and sign a brief record of the proceedings and shall adopt such procedures as appear to him appropriate for the purpose of the hearing and he shall not be bound by any rules of evidence.
- (3) Where the heirs of a deceased person or other persons claim as co-owners interests in land which are or can be deemed to be equivalent to those of the owner of a perpetual estate, whether the land comprises a number of parcels or consists of one parcel which is held in undivided shares, the Settlement Officer may order a partition of the land among the co-owners in accordance with any agreement approved by him, or, failing agreement, in such manner as he may determine.
- (4) In the exercise of his powers under this section, the Settlement Officer shall have all the powers of a Magistrate.

49 Where individual settlement is impracticable

- (1) If the Settlement Officer considers that the settlement section or any part of it is not ready for settlement because the customary rights in it are not sufficiently determinate or for any other reason it appears that individual settlement is impracticable or undesirable:
 - (a) he may refer the matter to the Minister with a recommendation that the settlement section or the appropriate part of it should be withdrawn from the settlement area under section 31 (2), and the Minister may either make an order under section 31 (2) or refer the matter back to the Settlement Officer with a direction that it be dealt with under paragraph (b); or
 - (b) he may direct the land to be recorded as customary land.
- (2) Land which has been recorded as customary land may again be declared for settlement under this Part.

50 Claims based on documents of title

If a claim is based on a document of title, notwithstanding anything to the contrary in this Part contained:

- (a) the Recording Officer shall refer it to the Registrar for settlement under Part III;
- (b) if the Registrar considers that the claim cannot be settled expeditiously he shall report it to the Minister with a recommendation that the settlement area be varied under section 31 (2) by the exclusion of such part thereof as may be appropriate;
- (c) the demarcation plan shall not be completed until the area relating to the claim has been excluded from the settlement area, or the claim has been settled and the Registrar has under section 44 furnished the Settlement Officer with particulars of the parcel or parcels concerned.

51 Minor modification of settlement section

If it appears to the Settlement Officer that a settlement section

includes part only of a parcel of customary land he may by notice vary the limits of such section to include or exclude the parcel, and shall publish such notice in the manner prescribed in section 36(2) (b).

52 Documents produced in support of claim

The Settlement Officer or the Recording Officer may retain any document produced to him in connection with any claim or he may return it to the person who produced it marked in such manner as the Settlement Officer or Recording Officer, as the case may be, shall consider appropriate.

53 Notice of completion of Settlement Record

When the Settlement Record in respect of any settlement section is complete, the Settlement Officer shall sign and date a certificate to that effect and shall forthwith give notice of the completion thereof in the manner prescribed in section 36(2) (b) and of the place and times at which the Settlement Record or an official copy thereof can be inspected and in such notice shall declare the period during which and the manner in which petitions under section 54 may be presented.

54 Petition against decisions of Demarcation, Survey and Recording Officers

Any person, including the Commissioner, who is aggrieved by any act or decision of a Demarcation Officer or Survey Officer or by any entry in or omission from the Settlement Record by the Recording Officer under the powers given to those officers by this Act may, at any time during the period declared under section 53, petition the Settlement Officer in respect of the act, decision, entry or omission concerned, and the petition shall be heard and determined by the Settlement Officer.

55 Correction of errors

At any time before the Settlement Record becomes final, the Settlement Officer:

- (a) may correct in the Record any error or omission not materially

affecting the interests of any persons; and

- (b) after taking such steps as he thinks fit, to bring to the notice of every person whose interest is affected, his intention to make any material alteration in the Record which he considers necessary, and after giving such person an opportunity to be heard, may make such alteration.

56 Certificate of finality

After the expiration of the period declared under section 53, or when the Settlement Officer has determined all petitions presented under section 54, whichever shall be the later, the Settlement Officer, shall sign and date a certificate to the effect that the Settlement Record is final, give in the manner prescribed in section 36 (2) (b) notice of such certificate and of the place and times at which an official copy of the final Settlement Record can be inspected and deliver to the Registrar for compilation of registers in accordance with the provisions of section 89, such information and statutory declarations as may be required for the purposes of section 195 and the Settlement Record.

57 Appeals

- (1) Any person (including the Commissioner) who is aggrieved by any act or decision of the Settlement Officer and desires to question it or any part of it on the ground that it is erroneous in point of law or on the ground of failure to comply with any procedural requirement of this Act, may within three months from the date of the certificate of the Settlement Officer under section 56 or within such extended time as the High Court, in the interests of justice, may allow, appeal to that Court in the prescribed form.
- (2) On any such appeal the Court may, if satisfied that the decision is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by failure to comply with the procedural requirements of this Act, make such order or substitute for the decision of the Settlement Officer such decision as it may consider just and may under section 229 order rectification of the land register, and the order or decision of the High Court shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

- (3) A decision of the Court on appeal under subsection (1) shall be in writing and copies of it shall be furnished by the Court to the Registrar, to the appellant and to all other parties to the appeal and, by the Registrar, to all other parties who, in his opinion, may be affected by the appeal.
- (4) Any person (including the Commissioner) appealing under subsection (1) shall give notice to the Registrar of his intention to appeal and the Registrar shall enter a caveat under section 222 in every register affected by the appeal.

58 The recording of ownership deemed to be a transfer by Commissioner

For the purposes of section 133, the recording under this Part of the name of any person as being entitled to be registered as the owner of a perpetual estate shall be deemed to be the transfer of such estate by the Commissioner.

59 Vacant land brought under public control

Where land is found to be vacant under the provisions of this Part, the Commissioner shall be registered as the owner of the perpetual estate therein for and on behalf of the Government.

**PART V PURCHASE OR LEASE OF CUSTOMARY LAND
BY PRIVATE TREATY, AND COMPULSORY
ACQUISITION OF LAND**

Division I. Purchase or Lease of Customary Land

60 Purchase or lease of customary land by Commissioner

Notwithstanding any current customary usage prohibiting or restricting such transaction, customary land may be sold or leased to the Commissioner or any Provincial Assembly in accordance with the provisions of this Division.

61 Appointment of Acquisition Officer

- (1) Whenever the Commissioner wishes to purchase or to take a lease of any customary land under section 60, he shall in writing appoint

an Acquisition Officer to act as his agent for the purposes of the acquisition.

- (2) Where a Provincial Assembly wishes to purchase or to take a lease of any customary land under section 60, the Provincial Secretary may appoint an Acquisition Officer to act as his agent for the purposes of the acquisition.
- (3) The Acquisition Officer shall have all the powers of a Magistrate for the purposes of administering and taking oaths, affirmations and statutory declarations, securing the production of documents and the attendance and examination of persons whom he believes to be able to give evidence upon any of the matters relevant to the acquisition; but he shall not be bound by the rules of evidence.

62 Boundary demarcation and agreement

The Acquisition Officer shall:

- (a) cause the boundaries of the land to be demarcated on the ground or upon a map or plan in such manner as to bring them to the notice of the persons affected;
- (b) make a written agreement for the purchase or lease of the land required with the persons who purport to be the owners or with the duly authorised representative of such owners.

63 Publication of notice

The Acquisition Officer shall publish in such manner as he considers to be adequate or most effective for the purpose of bringing it to the attention of all persons affected thereby, notice:

- (a) of the agreement made under section 62 (b);
- (b) of the arrangements made for a public hearing by him in the area to decide any claims:
 - (i) that the vendors or lessors named in such agreement are not the owners; or
 - (ii) that such vendors or lessors do not have the right to sell or lease the land and to receive the purchase money or

rent; and

- (c) requiring such vendors or lessors and the claimants, if any, to attend.

64 Holding of public hearing

The Acquisition Officer shall hold a public hearing in the area in accordance with a notice published under the last preceding section, and if:

- (a) there are no claimants, he shall record that fact; or
- (b) there are any claimants, he shall hear their claims and determine the identity of the persons who have the right to sell or lease the land and receive the purchase money or rent.

65 Record

The Acquisition Officer shall:

- (a) record in writing the absence of claimants or his determination of the claims, as the case may be;
- (b) date such record or determination of the claims;
- (c) send a copy of such record or determination to the Commissioner; and
- (d) as soon as practicable bring the record or determination to the notice of the vendors or lessors and the claimants, if any, in such manner as he considers appropriate.

66 Appeals

- (1) Any person who is aggrieved by any act or determination of the Acquisition Officer may within three months from the date of the record or determination appeal to a Magistrate's Court and such court may make such order as it considers just.
- (2) Any person who is aggrieved by the order or decision of the Magistrate's Court and desires to question it on the ground that it is erroneous in point of law or in holding that the interests of the

appellant have not been substantially prejudiced by failure to comply with the procedural requirements of this Division, may within three months of the date of the order or decision appeal to the High Court.

- (3) The High Court may, if satisfied that the order or decision is erroneous in point of law or that the interests of the appellant have been substantially prejudiced by failure to comply with the procedural requirements of this Division, make such order as it considers just.
- (4) The order or decision of the High Court, and subject to the provisions of this section, the order or decision of the Magistrate's Court and the act or determination of the Acquisition Officer, shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

67 Implementation

Where the Acquisition Officer or, in the event of an appeal under section 66, the court, has determined that there are no claimants or has dismissed the claims, the Commissioner may, when the time limited for appeal under section 66 has expired and no appeal has been made, or on receipt of the order of the court, as the case may be, implement the agreement.

68 Part implementation and rescission

- (1) Where the Acquisition Officer or, in the event of an appeal under section 66, the court, has determined that any claimant has established a claim, the Commissioner may:
 - (a) implement the agreement made under section 62 (b) only to the extent to which a claim so established has not affected the right of the vendors or lessors named in that agreement to sell or lease any part of the land; or
 - (b) rescind such agreement.
- (2) Where the Commissioner rescinds an agreement under subsection (1) (b), he may enter into a fresh agreement relating to the same land or any part thereof with those persons who have been found by the Acquisition Officer or the court, as the case may be, to have the right to sell or lease the land and receive the purchase money or rent, and

the terms of such fresh agreement may be implemented without further notice, inquiry or hearing.

69 Possession and vesting

- (1) An agreement shall, for the purposes of sections 67 and 68, be implemented:
 - (a) in the case of a purchase of land, by the Commissioner:
 - (i) paying to the persons named in the agreement as vendors the purchase money;
 - (ii) taking such other steps as shall be necessary to comply with the terms of the agreement,
 - (iii) taking possession of the land, and
 - (iv) making an order vesting the perpetual estate in the land in the Commissioner for and on behalf of the Government, free from all other interests;
 - (b) in the case of a lease of the land, by the Commissioner:
 - (i) making an order vesting the perpetual estate in the land in the persons named in the agreement as lessors;
 - (ii) requiring the persons so named to execute a lease in favour of the Commissioner in accordance with the terms of the agreement;
 - (iii) paying to such persons any premium or rent payable in accordance with the terms of the agreement; and
 - (iv) taking possession of the land;
 - (c) in the case of a purchase of land by a Provincial Assembly where the Provincial Secretary has appointed an acquisition officer, by the Commissioner:
 - (i) receiving from the Provincial Assembly and paying to the persons named in the agreement as vendors the purchase money;

- (ii) requiring the Provincial Assembly to take such other steps as shall be necessary to comply with the terms of the agreement;
 - (iii) allowing the Provincial Assembly to take possession of the land; and
 - (iv) making an order vesting the perpetual estate in the land in the Provincial Assembly for and on behalf of the people of that Province, free from all other interests;
- (d) in the case of a lease of the land by a Provincial Assembly where the Provincial Secretary has appointed an acquisition officer, by the Commissioner:
 - (i) making an order vesting the perpetual estate in the land in the persons named in the agreement as lessors;
 - (ii) requiring the persons so named to execute a lease in favour of the Provincial Assembly in accordance with the terms of the agreement;
 - (iii) paying to such persons after receiving the same from the Provincial Assembly any premium or initial payment of rent payable in accordance with the terms of the agreement; and
 - (iv) allowing the Provincial Assembly to take possession of the land
- (2) Where an agreement is implemented to a limited extent under section 68 (1) (a), the provisions of subsection (1) shall be deemed to refer only to the part of the land in respect of which the agreement is implemented, and the purchase price, premium or rent, as the case may be, shall be adjusted accordingly.
- (3) If the agreement has not been rescinded, and has not been implemented, the Commissioner or the vendors or lessors may, within one year from the date on which the time limited for appeal under section 66 expired, or from the date of the order or decision of the court, whichever is the later, institute proceedings for specific performance of the agreement.

70 Registration

On receipt of a vesting order made by the Commissioner under section 69 and after preparation of the registry map, the Registrar shall compile registers in respect of the perpetual estate in the land comprised therein in accordance with the provisions of Part VI.

Division 2. Compulsory Acquisition of Land

71 Land may be acquired for public purpose

- (1) Whenever it appears to the Minister that any land is required for any public purpose, he may make a declaration to that effect and require the same to be published in such manner as he shall think fit.
- (2) The declaration shall specify (either by reference to a plan or otherwise) the boundaries and extent of the land so required, and the general nature of the public purpose for which it is required.
- (3) As soon as may be after the declaration has been made, the Commissioner shall cause to be posted, in prominent positions on or near the boundaries of the land specified in the declaration, notices in the prescribed form stating the fact that the declaration has been made and drawing attention to its effect and to the right to claim compensation conferred by section 79 and to the liberties and restrictions conferred and imposed by section 78.

72 Notice in respect of registered land

Where any land specified in the declaration is registered land, the Commissioner shall serve on every owner shown by the land register to be affected thereby a notice of the declaration in the prescribed form stating and drawing attention to the matters which are to be stated or to which attention is to be drawn in or by a notice posted pursuant to section 71(3).

73 Notice in respect of unregistered land

The Commissioner shall in such manner as he shall consider to be adequate or most effective for the purpose, give to every person or group of persons appearing to him to be, or claiming to be, the owner or owners of interests in any unregistered land or land registered as

customary land specified in the declaration, notice of the declaration and its effect and of the rights, liberties and restrictions conferred or imposed by the provisions of this Division.

74 Duty of Provincial Secretary to assist claimants and others

It shall be the duty of the Provincial Secretary to assist any person or group of persons requesting him so to do to draw up and submit any document which such person or group of persons may desire to draw up and submit for the purpose of exercising or claiming, or in connection with the exercise or claim of, any right or liberty conferred on him or them by the provisions of this Division; but no action shall lie against a Provincial Secretary for any failure to perform such duty or for anything done in good faith in the performance or purported performance of such duty.

75 Effect of declaration

On the publication of a declaration that land is required for a public purpose, all interests in or affecting the land specified in the declaration shall, subject to section 76, cease to subsist, and, subject to section 78, the right to use, occupy and enjoy the land and any buildings thereon and its produce shall vest in the Commissioner for and on behalf of the Government, and where the land is registered land the Registrar shall, upon application to him by the Commissioner accompanied by proof of the declaration, make a note in the registers relating to the interests in that land that the perpetual estate therein free from all other interests is vested in the Commissioner subject to appeal under section 76.

76 Appeals

- (1) Any person or group of persons having an interest which ceases to subsist by virtue of section 75 may within six calendar months next after the publication of the declaration apply to the High Court for an order quashing the declaration in so far as it applies to the land subject to or affected by the interest.
- (2) On hearing the application, the Court may, if it considers that the purpose referred to in the declaration is not a public purpose, make an order quashing the declaration; and the Registrar shall on production of the order to him cancel any note made on any registers

pursuant to section 75.

- (3) If, on hearing the application, the Court considers that the land referred to in the application, or any part of the land is not required for the purpose referred to in the declaration (being a public purpose), it may make an order quashing the declaration in so far as it applies to the land not required; and the Registrar shall on production to him of the order cancel any note made pursuant to section 75 on any registers in respect of the land affected thereby.

77 Alteration of register

Where there is no appeal under section 76 (1) or the High Court does not quash the declaration under subsections (2) or (3) of section 76, on application by the Commissioner, the Registrar shall:

- (a) where the land is registered land, register the Commissioner on behalf of the Government as the owner of the perpetual estate in such land and cancel the registration of all other interests in respect of the same land; or
- (b) where the land is unregistered land after preparation of the registry map, compile a register in respect of the perpetual estate in such land and register the Commissioner on behalf of the Government as the owner thereof free from all other interests,

and in either case the Registrar shall make a note in the ownership section of the register relating to such perpetual estate to the effect that the land comprised therein has been acquired compulsorily under the provisions of this Part.

78 Occupier may remain in possession pending notice to vacate

- (1) Notwithstanding the provisions of section 75, any person who, immediately before the publication of the declaration, was lawfully occupying any land, or lawfully exercising any right affecting any land specified in the declaration as required for a public purpose, may continue to occupy the land or exercise the right until he is ordered in writing by the Commissioner to cease from so doing:

Provided that where there is on the land any building in occupation,

possession of the building shall not be taken until after the expiry of a notice to the occupier in the prescribed form and served upon him requiring him to vacate the building within such reasonable period not exceeding four months from the date of service of the notice, as may be specified therein.

- (2) A person occupying land in exercise of the liberty conferred by subsection (1) shall not carry out any development of the land without the consent in writing of the Commissioner, which consent may be given on such terms and may embody such agreements (including agreements for the payment of compensation by the Commissioner) as the Commissioner thinks fit.

79 Claim for compensation

- (1) Any person who claims to be entitled to an interest which, by reason of section 75, ceases to subsist may within three months from the date of the publication of the declaration under that section, or within such further period as the Commissioner for good reason may allow, claim compensation from the Commissioner.
- (2) Within three months of any claim, the Commissioner shall, after considering the claim, and, if the claimant so desires, hearing the claimant, reject the claim or make in the prescribed form an offer to pay to the claimant such amount of compensation as he may think proper, and shall serve upon the claimant notice of the rejection of his claim or the offer:

Provided that where the offer is accepted by the claimant the Commissioner shall cause payment to be made within three months of the receipt by him of such acceptance.

- (3) If the claim has been rejected or the claimant is dissatisfied with the offer, he may within three months from the service upon him of the notice or the offer as aforesaid, appeal to the High Court, which may confirm the Commissioner's rejection of the claim or his offer, or assess such amount of compensation (if any) as to it may seem just, or remit the matter to the Commissioner with a direction that an offer be made under subsection (2).
- (4) If, having been served with an offer under subsection (2), the claimant does not within the period specified in subsection (3),

appeal to the Court, he shall be deemed to have accepted the offer.

- (5) Where the owner of the interest in respect of which compensation is claimed is a trustee, the compensation (if any) shall be paid to him in such manner and subject to such additional trusts and conditions (if any) as the Commissioner or the Court, as the case may be, directs, and no compensation shall be payable by the Commissioner in respect of that interest to any beneficiary under the trust.

80 Special provision as to easements

- (1) Where a claim for compensation is made in respect of an easement which ceases to subsist by virtue of section 75, and that easement subsisted for the benefit, in whole or in part, of an estate or lease which continues to subsist, then if the Commissioner is of opinion that the continued subsistence of the easement would not prejudicially affect the carrying out of the public purpose specified in the declaration made pursuant to section 71, he shall inform the Minister accordingly.
- (2) The Minister may thereupon make an order that the right to enjoy the easement shall be restored to the claimant, and the Commissioner shall furnish a copy of the order to the Registrar, who shall register it.
- (3) When an order under subsection (2) has been made, no compensation in respect of the easement shall be payable to the claimant, other than compensation for any temporary interruption of the enjoyment of the easement which may have occurred.

81 Payment of compensation

- (1) When an offer for compensation in respect of a claim has been accepted, or has become deemed to be accepted, or when the amount of such compensation has been assessed, the Commissioner or the High Court, as the case may be, shall furnish the claimant with an order for payment.
- (2) The order for payment shall direct the payment to the claimant, in such manner and subject to such trusts and conditions (if any) as may be specified in the order, of the compensation together with interest thereon up to the date of payment at five per centum per

annum from such date as shall be specified in accordance with subsection (3).

- (3) The interest on the compensation shall be in respect of the period from the date on which the declaration under section 71 was published up to and including the date of payment, except that where the claimant has been exercising the liberties conferred by section 78(1) it shall be in respect of the period from the date on which the claimant ceased to exercise the said liberties up to and including the date of payment.

82 Temporary occupation of land

- (1) Whenever the Commissioner is of opinion that the temporary occupation and use of any land is required for any public purpose, he may, if the land is to his knowledge occupied, serve notice on the occupiers, or if the land is not to his knowledge occupied, give notice in such manner as he shall consider to be adequate or most effective for the purpose of bringing it to the attention of all persons affected thereby, requiring the occupiers (if any) to give up possession of the land to him for a specified period not exceeding three years, and the occupiers shall be bound to give up possession, and the Commissioner shall in any event be entitled to enter and take possession, in accordance with the terms of such notice.
- (2) Compensation rental for the temporary occupation and use of the land shall be paid by the Commissioner to the lawful occupier or person entitled to possession, and it shall be deemed to accrue due from day to day.
- (3) At the end of the specified period possession of the land shall be restored to the persons lawfully entitled thereto, and there shall be paid to any person having an interest in or affecting the land compensation for the diminution in value (if any) of such interest consequent upon any damage done to the land during the specified period.
- (4) Any compensation or compensation rental payable under subsections (2) or (3) shall be claimed, and offered and accepted, or assessed, in like manner as compensation payable under section 79; and the provisions of section 81 shall apply to the payment of compensation under subsection (3).

(5) If, during or within three months next after the end of the specified period, the Minister is of opinion that:

- (a) the damage (if any) done to the land during the specified period is so substantial and of so permanent a nature that it would be just to the persons having interests in the land that the Commissioner should permanently retain the use and occupation thereof; or
- (b) the land has been developed during the specified period and that the value of the development ought to be secured for the benefit of the people of Solomon Islands,

the Minister may make a declaration to that effect, and the declaration shall have the same effect as a declaration that the land is required for a public purpose; and the provisions of this Division shall apply thereto accordingly, save that for reference therein to the date on which a declaration under section 71 was published there shall be substituted references to the date on which the declaration under this subsection was made.

(6) For the purposes of this section:

- (a) the expression **“the land”** means the land referred to in a notice served under subsection (1) or any part or parts thereof;
- (b) the expression **“the specified period”** means the period specified in a notice served under subsection (1).

83 Assessment of compensation

The amount of any compensation or compensation rental which under the provisions of this Division falls to be assessed by the High Court shall be such amount as the Court in its absolute discretion thinks just, having regard to:

- (a) the condition of the land concerned, as it existed:
 - (i) at the date on which the declaration under section 71 was published, in the case of compensation payable under section 79; or

- (ii) in any other case, at the date on which possession of the land was given to the Commissioner under section 82(1), and
- (b) all such other matters and circumstances as the Court may consider relevant and in particular in assessing compensation rental shall have regard to any diminution in value to the occupier of the land concerned of land contiguous thereto.

84 Compensation for customary land

- (1) Subject to subsection (1A), where the land to be acquired is customary land, the Commissioner may, by notice in writing, offer to transfer or grant, as the case may be, in the manner provided by Part X, to the person or group of persons entitled to the compensation for the land acquired an estate in land in lieu of paying to such person or group of persons any compensation claimed by him or them, and shall in such notice identify the land offered and set out the nature of the estate offered together with the terms and conditions (if any) affecting the same.

(1A) The Commissioner shall:

- (a) before making an offer under subsection (1), seek the advice of the Board; and
 - (b) in making the offer, follow any written directive issued by the Board.
- (2) If an offer made under subsection (1) be not accepted within three months after the date of the notice or, where the offer is made to a group of persons, by a majority of such group, it shall be deemed to have been refused, and the provisions of section 79 shall take effect as if it had not been made.
- (3) Any dispute as to whether any persons, being members of a group, constitute a majority of the group shall, unless the parties otherwise agree, be determined by a Magistrate's Court.
- (4) Where any compensation or compensation rental is payable to a group of persons claiming rights or interests in land according to current customary usage, such compensation or compensation

rental shall be payable to the group and for the benefit of all of them; and any dispute among the members of the group, as to the manner in which the compensation or compensation rental shall be dealt with when received, shall be determined by a local court.

- (5) Where any compensation or compensation rental is payable to a group of persons claiming rights or interests in land according to current customary usage, if the Commissioner has any doubt as to:
 - (a) whether an offer thereof has been accepted by all the members of the group, he may apply to the High Court for directions; or
 - (b) the persons to whom he should make, or order the making of, any payment in respect thereof, he may apply for directions to the local court having jurisdiction.

85 Costs

- (1) Where an offer for compensation is made by the Commissioner, and is accepted, or deemed to be accepted, the Commissioner shall include in the order for payment a specified amount equivalent to the amount of the costs which in his opinion have been reasonably and properly incurred by the claimant in preparing and settling the claim to such compensation. Such amount shall not carry any interest in respect of any period prior to the expiration of thirty days next after the date on which the offer was accepted or deemed to be accepted.
- (2) Where an offer of compensation rental is made by the Commissioner and is accepted, or deemed to be accepted, the Commissioner shall, as soon as may be thereafter, pay to the claimant an amount equivalent to the amount of the costs which in his opinion have been reasonably and properly incurred by the claimant in preparing and settling the claim to such compensation rental.
- (3) Where any compensation or compensation rental is assessed by the High Court, the Court may make such order, concerning the payment of a specified amount in respect of costs (including costs relating to the preparation of the claim and any proceedings before or dealing with the Commissioner in respect thereof) by or to the claimant, as it thinks just. The order shall include such directions as the Court may think expedient to provide for the recovery or payment of such amount from or to the claimant, but so that any deduction of such

amount which may be directed to be made from any compensation payable to the claimant shall be disregarded for the purpose of computing any interest on such compensation.

PART VI ORGANISATION AND ADMINISTRATION OF LAND REGISTRIES

Division 1. Land Registries

86 Registration districts

For the purposes of this Act, the Minister may, by order, constitute an area or areas of land a land registration district or land registration districts and may at any time vary the limits of any such district.

87 Land registries

- (1) There shall be maintained in each land registration district a land registry in which there shall be kept:
 - (a) a register to be known as the land register;
 - (b) a registry map;
 - (c) parcel files containing the instruments which support subsisting entries in the land register, and any filed plans and documents;
 - (d) a book, to be known as the presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry;
 - (c) a personal index in which shall be recorded in alphabetical order the names of the owners of estates and registered leases, showing the numbers of the parcels in which they are interested; and
 - (f) a register and a file of powers of attorney.
- (2) Each land registry shall have a seal, and every instrument purporting to bear the imprint of such a seal shall be received in evidence and, unless the contrary is shown, shall be deemed without further proof to be issued by or under the direction of the Registrar.

Division 2. The Land Register

88 The land register

- (1) The land register shall comprise a register in respect of the perpetual estate in each parcel of land shown in the registry map and a register in respect of each fixed-term estate and of each lease required by this Act to be registered.
- (2) Each register shall be divided into three sections, as follows:
 - A the property section, containing a brief description of the land comprised in the estate or lease, together with particulars of its appurtenances and a reference to the registry map and filed plan (if any);
 - B the ownership section, containing the name and, where possible, the address of the owner and a note of any caveat or restriction affecting his right of disposition; and
 - C the encumbrances section, in which is entered every encumbrance or other interest adversely affecting the estate or lease required by this Act or any other written law to be registered.

89 Compilation of land register

The land register shall be compiled from:

- (a) details of ownership of interests in land, which, according to satisfactory information in the possession of the Registrar, would entitle any person to be registered as an owner under the provisions of Part III;
- (b) Settlement Records delivered to the Registrar under section 56;
- (c) purchases and leases of customary land under Division 1 of Part V; and
- (d) declarations, published under Division 2 of Part V, that land is required for a public purpose.

90 Manner of registration

Registration shall be effected by an entry in the land register in such form as the Registrar may from time to time direct, and by the cancellation of the entry (if any) which it replaces.

91 New editions of register

The Registrar at any time may open a new edition of a register showing all subsisting entries and omitting entries which have ceased to have any effect.

92 Cancellation of obsolete entries

The Registrar may cancel any entry in any register which he is satisfied has ceased to have any effect.

Division 3. Maps, Parcels and Boundaries

93 Registry map

- (1) The Surveyor-General shall prepare and thereafter maintain a map or series of maps to be called the registry map:

Provided that the Registrar may, until such time as the Surveyor-General has prepared the registry map, accept any other map or plan prepared under the directions of the Surveyor-General as is sufficient to identify any parcel, and until then such other map or plan shall be deemed to be the registry map.

- (2) The registry map shall be divided into quarter degree sheets which shall be numbered consecutively.
- (3) On the quarter degree sheets shall be shown blocks, to be known as registration blocks, and plans shall be made of these blocks on whatever scale is suited to the size of the parcels.
- (4) The registration blocks shall be numbered consecutively on each quarter degree sheet, and where a block falls on two or more sheets, it shall be numbered in the manner decided by the Surveyor-General.
- (5) On the registration block plan shall be shown the parcels which shall be numbered consecutively, and the number of the quarter degree

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sheet followed by the number of the registration block followed by the number of the parcel shall be sufficient reference to any parcel.

- (6) The Registrar may at any time cause registration blocks to be combined or divided or cause their boundaries to be varied.
- (7) A plan may be filed in respect of a particular parcel to augment the information available from the registry map and the filing of the plan shall be noted in the register.

94 Correction of registry map

- (1) If it appears to the Registrar that there is any error in the registry map, he may, after taking such steps as he thinks fit to bring to the notice of any person shown by the land register to be interested his intention so to do, and giving every such person an opportunity to be heard, require the Surveyor-General to correct the error:

Provided that it shall not be necessary for the Registrar to take steps to bring the correction to the attention of any person shown by the land register to be interested nor to give such person an opportunity to be heard, in the case of any correction not materially affecting the interests of that person.

- (2) The Registrar may require the Surveyor-General to make a survey of any land for the purposes of this Act, and, after informing every person affected thereby, may cause the registry map to be corrected as a result of such survey.

95 New editions of registry map

The Registrar may require the Surveyor-General to prepare a new edition of the registry map or any part thereof, and there may be omitted from the new map any matter which the Registrar considers obsolete.

96 Mutation

- (1) On the application of the owner of an estate, and subject to the agreement of all persons shown by the land register to be affected thereby, the Registrar, subject to sections 99 and 140, may require the Surveyor-General to alter the registry map, but no such alteration

shall be effected except on the instructions of the Registrar in writing in the prescribed form, to be known as a mutation form, and the mutation form shall be filed.

- (2) Whenever the boundary of a parcel is altered on the registry map under this section, the parcel number shall be cancelled and the parcel shall be given a new number.

97 Boundaries

- (1) Where any uncertainty or dispute arises as to the position of any boundary, the Registrar, on the application of any interested party, shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary.
- (2) Any fees payable in relation to, and the costs of and incidental to, an application under subsection (1), shall be paid by the applicant and may be required by the Registrar to be paid in advance.
- (3) Where the Registrar exercises the powers conferred by subsection (1), he shall make a note to that effect on the registry map and in the register, and shall file such plan or description as may be necessary to record his decision.
- (4) No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.

98 Party walls

- (1) Where any wall or structure lies along the boundary of two parcels which are comprised in separate estates, that wall or structure shall be deemed to be severed vertically in two and the land comprised in each estate shall include the appropriate vertical part thereof.
- (2) Either of the two estate owners may apply to the Registrar for the registration of the wall or structure as a party wall or party structure; and the Registrar may, after giving notice of the application to the other estate owner and affording him an opportunity to be heard, register it as such.

- (3) Where a wall or structure is registered as a party wall or party structure, each estate owner shall have such rights to support and user over the part thereof which is not comprised in his estate as may be requisite.

99 Combinations and sub-divisions

- (1) Where the perpetual estates in respect of contiguous parcels are owned by the same owner and are subject in all respects to the same rights and obligations, the Registrar, on application by the owner, may combine those parcels by closing the registers relating to such estates and opening a new register or registers in respect of the perpetual estate or estates in the parcels resulting from the combinations.
- (2) Subject to section 140 (which relates to restrictions upon and effect of subdivision), upon the application of the owner of an estate in a parcel for the division of his parcel into two or more parcels, the Registrar shall effect the division by closing the register relating to such estate and opening new registers in respect of the estates in the new parcels resulting from the division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that nothing shall be done under this section which would be inconsistent with this Act or any other written law, and no land which is subject to a lease shall be subdivided unless the lease is also subdivided.

PART VII LAND OWNERSHIP

100 Conversion of estates held by persons other than Solomon Islanders

- (1) With effect from the 31st December 1977, any perpetual estate registered in the name of, or on behalf of, any person who is not a Solomon Islander shall automatically convert to a fixed-term estate of 75 years at an annual rent after the first seven years (which shall be a rent-free period) calculated as a percentage of the unimproved capital value of such estate at a rate not exceeding 8 *per centum*.
- (2) When a freehold interest is registered under the provisions of this Act and that interest is shown to be owned by a person who is not a

Solomon Islander then the provisions of subsection (1) shall apply to convert such interest to a fixed-term estate in like manner as that applicable to a perpetual estate.

- (3) **“Unimproved capital value”** referred to in subsection (1) shall have the same meaning as **“unimproved value”** as defined by regulation 2 of the Local Government (Rating of Land) Regulations.

101 Reduction of fixed-term estates and registered interests to 75 years

- (1) Any fixed-term estate, lease or other registered interest presently vested in a person who is not a Solomon Islander being an estate or interest for a period the unexpired portion of which is in excess of 75 years calculated from the 31st December 1977 shall be deemed to be a fixed-term estate, lease or other registered interest for a period of 75 years from the 31st December 1977.
- (2) From and after the 31st December 1977 no person other than a Solomon Islander shall be granted fixed-term estate, lease or any interest in land whatsoever for a period in excess of 75 years.
- (3) All other interests in land and all charges secured on land held on the 31st December 1977 by a person who is not a Solomon Islander shall determine not later than 75 years from that date.

102 Commissioner to hold perpetual estates

Perpetual estates converted under the provisions of this Part shall be held by the Commissioner on behalf of the Government of Solomon Islands.

103 Provision for development of land

Where under the provisions of section 100 a fixed-term estate has been created then the Commissioner, in addition to the matters referred to in subsection (1) of section 100, may, after giving the person who owns such fixed-term estate the opportunity to submit development proposals within a reasonable length of time, impose such conditions as shall be fair and reasonable for the future development of such land and in default of complying with such conditions within the time limits set out therein the fixed-term estate

shall be forfeited to the Commissioner.

104 Registration of fixed-term estate

Any person who has become entitled to a fixed-term estate under this Part shall, within six months of the receipt of the same from the Commissioner, submit the grant of the fixed-term estate to the Registrar for registration free from all fees and stamp duties.

105 Companies to be caught by this Part

Where a company, referred to in subsection (4) of section 112, permits the transfer or issue of shares so that Solomon Islanders hold less than 60 *per centum* of the equity in that company, then this Part shall apply to any perpetual estates, fixed-term estates or other interests held by such company and it shall be the duty of the secretary of the company to report the change in the holding of the shares in the company to the Registrar within 28 days of the happening of such alteration and in default of so doing the secretary and each director shall be liable to a fine of one thousand penalty units.

106 Prohibition of leasing prior to receiving a fixed-term estate

No person whose perpetual estate, fixed-term estate or lease is converted or reduced by virtue of sections 100 or 101 shall grant a lease or sublease or otherwise deal in any interest in land held by him prior to the 31st December 1977 except to a Solomon Islander or a person described in subsection (4) of section 112, without obtaining the prior written consent of the Commissioner.

107 Compensation provisions

Any person who is deprived of any interest in or right over land by virtue of this Part may claim compensation in writing from the Commissioner and the provisions of subsections (2) to (5) inclusive of section 79 shall apply to any such claim without prejudice to the rights of any such person to apply to the High Court for other relief as specified in section 8(1)(c)(ii) of the *Constitution*.

108 Exempt persons

Where a perpetual or fixed-term estate, lease or freehold or leasehold interest is held by any of the persons described in subsection (4) of section 112 then the provisions of this Part shall not apply.

PART VIII REGISTRATION

109 Interest conferred by registration

Subject to the provisions of this Act:

- (a) the registration of a person as the owner of a perpetual estate shall vest in that person the perpetual estate in the land comprised in that estate together with all implied and express rights and privileges belonging or appurtenant thereto and subject to all implied and express obligations, liabilities and incidents of that estate;
- (b) the registration of a person as the owner of a fixed-term estate shall vest in that person the fixed term described in the grant thereof, together with all implied and express rights and privileges belonging or appurtenant thereto and subject to all implied and express obligations, liabilities and incidents of that estate;
- (c) the registration of a person as the owner of a lease shall vest in that person the interest described in the lease, together with all implied and express rights and privileges belonging or appurtenant thereto and subject to all implied and express obligations, liabilities and incidents of the lease which are to be performed or observed by the lessee.

110 Rights of owner

The rights of an owner of a registered interest, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall be rights not liable to be defeated except as provided by this Act, and shall be held by the owner, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but

subject:

- (a) to the leases, charges and other encumbrances and to the conditions and restrictions (if any) affecting the interest, and shown or referred to in the land register or implied by this Act; and
- (b) to such liabilities, rights and interests as affect the same and are declared by section 114 (which relates to overriding interests) not to require noting in the register:

Provided that nothing in this section shall be taken to relieve an owner from any duty or obligation to which he is subject as a trustee.

111 Voluntary transfer

Every owner who has acquired an estate, a lease or a charge by transfer without valuable consideration shall hold it subject to any unregistered rights or interests subject to which the transferor held it and subject also to the provisions of any written law relating to bankruptcy and to the winding-up provisions of the *Companies Act*, but save as aforesaid such transfer when registered shall in all respects have the same effect as a transfer for valuable consideration.

112 Perpetual estates

- (1) A perpetual estate in land consists of the right to occupy, use and enjoy in perpetuity the land and its produce, subject to the payment of any rent and the performance of any obligations for the time being incident to the estate, and subject to such restrictions as may be imposed by or under this Act or any other written law.
- (2) The owner of a perpetual estate may, subject to the provisions of this Act, dispose of it either in whole or in part, and either during his life or, at his death, by a valid will, in any manner he thinks fit;

Provided that:

- (a) a disposition by way of security for the payment of money shall be made by way of a charge in accordance with the provisions of this Act;

- (b) a disposition, other than by the Commissioner, of the whole or part of the estate for a limited period shall be by way of lease in accordance with the provisions of this Act; and
 - (c) a disposition by will which is not in perpetuity shall take effect as a disposition of the estate to the personal representative of the deceased owner of the estate, or if there be no personal representative, to the Public Trustee, and in either case upon the statutory trusts.
- (3) For the avoidance of doubt no perpetual estate shall be vested in a person who is not a Solomon Islander unless he is a person who falls within one of the categories in subsection (4).
- (4) The class of person who may be registered as an owner of a perpetual estate although not a Solomon Islander is as follows:
- (a) a person holding such estate on trust for a Solomon Islander subject to the filing of a statutory declaration to this effect with the Registrar and in a form required by the Registrar;
 - (b) a trustee in bankruptcy;
 - (c) a liquidator appointed under the provisions of any existing law;
 - (d) a local council;
 - (e) a company registered in the Solomon Islands where at least 60 *per centum* of the equity is held beneficially by persons who are Solomon Islanders;
 - (f) the Commissioner;
 - (g) a personal representative or guardian;
 - (h) the Public Trustee;
 - (i) statutory bodies incorporated by any written law of Solomon Islands;
 - (j) registered co-operatives under the *Co-operative Societies Act*;
 - (k) a settler from the former Gilbert and Ellice Islands Colony who

prior to 15th September 1977 had been granted, had acquired, or was holding land in perpetuity or a descendant of such settler:

Provided that such settler or his descendant shall not be entitled to be registered as the owner of a perpetual estate in any land other than such land as is referred to in this paragraph.

113 Fixed-term estates

- (1) A fixed-term estate in land consists of the right to occupy, use and enjoy for a period of time fixed and certain at the time of the grant thereof, the land and its produce, subject to the payment of any rent and the performance of any obligations for the time being incident to the estate, and subject to such restrictions as may be imposed by or under this Act or any other written law.
- (2) The owner of a fixed-term estate may, subject to the provisions of this Act, dispose of it either in whole or in part, and either during his life or, at his death, by a valid will, in any manner he thinks fit:

Provided that:

- (a) a disposition by way of security for the payment of money shall be by way of a charge in accordance with the provisions of this Act;
- (b) a disposition of the whole or a part of the estate for a limited period (being less than the whole remaining portion of the period for which the estate was granted) shall be by way of lease in accordance with the provisions of this Act;
- (c) a disposition by will which is not for the whole remaining portion of the period for which the estate was granted, shall take effect as a disposition of the estate to the personal representative of the deceased owner of the estate, or, if there be no personal representative, to the Public Trustee, and in either case upon the statutory trusts.

114 Overriding interests

The owner of a registered interest in land shall hold such interest

subject to such of the following overriding interests as may, for the time being, subsist and affect the same, without their being noted on the register:

- (a) rights of way, rights of water, easements and profits subsisting at the time of first registration of that interest under this Act;
- (b) natural rights of light, air, water and support;
- (c) rights of compulsory acquisition, resumption, entry, search and user conferred by this Act or any other written law;
- (d) unless otherwise stated in the grant the obligations set out in section 133;
- (e) the interest (excluding any option to purchase or option to renew) of a tenant in possession under a lease for a term of not more than two years or under a periodic tenancy;
- (f) any charge created by the provisions of this Act or any other written law in respect of the land comprised in the interest;
- (g) the rights of a person in actual occupation of the land or in receipt of the rents and profits thereof, save where enquiry is made of such person and the rights are not disclosed:
- (h) rights and powers relating to electric supply lines, telephone and telegraph lines or poles, pipe lines, aqueducts, canals, weirs, dams, roads and ancillary works, conferred by any written law; and
- (i) rights acquired or in the process of being acquired by virtue of any law relating to the limitation of actions or by prescription:

Provided that the Registrar may direct the registration of any of the liabilities, rights and interests hereinbefore defined in such manner as he thinks fit.

115 Right of way

- (1) Notwithstanding anything to the contrary in this Act contained, all interests in land (including customary land) shall be held subject to an implied right that any person (whether or not a Solomon Islander)

who is the owner of an estate in or lease of, or of rights equivalent thereto in, or the occupier of, land adjoining or in the neighbourhood of that land who has no other reasonable means of access from his land to any one of the following, that is to say, a road, way, river, creek or foreshore affording reasonable means of access, shall have a right of way for all reasonable purposes over such land and to pass and re-pass with or without boats or vehicles.

- (2) If the persons concerned cannot agree among themselves to the location of or to the terms and conditions of or incidental to the right of way, the matter shall be referred to the Commissioner by the person requiring the right of way, and the Commissioner shall decide the matter.
- (3) Where the right of way is to be exercised over an existing path or track which has been formed or maintained at the expense of the person over whose land it passes, the Commissioner may require the person by whom the right of way is to be exercised to pay to such other person such reasonable sum as the Commissioner may assess by way of compensation.
- (4) In any case where the Commissioner has given his decision upon a right of way under subsection (2) he shall issue a right of way certificate which shall:
 - (a) specify the land served by the right of way, the land over which it exists and such other details as he may consider desirable; and
 - (b) upon application by him be noted in the land register in so far as it relates to registered land.
- (5) Compensation for loss or damage in respect of or to land over which a right of way is made, or in respect of or to anything therein or thereupon, shall be payable and shall be assessed by mutual agreement by the parties concerned and in the absence of agreement the matter shall be referred to the Commissioner and the compensation shall be assessed by him.
- (6) Any person aggrieved by any decision of the Commissioner under this section may, within three months of being informed of such decision, appeal to the High Court, and the Court's decision thereon

shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

116 What instruments registrable or to be registered

- (1) Subject to the provisions of subsection (2), every instrument creating or disposing of or charging or extinguishing, or purporting to create or dispose of or charge or extinguish, a registered interest in land shall be registered.
- (2) It shall not be necessary to register:
 - (a) any lease for a period not exceeding two years, unless it is required to be registered by section 146;
 - (b) any transfer, charge or other instrument disposing of any lease, being a lease for a period not exceeding two years which is not registered;
 - (c) any will;
 - (d) any appointment of a personal representative;
 - (e) any appointment of a trustee in bankruptcy, or any receiving order in bankruptcy; or
 - (f) any order of a court, unless the registration thereof or of the effect thereof is specifically required by this Act.
- (3) If requested so to do, the Registrar shall register such an instrument as is mentioned in subsection (2) (d) or (2) (e), and may register any other instrument mentioned in subsection (2), save a will, which shall not be capable of registration.
- (4) Without prejudice to section 220 (which relates to the lodging of caveats) a licence shall not be capable of registration.

117 Instruments ineffectual until registered

- (1) No registered interest in land shall be capable of being created or disposed of except in accordance with this Act and every attempt to create or dispose of such interest otherwise than in accordance with this Act shall be ineffectual to create, extinguish, transfer, vary or

affect any such interest.

- (2) Nothing in this section shall be construed as preventing any unregistered instrument from operating as a contract, but no action may be brought upon any contract for the disposition of any interest unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and is signed by the party to be charged or by some other person thereunto by him lawfully authorised:

Provided that such an action shall not be prevented by reason only of the absence of writing, where an intending purchaser or lessee who has performed or is willing to perform his part of a contract:

- (i) has in part performance of the contract taken possession of the property or any part thereof; or
 - (ii) being already in possession, continues in possession in part performance of the contract and has done some other act in furtherance of the contract.
- (3) Every instrument when registered shall have the same effect for all purposes of and incidental to this Act as if it had been made under seal; but nothing in this subsection shall be construed to prevent a party to such an instrument affixing his seal thereto, or giving to the instrument any additional form of solemnity not inconsistent with the provisions of this Act.

118 Protection of persons dealing in registered interests

- (1) No person dealing or proposing to deal for valuable consideration with an owner of a registered interest in land shall be required or in any way concerned:
- (a) to enquire or ascertain the circumstances in or the consideration for which such owner or any previous owner was registered; or
 - (b) to see to the application of any consideration or any part thereof; or
 - (c) to search any register kept under any previous written law

relating to the registration of documents relating to land.

- (2) Where the owner of such an interest is a trustee, he shall, in dealing therewith, be deemed to be the absolute owner thereof, and no disposition by such trustee to a *bona fide* purchaser for valuable consideration shall be defeasible by reason of the fact that such disposition amounted to a breach of trust.

119 Exoneration of the Registrar

Where by this Act any person is exonerated from enquiring as to any matter or fact relating to a title to, or to a power of dealing with, an interest, or is protected from the effect of notice of any such matter or fact, then, in registering any instrument relating to that interest, the Registrar shall not be concerned to make any enquiry or search in relation to that interest which such person need not have made, nor shall the Registrar be affected by any notice with which such person need not have been affected.

120 Protection for persons dealing with Commissioner

No person who deals with the Commissioner in connection with any interest in land shall be concerned to enquire whether any consent or authority to or for the dealing, required by or under this Act or any other written law, has been obtained, or whether the dealing contravenes any direction given by the Minister or Board to the Commissioner.

121 Additional fee for delayed registration

Where an instrument is presented for registration later than six months from the date of the instrument, then, as well as the registration fee, an additional fee equal to five times the registration fee shall be payable for each six months which have elapsed since such date:

Provided that:

- (i) in no such case shall the sum of the additional fees exceed twenty times the original registration fee payable;
- (ii) the Registrar may, in his sole discretion, remit any additional

fee payable by virtue of this section, either in whole or in part.

122 Power to compel registration

- (1) If he is satisfied that any person, through his wilful default, has failed to present for registration any instrument required to be registered under this Act, the Registrar may by notice in writing order such person to present such instrument for registration, and thereupon the registration fee and any additional fee payable under section 121 shall become due and shall be payable whether the instrument is presented for registration or not.
- (2) Any person who fails to comply with an order of the Registrar under subsection (1) within one month of the service of the notice shall be guilty of an offence under section 246.

123 Priority of registered interests

- (1) Interests appearing in the register shall have priority according to the order in which the instruments which led to their registration were presented in registrable form to the land registry, irrespective of the dates of the instruments and notwithstanding that the actual entry in the register may be delayed:

Provided that where an instrument is prepared in the land registry it shall be deemed to have been presented on the date on which application for its preparation was made to the Registrar.

- (2) Instruments sent by post or under cover and received during the hours of public business shall be deemed to be presented simultaneously immediately before the closing of the land registry for public business, and instruments so sent but received between the time of closing and the next opening of the land registry for public business shall be deemed to be presented simultaneously immediately after such opening.
- (3) Where more than one instrument or application are presented on the same day, or on different days but at so short an interval from each other that in the opinion of the Registrar there is doubt as to their order of priority, the Registrar may refuse registration until he has heard and determined the rights of the parties interested thereunder.

- (4) When an item of movable property becomes affixed to land, or to a structure that is itself attached to land, in such a way as to cause an interest in the fixture to arise in a person who has an interest in the land, priority in the fixture as between a holder of an interest in the land and a holder of an interest in the fixture shall be determined as provided by the *Secured Transactions Act*.

124 Stay of registration

- (1) Any person proposing to deal for value with the registered owner of an interest may with the consent in writing of such owner and on stating the particulars of the proposed dealing lodge with the Registrar an application for a stay of registration in the prescribed form.
- (2) If as shown by the register the owner is free to deal with his interest, the Registrar shall make an order certifying that the owner is so free and staying registration of any instrument affecting the interest for one month from the time specified in the order, and such order shall be registered.
- (3) If within the said period of one month an instrument effecting the proposed dealing is lodged for registration such instrument shall have priority over any other instrument lodged for registration after the time specified in the order and shall be registered notwithstanding any caveat lodged with, or any copy of a writ of execution or judgment, decree or order of any court served on the Registrar after the time specified.

125 Merger of registered interests

Where, upon registration of a dealing, the interests of:

- (a) lessor and lessee; or
- (b) chargor and chargee; or
- (c) the owner of an estate in or lease of a parcel which is burdened with an easement, profit or restrictive covenant and the owner of an estate in or lease of a parcel which benefits therefrom,

vest in the same owner, such interests shall not merge unless a

surrender or discharge is registered or the parcels are combined or there is a declaration of merger, which may be contained in the instrument evidencing the dealing.

126 Corporations

- (1) In favour of any person dealing with an interest, a corporation shall be deemed to have the same powers of acquisition and disposition as a natural person of full age and legal capacity.
- (2) This section shall apply to all corporations whether sole or aggregate, whether created directly by Act or otherwise, and notwithstanding any stipulation, restriction or qualification imposed in the constitution of the corporation or elsewhere.
- (3) Nothing in this section shall be held to diminish the personal liability of any individual or group of individuals controlling or responsible for the management of a corporation for acting in excess of its corporate powers.
- (4) Where a corporation holds an interest in a fiduciary capacity this section shall not be held to extend the powers of the corporation in respect of that interest, nor otherwise to affect the liability of the corporation to the beneficiaries for acting in excess of those powers.

127 Spouses to be treated as separate persons

A husband and wife shall, for all purposes of any transaction affecting or concerning an interest, be treated as separate persons.

128 Persons transacting with themselves

A person may enter into any transaction affecting or concerning an interest with himself, either alone or jointly with any other person; but nothing in this section precludes any such transaction from being liable to be set aside if, by reason of any fiduciary relationship or otherwise, that transaction is precluded from being validly effective.

PART IX SEARCHES AND CERTIFIED COPIES

129 Inspections

Any person, upon payment of the prescribed fee (if any) may inspect during hours of public business any register and any sheet of the registry map.

130 Certified copies

Upon payment of the prescribed fee, the Registrar shall furnish to any person applying for it a copy of or extract from any register or sheet of the registry map, or of any filed instrument, plan or document, certified by the Registrar to be a true copy.

131 Evidence

- (1) Every document purporting to be signed by the Registrar shall, in all proceedings, be presumed to be so signed until the contrary is proved.
- (2) Every copy of or extract from a document certified by the Registrar to be a true copy or extract shall, in all proceedings, be received as *prima facie* evidence of the contents of the document.
- (3) Every entry or note in or on any register, the registry map or any filed plan shall, subject to sections 228 and 229, be received in all proceedings as conclusive evidence of the matter or transaction which it records.
- (4) No process for compelling the production of the register or of the registry map or of any filed instrument, plan or document, shall issue from any court except with the leave of that court, which leave shall not be granted if a certified copy or extract will suffice, and any such process, if issued, shall bear thereon a statement that it is issued with the leave of the court.

PART X ESTATES

132 Transfers and grants by the Commissioner

- (1) The Board may, subject to the provisions of this Act:

- (a1) advertise land as available for allocation in accordance with the provisions of this Act or
- (a) transfer to any person the perpetual estate in any land held by him for such an estate; or
- (b) grant to any person a fixed-term estate in any public land for a period not exceeding ninety-nine years:

Provided that where the land concerned was compulsorily acquired under Division 2 of Part V it shall not be transferred or granted as aforesaid without the prior written consent of the Minister.

- (2) On the transfer or grant of an estate, the Board may:
 - (a) require the payment of a premium for the transfer or grant;
 - (b) provide that the estate shall be held subject to the payment of a rent;
 - (c) provide that the estate shall be held subject to the performance, by the owner for the time being, of such obligations as may be specified in the transfer or grant,

and the amount of any rent shall be entered on the register.

- (2A) Where there is a transfer of land in accordance with subsection (2), the sublessee holds the sublease subject to the payment of rent to the lessor.
- (3) Upon the registration of an estate subject to an obligation expressed or implied by the owner that he will not transfer or charge the estate or lease or part with possession of the land comprised therein or any part thereof without the written consent of the Commissioner, the obligation shall be noted on the register of the estate and no such dealing with the estate shall be registered until the consent of the Commissioner has been produced to the Registrar.
- (4) Subject to the provisions of the Act, the Board may:
 - (a) vary, negative or add to obligations contained or implied in any transfer or grant of an estate; and

- (b) vary the rent of any fixed term estate.
- (5) A decision made by the Board under subsection (4) shall be implemented by an instrument in the prescribed form executed by the Commissioner and the owner of the estate.
- (6) The Commissioner shall not except, where there are special grounds of an urgent or exceptional character, consent to a dealing referred to in subsection (3) where an obligation to develop the land has not been complied with.

133 Implied obligations incident to estates

Every estate shall, unless it is otherwise specified by the Commissioner in the transfer or grant, be held subject to the performance of the following obligations, that is to say:

- (a) that all boundary marks on the land comprised in the estate shall be properly maintained; and
- (b) that all existing roads, and rights to use the same, through and over the land comprised in the estate shall remain free and uninterrupted (unless closed, altered, or determined, with the consent of the Commissioner);

and, in addition, every fixed-term estate shall, unless it is otherwise specified in the grant, be held subject to the performance of the following obligation, that is to say, that no gravel, stones, coral, shell, rock, guano, sand, loam or earth shall be removed outside the boundaries of the land comprised in the estate without the written consent of the Commissioner first had and obtained, which consent may be granted on such terms, including terms as to payment, as he may think fit.

134 Form and registration of transfers and grants

- (1) Every transfer or grant by the Commissioner of an estate shall be in the prescribed form and shall be signed by the Commissioner as transferor or grantor, and by the transferee or grantee and shall be registered.
- (2) An estate shall be deemed to have been transferred or granted on

the date of the presentation for registration of the transfer or grant thereof, and, if it is a fixed-term estate, the period for which the estate subsists shall begin on that date or on such earlier date (if any) as may be specified in the grant.

135 Rents

- (1) Any rent incident to an estate transferred or granted by the Commissioner shall, subject to the provisions of subsection (2), be due and payable at the office of the Commissioner on the first day of January in each year in advance and without demand.
- (2) The first payment of a rent incident to an estate transferred or granted by the Commissioner (being rent in respect of the period from the date on which the estate begins to subsist until the thirty-first day of December next following) shall, unless already paid, be due and payable at the office of the Commissioner on the date of the transfer or grant of the estate, and the amount thereof shall be:
 - (a) where the estate begins to subsist before the first day of February in any calendar year, one whole year's rent;
 - (b) in any other case, one whole year's rent less one-twelfth thereof for each complete month of that calendar year that has elapsed prior to commencement of the term of the estate.
- (3) From and after the commencement of this Act the Commissioner shall:
 - (a) subject to section 140, at intervals of not less than seven years in the case of an estate comprising town land, or fifteen years in the case of an estate comprising other land, revise under subsection (5) the amount of rent incident to an estate; and
 - (b) on revision of the rent under this section, deliver to the Registrar a notification of the amount of the revised rent and the Registrar shall enter such amount of the revised rent and the Registrar shall enter such amount in the register, and the payment of the revised rent may be enforced against the person who for the time being is the owner of the estate in like manner as if that person had been the original transferee or grantee of the estate.

- (3A) In respect of estates granted before the commencement of this Act, the revision of rent under subsection (3)(a) shall:
- (i) for a grant yet to be revised under the principal Act, take effect from the date of the first revision; and
 - (ii) for a grant already revised under the principal Act, take effect from the date of the last revision.
- (4) For the purposes of this Act, the Commissioner may by order designate any area of land as town land; and for the purposes of subsection (3), an estate shall be deemed to comprise town land if, at the time when the transfer or grant of the estate took effect, the land comprised in it was so designated.
- (5) The amount at which any rent incident to an estate shall be fixed consequent upon a revision by the Commissioner under subsection (3) shall be such as is fair and reasonable having regard to the value of the land comprised in such estate at the commencement of the period to which revision is to apply without taking into account any improvements made to or on such land subsequent to the date of transfer or grant of the estate by the Commissioner.
- (6) If the owner of the estate is aggrieved by the amount of any rent revised under subsection (5), he shall have a right to appeal within such time, in such manner and to such person, panel or court as shall be prescribed, and the decision on such appeal shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

136 Commissioner's right of forfeiture

- (1) Subject to section 139, the Board shall have the right to forfeit an estate if the owner:
- (a) fails to pay rent incident to the estate when it becomes due;
 - (b) fails to perform any obligation on his part incident to the estate;
 - (c) irrespective of any contrary time period referred to in the lease, fails to develop the land in accordance with the development obligation incident thereto within a period of three years from

the date of transfer or grant;

- (d) or any person in occupation of the land has been convicted by a court for any offence relating to the possession or sale of liquor in the premises under the *Liquor Act* (cap. 144) or any drugs specified as dangerous drugs under the provisions of the *Dangerous Drugs Act* (Cap. 98); or
 - (e) has permitted any person to enter or remain on the land and construct any dwelling house, whether of a permanent or temporary nature without first obtaining the consent of the Commissioner.
- (1A) Where the Board exercises the right to forfeit an estate under subsection (1), neither the owner nor any person claiming a right in the property through or under him, shall be entitled to compensation in respect of the property.
- (2) The right of forfeiture may be:
- (a) exercised, where neither the owner nor any person claiming through or under him is in occupation of the land comprised in the estate, by entering upon the remaining in possession of the land; or
 - (b) enforced by action in the High Court.
- (3) The right of forfeiture shall be taken to have been waived if the Commissioner:
- (a) accepts rent which has become due since the right of forfeiture has occurred or has by any other positive act shown an intention to treat the estate as subsisting; and
 - (b) is, or should by reasonable diligence have become, aware of the commission of the breach:

Provided that the acceptance of rent or the commencement of any development on the land in accordance with the development obligation after the Commissioner has commenced an action in the Court under subsection (2) shall not operate as a waiver.

137 Effect of forfeiture on leases

The forfeiture of an estate shall determine every lease and every other interest appearing in the register relating to that estate but where the High Court grants relief against the forfeiture under section 139 every such lease and other interest shall be deemed not to have determined.

138 Notice before forfeiture

The Commissioner shall not be entitled to exercise the right of forfeiture until he has served on the owner of the estate and on every other person shown by the land register to be interested a notice:

- (a) specifying the particular breach complained of; and
- (b) if the breach is capable of remedy, requiring the owner to remedy the breach within such reasonable period as is specified in the notice; and
- (c) in any case other than non-payment of rent, requiring the owner to make compensation in money for the breach,

and the owner has failed to remedy the breach within a reasonable time thereafter, if it is capable of remedy, and to make reasonable compensation in money.

139 Relief against forfeiture

- (1) The owner of an estate upon whom a notice has been served under section 138, or against whom the Commissioner is proceeding, by action or re-entry, to enforce his right of forfeiture, may apply to the High Court for relief, and the Court may grant or refuse relief, as the Court, having regard to the proceedings and the conduct of the parties and the circumstances of the case, thinks fit, and, if it grants relief, may grant it on such terms as it thinks fit, and may, under section 229, order rectification of the land register.
- (2) No application by the owner of an estate for relief against forfeiture of the estate under subsection (1) shall be entertained by the Court in the case of forfeiture effected by:

- (a) action in which the owner has entered appearance, except in the course of that action;
 - (b) action in which the owner has not entered appearance, unless such application is made within one month of the order of forfeiture;
 - (c) re-entry unless, it is made within one month of the date of re-entry.
- (3) The High Court, on application by any person claiming as lessee or chargee any interest in the land or part of the land comprised in the estate forfeited or sought to be forfeited, may make such order as it thinks just; and in particular the order may provide for the vesting of the estate or any other estate or any part thereof or any interest therein in such lessee or chargee, for any period, subject to such rights and interests and on such terms as the Court in the circumstances of the case thinks fit, and may, under section 229, order rectification of the land register:

Provided that nothing in this subsection shall apply in the case of a forfeiture arising from a breach to which the lessee is a party, or from the breach of an express obligation against leasing or parting with the possession of the land comprised in the estate or charging the estate:

Provided further that no application under this subsection be entertained by the Court unless it is made within six months of the date of re-entry or order of forfeiture as the case may be.

- (4) This section shall have effect notwithstanding any stipulation or agreement to the contrary.

140 Restriction and effect of subdivision

- (1) The owner of an estate shall not, without the written consent of the Commissioner (which consent may, subject to subsections (3) and (4), be given subject to such conditions as the Commissioner may consider fit to impose), create or dispose of any interest in the land comprised in the estate so as to effect a physical subdivision of that land, and the Registrar shall not register an instrument purporting to create or dispose of any such interest unless he is satisfied that such

consent has been obtained and that the conditions imposed by the Commissioner have been observed.

- (2) The Commissioner must not consent to any subdivision if:
 - (a) an application is not supported by evidence that the requirements of the *Town and Country Planning Act* (Cap. 154) have been complied with; and
 - (b) in respect of any application for land for an urban purpose, such land is not wholly within an area which has been designated as town land under section 135(4) or which has not been declared to be a town under the *Town and Country Planning Act* (Cap. 154).
- (2A) For the purposes of subsection (2)(b), any residential, commercial or industrial use that is not wholly or primarily ancillary to agricultural use, shall be deemed to be an urban purpose.
- (3) Any person aggrieved by a decision of the Commissioner refusing consent under subsection (1) or by any condition subject to which consent is given may appeal to the High Court, which may make such order as it thinks just, and such order shall be final and conclusive and shall not be questioned in any proceedings whatsoever.
- (4) Where land comprised in an estate is subdivided, the Commissioner shall determine and revise the rent (if any) in respect of each subdivision to reflect the new value of each parcel, and impose new obligations on the estates resulting from the subdivision;
- (4A) The owner of each subdivision shall:
 - (a) pay the revised rent; and
 - (b) perform any obligation, as determined by the Commissioner, in respect of that estate.
- (5) Where, subject to section 168 (1) (d), the land comprised in an estate which is subject to a charge is subdivided, the owner of each estate resulting from such subdivision shall:
 - (a) pay the moneys payable (if any) under the charge based on

the rent as determined under subsection (4) and

- (b) perform the obligations contained in the charge so far as they affect his estate:

Provided that unless the chargee in giving his consent to the subdivision under section 168 (1) (d) agrees to the apportionment of the moneys payable under or to severance of the obligations contained in the charge (which consent when given shall be irrevocable), nothing in this subsection shall be deemed to impair the right of the chargee to recover from any of the estates resulting from the subdivision the whole of the moneys payable under the charge or to enforce the charge against any of the estates so resulting.

- (6) Nothing in this section shall be deemed to invalidate any interest which is solely an interest in the proceeds of sale of an estate held upon trust for sale.
- (7) For the purposes of this section any freehold interest in land (which expression shall have the meaning ascribed to it in section 9 (1)) which is or has been the subject of an application for first registration shall be deemed to be an estate in land.

141 Termination and surrender of estates

- (1) A fixed-term estate shall cease to subsist when the Commissioner has under section 136 (2) (a) lawfully re-entered and recovered possession of the land comprised therein or for any other reason has become entitled to be registered as the owner thereof.
- (2) If, within three months of a revision of incident to an estate pursuant to section 135 (3), the owner of the estate, with the written consent of all persons appearing from the register to be interested in the estate or in the land comprised therein, or with the leave of the High Court, gives to the Commissioner not less than three months' notice in writing of his intention to surrender the estate, then upon the expiration of the notice the estate, if it is a perpetual estate, shall vest in the Commissioner or, if it is a fixed-term estate, shall cease to subsist.
- (3) Upon granting leave under subsection (2), the Court may impose such terms as it thinks just, and make such further provision

(including the making of vesting orders) as it considers expedient.

- (4) The provisions of section 161 (which relates to surrender of leases) shall apply *mutatis mutandis* to fixed term estates.
- (5) The fact that a perpetual estate has become vested in the Commissioner or a fixed-term estate has ceased to subsist shall not affect the right of the Commissioner to recover any rent incident thereto which has accrued due and not been paid, or damages for the non-performance of any obligation incident thereto, before the date on which the estate so vested or ceased to subsist, and such rent or damages may be recovered in proceedings instituted either before or after the date on which the estate so vested or ceased to subsist.
- (6) Where the Commissioner has become entitled to be registered as the owner of a perpetual estate or where a fixed-term estate ceases to subsist, under this Part, he shall give notice of such fact to the Registrar accompanied by such evidence as the Registrar may require and the Registrar shall make the appropriate entries in the land register.

142 Qualified right to renewal of fixed-term estates

- (1) Where a fixed-term estate in any land has been granted for cultivation purposes the owner of the estate shall be entitled to a renewal of the grant for a term not exceeding ninety-nine years or the term of the estate, whichever is the less:

Provided that:

- (i) this subsection shall not apply in relation to any land designated as town land under section 135 (4) prior to the expiration of the fixed-term estate therein or required for a public purpose;
- (ii) the renewal shall be subject to such obligations designed to secure development of the land and to restrict the use thereof to cultivation purposes as the the Board may direct the Commissioner to insert in the grant;
- (iii) the right of renewal conferred by this subsection shall not extend to any renewal of a fixed-term estate under this

subsection; and

- (iv) this section shall not apply to fixed-term estates created by section 100.
- (2) Section 135 (which relates to payment and revision of rent) shall apply to a renewal of a fixed-term estate made in pursuance of subsection (1) as if the estate had continued to subsist for the period of its renewal.
- (3) For the purpose of this section, a cultivation lease granted under the *Land Act*, and a lease for cultivation purposes granted by the Government prior to the date of commencement of the said *Land Act*, shall be deemed to be a fixed-term estate granted for cultivation purposes provided that the land comprised in such lease was not at the time of the grant, native land within the meaning ascribed to that expression in section 2 of the said *Land Act*.

PART XI LEASES

143 Leases

- (1) Subject to the provisions of this Act including subsection (2) of this section and of any other written law, the owner of an estate, other than the Commissioner, may lease the land comprised in that estate or part of it to any person for a definite term or for a period which though indefinite may be determined by the lessor or the lessee, and subject to such conditions as the lessor may think fit:

Provided that nothing in this section shall be construed to limit the power of the Commissioner to create a periodic tenancy:

Provided further that, if any part is leased, and the lease is required to be registered under this Act, it shall be accompanied by a plan or other description which the Registrar, in his absolute discretion, deems adequate to identify the part leased.

- (2) No lease shall be granted without the prior written consent of the Commissioner to any person other than a person in whom a perpetual estate may be vested under the provisions of Part VII.

144 Conditions for consent of Commissioner

- (1) The Commissioner shall not give his consent to the grant of a lease under subsection (2) of section 143 unless and until he is satisfied that the proposed leasee is of good repute and has the capacity and ability to use and maintain and, where applicable, develop the land in accordance with the development and town and country planning provisions applicable to the land and in a manner consistent with the promotion of the public benefit.
- (2) Where an application is made to the Commissioner for his consent under subsection (2) of section 143 the Commissioner may make such investigation and may require that he be supplied with such information, references and other matter in support of the application as he considers necessary for the proper consideration of the application

145 Periodic tenancies

- (1) Subject to any written law governing tenancies:
 - (a) where in any lease the term is not specified and no provision is made for the giving of notice to determine the tenancy, the lease shall be deemed to have created a periodic tenancy;
 - (b) where the owner of an estate or a lease (other than the Commissioner) permits the exclusive occupation of the land comprised therein or any part thereof by any other person at a rent but without any agreement in writing, that occupation shall be deemed to constitute a periodic tenancy;
 - (c) the period of a periodic tenancy created by this section shall be the period by reference to which the rent is payable, and the tenancy may be determined by either party giving to the other notice, the length of which shall be not less than the period of the tenancy and shall expire on one of the days on which rent is payable.
- (2) No periodic tenancy of any kind shall be capable of registration, but for the avoidance of doubt a periodic tenancy is hereby declared to be an interest for the purposes of section 220 (which relates to the lodging of caveats).

146 Registration of leases

A lease for a specified period exceeding two years or a lease which contains an option whereby the lessee may require the lessor to grant him a further term or terms which, together with the original term, exceed two years, shall be in the prescribed form, and shall be completed by:

- (a) opening a register in the name of the lessee;
- (b) filing the lease; and
- (c) registering the lease as an encumbrance in the register of the lessor's estate or lease.

147 Agreements implied in leases on part of lessor

On the lease of the whole or part of an estate, there shall be implied, on the part of the lessor, a warranty that he has a good right to grant the lease, and, in the absence of express provision to the contrary, the following undertakings with the lessee:

- (a) that the lessor will, during the term created by the lease, and so far only as the lessee is not liable (under the terms of the lease or otherwise) so to do, pay the rent and perform the express or implied obligations incident to the estate and take all reasonable steps to ensure that the estate continues to subsist during the said term;
- (b) that the lessee shall, so long as he pays the rent and performs the obligations which under the express or implied terms of the lease he is liable to pay and perform, peaceably hold and enjoy the leased premises during the term created by the lease without any interruption by the lessor or any person rightfully claiming under or in trust for him;
- (c) not to use or permit to be used any adjoining or neighbouring land comprised in an estate or lease of which he is the owner in any way which would render the leased premises unfit or materially less fit for the purpose for which they were leased;
- (d) where part only of a building is leased, to keep the roof, main

walls and main drains, and the common passages and common installations, in repair;

- (e) where any dwelling-house, flat or room is leased furnished, that such house, flat or room is fit for habitation at the commencement of the tenancy; and
- (f) that if at any time the leased premises or any part thereof are destroyed or damaged by fire, civil commotion or accident not attributable to the negligence of the lessee, his servants or his licensees, so as to render the leased premises or any part thereof wholly or partially unfit for occupation or use, the rent or a just proportion thereof according to the nature and extent of the damage sustained shall be suspended and cease to be payable until the leased premises have again been rendered fit for occupation and use; but that if the leased premises have not been so rendered fit for occupation and use within six months of their destruction or damage as aforesaid, the lessee may at his option, and on giving one month's written notice of his intention so to do, determine the lease.

148 Agreements implied in leases on part of lessee

On the lease of the whole or part of an estate, there shall be implied, on the part of the lessee, in the absence of express provision to the contrary, the following undertakings with the lessor:

- (a) to pay the rent reserved by the lease as and when the same becomes payable;
- (b) to pay all rates, taxes and other outgoings which are at any time payable in respect of the leased premises during the continuance of the lease unless the same are payable exclusively by the lessor by virtue of any written law;
- (c) to perform all such of the obligations incident to the estate as ought to be performed by the person in occupation of the land comprised in the estate or that part thereof which is leased;
- (d) except where part only of a building is leased, or where a dwelling-house is leased furnished, to keep all buildings comprised in the lease in repair;

- (e) where part only of a building is leased, or where a dwelling-house is leased furnished, to keep the leased premises, except the roof, main walls and main drains, and the common passages and common installations, in repair;
- (f) where the lease is of furnished premises, to keep the furniture in as good conditions as it was at the commencement of the period, fair wear and tear only excepted, and to replace such articles as are lost, destroyed or so damaged as to be beyond repair with articles of equal value to those so lost, destroyed or damaged;
- (g) to permit the lessor or his agent with or without workmen or others at all convenient times and after reasonable notice to enter on the leased premises and examine their condition;
- (h) to repair or otherwise make good any defect or breach of agreement for which the lessee is responsible and of which notice has been given by the lessor to the lessee, within such reasonable period as may be specified in the notice; and
- (i) not to subdivide, sublease or otherwise part with the possession of the leased premises or any part thereof or transfer or charge the lease, without the previous written consent of the lessor, but such consent shall not be unreasonably withheld.

149 Meaning of “in repair”

Where an agreement is contained or implied in any lease to keep a building or a particular part of a building **“in repair”**, it shall, in the absence of an express provision to the contrary, mean in such state of repair as that in which a prudent owner might reasonably be expected to keep his property, due allowance being made for the age, character and locality of the building at the commencement of the lease:

Provided that there shall not be read into such an agreement an undertaking to put any building into a better state of repair than that in which it was at the commencement of the lease.

150 Lessor's consent to dealing with lease

Upon the registration of a lease containing an agreement, express or implied, by the lessee that he will not subdivide, sublease or part with the possession of the land leased or any part thereof or transfer or charge the lease, without the written consent of the lessor, the agreement shall be noted in the register of the lease, and no dealing with the lease shall be registered until the consent of the lessor, verified in accordance with section 203, has been produced to the Registrar.

151 Lease of charged estate or lease

Where an estate or lease is subject to a charge, no lease of any of the land comprised in the interest charged shall be registered without the previous consent in writing of the owner of the charge, verified in accordance with section 203, unless the charge expressly dispenses with the necessity for such consent.

152 Future leases and duration of leases

- (1) A lease may be made for a period to commence on a future date, not later than twenty-one years from the date on which the lease is executed, but shall be of no effect unless it is registered.
- (2) Any instrument purporting to create a lease to commence on a date more than twenty-one years after the date of the instrument or take effect on the fulfilment of any condition, shall be void.
- (3) Where the period of a lease is expressed as commencing on a particular day, that day shall be excluded in computing that period.
- (4) Where no day of commencement is named, the period shall commence on the date of first execution of the lease, and that day shall be excluded in computing that period.
- (5) Where the period is a year or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day on which such period commences.

153 Disposition of leases for limited periods

- (1) A disposition of a lease for a limited period (being less than the whole remaining portion of the period for which it was granted) shall be by way of sublease in accordance with the provisions of this Act.
- (2) A disposition of a lease by will which is not for the whole remaining portion of the period for which it was granted, shall take effect as a disposition of the lease to the personal representative of the deceased owner of the lease, or, if there be no personal representative, to the official administrator, and in either case, upon the statutory trusts.

154 Holding over

- (1) Where a person, having lawfully entered into occupation of any land as lessee, continues to occupy that land with the consent of the lessor after the determination of the lease, he shall, subject to any written law and in the absence of any evidence to the contrary, be deemed to be a lessee holding the land on a periodic tenancy on the same conditions as those of the lease, so far as those conditions are appropriate to a periodic tenancy.
- (2) For the purposes of this section, the acceptance of rent in respect of any period after the determination of the lease shall, if the former lessee is still in occupation and subject to any agreement to the contrary, be taken as evidence of consent to the continued occupation of the land.

155 Lessor's right of forfeiture

- (1) Subject to the provisions of section 157 and to any provision to the contrary in the lease, the lessor shall have the right to forfeit the lease if the lessee commits any breach of, or omits to perform, any agreement or obligation on his part expressed or implied in the lease.
- (2) The right of forfeiture may be:
 - (a) exercised, where neither the lessee nor any person claiming through or under him is in occupation of the land comprised in the lease, by entering upon and remaining in possession of the land; or

- (b) enforced by action in the High Court.
- (3) The right of forfeiture shall be taken to have been waived if:
 - (a) the lessor accepts rent which has become due since the breach of the agreement or obligation which entitled the lessor to forfeit the lease or has by any other positive act shown an intention to treat the lease as subsisting; and
 - (b) the lessor is, or should by reasonable diligence have become, aware of the commission of the breach:

Provided that the acceptance of rent after the lessor has commenced an action in the Court under subsection (2) shall not operate as a waiver.

156 Effect of forfeiture on sublease

The forfeiture of a lease shall determine every sublease and every other interest appearing in the register relating to that lease but:

- (a) where the forfeiture is set aside by the Court on the grounds that it was procured by the lessor in fraud of the sublessee; or
- (b) where the Court grants relief against the forfeiture under section 157,

every such sublease and other interest shall be deemed not to have determined.

157 Notice before and relief against forfeiture

Sections 138 and 139 (which relate to notice before and relief against forfeiture) shall apply *mutatis mutandis* to leases.

158 Subdivision of leases

- (1) Subject to subsection (2), upon the application of a lessee for the division of his registered lease into two or more leases accompanied by a plan or other description which the Registrar, in his absolute discretion, deems adequate to identify the divisions, the Registrar shall effect the division by closing the register relating to such lease and opening new registers in respect of the leases resulting from the

division, and recording in the new registers all subsisting entries appearing in the closed register:

Provided that nothing shall be done under this section which would be inconsistent with this Act or any other written law.

- (2) Section 140 (which relates to the restriction and effect of subdivision of an estate) shall apply to a lease in like manner as it applies to an estate and for that purpose shall be read as if for references therein to an estate and the owner of an estate were respectively substituted references to a lease and the lessee, and for the reference to the Commissioner in subsection (3) there was substituted a reference to the lessor.

159 Variation and extension of leases

Subject to the provisions of this Act, the agreements and obligations contained or implied in any registered lease may be varied, negated or added to, and the period of any registered lease may from time to time be extended, by an instrument in the prescribed form executed by the lessor and the lessee for the time being and registered before the expiration of the then current term of the lease.

160 Subleases

- (1) Subject to any provision express or implied in his lease affecting his right to do so, the owner of a registered lease may sublease for any period which is less than the remainder of the period of his lease and if the sublease is required to be registered under this Act, it shall be effected by an instrument in the prescribed form.
- (2) Save as otherwise expressly provided in this Act, the provisions of this Act affecting leases, lessors and lessees shall apply to subleases, sublessors and sublessees, with such adaptations as are necessary.
- (3) In addition to the agreements specified in this Act to be implied in leases, there shall be implied in every sublease under this Act an agreement by the sublessor that he will, during the continuance of the sublease, pay the rent reserved by the lease under which the sublessor holds, and observe and perform the agreements and obligations thereof.

- (4) Where a sublessee has paid to the sublessor's lessor the rent or any part of the rent payable by the sublessor under the lease under which the sublessor holds, the sublessee shall be entitled to set off any sum so paid against the rent payable by him to the sublessor in respect of the sublease.

161 Surrender of leases

- (1) Where the lessor and the lessee agree that a registered lease shall be surrendered, it shall be surrendered in the following manner, that is to say:

- (a) an instrument shall be prepared in the prescribed form;
- (b) the instrument shall then be executed by the lessee and by the lessor;
- (c) the Registrar shall then cancel the registration of the lease; and
- (d) the instrument shall then be filed,

and thereupon, or upon such earlier date as is expressed in the instrument, the interest of the lessee shall cease.

- (2) No registered lease which is subject to a charge shall be surrendered without the consent in writing of the owner of the charge endorsed on the instrument of surrender and verified in accordance with section 203, and upon registration of the surrender the charge shall cease to have effect.
- (3) Registration of the surrender of a lease which is subject to a sublease shall not extinguish that sublease but the Registrar shall register the sublease in the encumbrances section of the register on which he registers the surrender, and the estate or lease evidenced by that register shall, to the extent and for the purpose of preserving such incidents and obligations as would otherwise have subsisted, be deemed to be the reversion expectant on the sublease.

162 Termination of leases to be registered

- (1) Where a registered lease has expired or been determined the lessor shall apply in writing to the Registrar to cancel its registration.

- (2) An application under this section shall be supported by such evidence of the determination as the Registrar may require, and the Registrar on being satisfied of the matters set forth in the application shall cancel the registration of the lease.

PART XII CHARGES

163 Form and effect of charges

- (1) An owner may, by an instrument in the prescribed form, charge his estate, registered lease or charge to secure the payment of an existing or a future or contingent debt or other money or money's worth.
- (2) The charge shall be completed by its registration as an encumbrance and the registration of the person in whose favour it is created as the chargee and by filing the instrument.
- (3) A charge shall not operate as a transfer but shall have effect as a security only.

164 Supplementary provisions relating to charges

- (1) An owner of a registered interest may not create any security for the payment of money enforceable against that interest other than a charge under and in accordance with this Part.
- (2) The owner of an estate, a registered lease or charge may create one or more charges in respect of such interest which shall rank according to the order in which they are registered.
- (3) A security for the payment of money, purporting to be enforceable against a registered interest, which is created otherwise than by way of a charge, or a charge which is not registered, may give rise to a personal liability, but shall not be enforceable under this Part.

165 Consolidation and further advances

- (1) A chargor seeking to discharge a charge shall be entitled to do so without discharging any separate charge made by him or by any person through whom he claims, solely in respect of an interest other than that comprised in the charge which he seeks to discharge.

- (2) A prior chargee shall have a right to make further advances to rank in priority to subsequent charges if, and only if:
 - (a) an arrangement to that effect has been made with the subsequent chargee; or
 - (b) the charge imposes an obligation to make such further advances; or
 - (c) the charge was made expressly for securing a current account up to a specified limit, in which case the right shall extend only up to such limit.
- (3) Where a charge imposes an obligation to make further advances, or is made expressly for securing a current account up to a specified limit, the Registrar shall, when registering it, include in the relevant memorandum the words “subject to further advances”, or words to that effect.

166 Variations and subcharges of charges

- (1) Subject to the provisions of this Act, the terms of a charge may be varied by an instrument in the prescribed form made between the parties for the time being to the charge, but no such variation shall affect the rights of the owner of any subsequent charge registered before registration of the instrument of variation unless he has consented thereto in writing endorsed on the instrument of variation and verified in accordance with Section 203.
- (2) The provisions of this Part shall apply to subcharges with the following modifications, that is to say:
 - (a) for references therein to a charge there shall be substituted references to a subcharge;
 - (b) paragraph (c) shall be deemed to be deleted from section 168 (1); and
 - (c) the words “enter on the land and” shall be deemed to be deleted from section 171 (2) (b).

167 Discharge of charges

- (1) The Registrar shall, if required by the chargee, or on proof of the satisfaction in whole or in part of a charge, in either case in the prescribed form, register the discharge in whole or in part of the charge.
- (2) Where a chargor is desirous of wholly satisfying a charge and the chargee, or, if there are two or more chargees, any of the chargees, is or are dead or cannot be found, the chargor may pay the moneys owing in respect of the charge into the High Court; and upon proof of such payment the Registrar shall register the discharge of the charge, and thereupon the charge shall cease to have effect.

168 Obligations implied in charges

- (1) There shall be implied in every charge, unless the contrary is expressed therein, on the part of the chargor, the following obligations:
 - (a) to pay to the chargee the principal sum secured, and interest (if any) thereon, at the appointed time and rate;
 - (b) to pay interest (if any) at the appointed time and rate as well after as before any judgment is obtained in respect of the charge on so much of the principal sum (including arrears of interest, if any) as for the time being remains unpaid;
 - (c) to pay the rent and perform the obligations incident to the interest comprised in the charge;
 - (d) not to subdivide or lease the land or any part thereof comprised in the interest charged, or transfer, surrender or charge the interest without the previous written consent of the chargee, but such consent shall not be unreasonably withheld.
- (2) A charge may provide for the payment of interest at a higher rate than that appointed if the interest at the appointed rate is not paid within a specified period after the same shall have become due; but so that the higher rate shall not exceed the appointed rate by more than three *per centum per annum*.

169 Chargee's consent to transfer

Where a charge contains an agreement, express or implied, by the chargor with the chargee that he will not subdivide or lease the land or any part thereof comprised in the interest charged or transfer, surrender or charge the interest without the written consent of the chargee, the agreement shall be noted in the register relating to the interest and no such subdivision, lease, transfer, surrender or charge shall be registered until the written consent of the chargee verified in accordance with section 203 has been produced to the Registrar.

170 Action for recovery of debt

Any principal sum or interest due under a charge may, subject to the provisions of section 171 (4), be recovered by action in any court.

171 Enforcement of charges

- (1) A charge may be enforced upon application to the High Court, and not otherwise.
- (2) Upon any such application, the Court may make an order:
 - (a) empowering the chargee or any other specified person to sell and transfer the interest charged, and providing for the manner in which the sale is to be effected and the proceeds of the sale applied;
 - (b) empowering the chargee or any other specified person to enter on the land and act in all respects in the place and on behalf of the owner of the interest for a specified period, and providing for the application of any moneys received by him while so acting; or
 - (c) vesting the interest in the chargee or any other person either absolutely or upon such terms as it thinks fit, but such order shall, subject to subsection (5), not take effect until registration thereof:

Provided that no such order shall be made in respect of a person who is not a Solomon Islander.

- (3) The Court shall, in exercising its jurisdiction under this section, take into consideration any action brought under section 170 and the results thereof.
- (4) After the Court has made an order under paragraphs (a) or (c) of subsection (2), or while an order under paragraph (b) of subsection (2) is in force, no action may be commenced or judgment obtained under section 170 in respect of the charge, except with the consent of the Court and subject to such conditions (if any) as the Court may impose.
- (5) Any order made by the Court under this section shall for the purposes of subsection (4) be effective from the time when it is made.

PART XIII TRANSFERS

172 Transfer

- (1) An owner may, subject to the provisions of this Act including the provision to this subsection and subsection (2) transfer his estate, registered lease or charge to any person (including himself), with or without consideration, by an instrument in the prescribed form:

Provided that he shall not be entitled to transfer his interest in any perpetual or fixed-term estate or lease or other interest where such estate or interest is held for a period in excess of 75 years to a person who is not a Solomon Islander or a class of person as set out in subsection (4) of section 112.

- (2) No fixed-term estate or lease shall be transferred without the prior written consent of the Commissioner to any person other than a person in whom a perpetual estate may be vested under the provisions of Part VII and the provision of section 144 (which relates to the conditions of consent for a grant of a lease) shall apply to a consent under this subsection as though section 144 referred throughout to such a consent.
- (3) A transfer shall dispose of the interest transferred for the whole remaining portion (at the time when the disposition purports to take effect) of the period for which the interest was registered.
- (4) A transfer shall not be expressed to take effect on the happening of

any event or on the fulfilment of any condition or at any future time.

- (5) Any condition or limitation purporting to restrain absolutely a transferee or any person claiming under him from disposing of the interest shall be void.
- (6) An owner of a registered interest may not dispose of the interest for the whole remaining portion (at the time when the disposition purports to take effect) of the period for which the interest was registered, otherwise than by way of transfer in accordance with the provisions of this Act.
- (7) The transfer shall be completed by registration of the transferee as owner of the estate, lease or charge and by filing the instrument.
- (8) The Registrar may refuse to accept a transfer unless and until it is accompanied by a statutory declaration sworn by the transferor and transferee declaring that the transferee is a Solomon Islander or otherwise qualifies to hold an estate lease or other registered interest in accordance with subsection (4) of section 112.

173 Matters implied in transfer

- (1) On the transfer of an estate or a lease, there shall be implied:
 - (a) except in so far as the transfer may otherwise specify, a warranty, on the part of the transferor, that the rent and obligations incident to the estate or the lease have been paid and performed up to the date of the transfer; and
 - (b) on the part of the transferee, a covenant with the transferor that so long as the estate or lease subsists the transferee and the persons deriving title under him will pay the rent and perform the obligations incident to the estate or lease, and will keep the transferor and the persons deriving title under him indemnified against all consequences and liabilities arising out of the non-payment of the rent or the non-performance of any of the obligations.
- (2) On the transfer of an estate or a lease subject to a charge, there shall be implied, in addition to the matters specified in subsection (3):

- (a) except in so far as the transfer may otherwise specify, a warranty, on the part of the transferor, that nothing has been done or omitted up to the date of the transfer (including the payment of any moneys payable under the charge) which would render the charge liable to be enforced; and
 - (b) on the part of the transferee, an undertaking with the transferor that so long as the charge subsists the transferee and the persons deriving title under him will pay all moneys payable thereunder and perform the obligations contained therein, and will keep the transferor and the persons deriving title under him indemnified against all consequences and liabilities of or arising out of the non-payment of the said moneys or the non-performance of any of the said obligations.
- (3) Upon registration of a transfer of a charge, the transferee shall be entitled to all of the rights, powers and remedies of the chargee expressed or implied in the charge including the right to recover any debt, sum of money, or damages thereunder, and all the interest of the transferor in any such debt, sum of money or damages, shall vest in the transferee.
- (4) A chargor shall not be bound to account to any person who has acquired an interest in the charge unless the transfer or other instrument whereby such person became entitled has been registered and the chargor has been notified in writing of the registration by such person.
- (5) A transfer of an estate or lease which is subject to a lease shall be valid without the lessee acknowledging the transferee as lessor, but nothing in this subsection shall:
 - (a) affect the validity of any payment of rent made by the lessee to the transferor; or
 - (b) render the lessee liable, on account of his failure to pay rent to the transferee, for any breach of agreement to pay rent,

before notice is given to the lessee by the transferee, in the case of a registered lease, of registration of the transfer, and in the case of an unregistered lease, of the transfer.

174 No transfer of part without subdivision

No part of an estate or registered lease shall be transferred until the owner has:

- (a) obtained the consent of the Commissioner under section 140 or section 158, as the case may be; and
- (b) subdivided the land comprised in the estate or lease and new registers have been opened in respect of the estate or lease in each subdivision.

175 If transfer instrument unobtainable

If the Registrar is satisfied that an interest has been sold or disposed of by the registered owner thereof and that the whole of the consideration for such sale or disposition has passed but that a transfer or other proper instrument of disposition cannot be obtained because the registered owner is dead or out of Solomon Islands or cannot be found or because for any reason it is impracticable to obtain his signature within a reasonable time, then the Registrar may make a vesting order to give effect to the sale or disposition and shall register such order, whereupon the person in whom the order vests the interest shall become the transferee and registered owner thereof.

PART XIV CONTROL OF ADVERTISEMENT

176 Consent of Commissioner required for advertisement

No person shall without the prior written consent of the Commissioner, advertise in Solomon Islands or outside Solomon Islands any interest in land, other than a perpetual estate or a fixed-term estate to be held in excess of seventy five years.

177 Particulars to be contained in advertisement

- (1) The Commissioner may require any person applying for a consent to advertise under section 176 (in this Part referred to as the applicant) to include in any advertisement, which in the Commissioner's opinion is likely to come to the attention of persons outside Solomon Islands, such particulars as he may consider necessary to make the

advertisement true and fair including particulars about:

- (a) the description of land;
 - (b) the nature of the interest to be disposed of;
 - (c) development and town and country provisions applying to the land;
 - (d) proposed use of the land;
 - (e) exchange control and immigration legislation; and
 - (f) the provisions of this Act.
- (2) Where the Commissioner has made a requirement under subsection (1) no person shall publish either in Solomon Islands or elsewhere an advertisement in relation to the interest in land unless it complies with the requirement.

178 Grounds for section 176 refusing consent

- (1) The Commissioner may refuse to consent for the purposes of section 176 where, in his opinion, the proposed use referred to in the advertisement is:
- (a) contrary to any town and country planning scheme; or
 - (b) in conflict with the provisions of a development plan approved by a Provincial Assembly or the Honiara Town Council; or
 - (c) otherwise prejudicial to the use or development of the land for the promotion of the public benefit.
- (2) Without prejudice to the generality of subsection (1) where the Commissioner is of the opinion that the advertisement is likely to come to the attention of persons outside Solomon Islands, he may refuse to consent for the purposes of section 176 unless and until he is satisfied that:
- (a) the applicant has given not less than three months prior notice to the Provincial Assembly or the Honiara Town Council, in whose area the land subject of the interest is situated, of the

intention to advertise and the terms of the advertisement; and

- (b) has taken such other steps as the Commissioner may require to bring his intention to advertise and the terms of the advertisement to the notice of other persons in that area or in Solomon Islands
- (3) Without prejudice to the generality of the foregoing subsection the Commissioner may in any case require that an advertisement be first published as he may direct in Solomon Islands before being published overseas and shall not give consent to the publication of the advertisement overseas until this requirement is complied with.

PART XV EASEMENTS AND PROFITS

179 Easements

- (1) The owner of any estate or registered lease may by instrument in the prescribed form grant an easement over the land comprised in his estate or lease for the benefit of any other land.
- (2)
 - (a) Any owner transferring, granting or leasing an estate or registered lease may in the transfer, grant or lease grant an easement, for the benefit of the land comprised in the interest transferred, granted or leased over the land comprised in any estate or registered lease retained by him.
 - (b) Any owner transferring, granting or leasing an estate or registered lease may in the transfer, grant or lease reserve an easement for the benefit of the land comprised in any estate, lease, freehold interest or leasehold interest retained by him.
 - (c) In this subsection **“freehold interest”** means a freehold interest in land, and **“leasehold interest”** means a leasehold interest in land, as defined in section 9 (1).
- (3) The instrument creating the easement shall specify clearly:
 - (a) the nature of the easement, the period for which it is granted, and any conditions, limitations or restrictions intended to affect

its enjoyment;

- (b) the land burdened by the easement and, if required, by the Registrar, the particular part thereof so burdened; and
- (c) the land which enjoys the benefit of the easement,

and shall, if so required by the Registrar, include a plan and such other details as are sufficient in the Registrar's estimation to define the easement.

- (4) The grant or reservation of the easement shall be completed by its registration as an encumbrance in the register of the interest burdened and, in the case of registered land, in the property section of the register in respect of the interest which benefits, and by filing the instrument.
- (5) An easement granted by the owner of a fixed-term estate or a lease shall be capable of existing only during the subsistence of such estate or lease.
- (6) Where a grant of an easement over registered land is expressed to be appurtenant to land which is not registered under this Act, the Registrar shall not be concerned to investigate the title of the grantee.

180 Contribution to repairs

- (1) Where an instrument creating an easement contains a covenant binding either party to contribute to the cost of construction, maintenance or repair, of any way, wall, drain or other the subject of the easement, then, unless a contrary intention is expressed in the instrument, so long as the easement subsists the covenant shall bind any person deriving title under either party as if such person had been a party to the original covenant.
- (2) This section shall not render any person liable to contribute to expenditure incurred at a time before he became, or after he ceased to be, an owner of the estate or lease to which the liability attached.
- (3) For the purpose of subsection (2) any liability of an owner of an easement shall cease from the time at which he delivers to the owner of the estate or lease burdened by the easement a release of the

easement in the prescribed form and acceptable for registration.

181 Profits

- (1) The owner of an estate or a registered lease may, by an instrument in the prescribed form, grant a profit.
- (2) The instrument shall indicate clearly the nature of the profit, the period for which it is to be enjoyed, and whether it is to be enjoyed:
 - (a) in gross, or as appurtenant to other land; and
 - (b) by the grantee exclusively, or by him in common with the grantor.
- (3) The grant of a profit shall be completed:
 - (a) by its registration as an encumbrance in the register of the interest which it burdens;
 - (b) where it is appurtenant to land comprised in an estate or registered lease, by its registration in the property section of the register in respect of that estate or lease; and
 - (c) by filing the instrument.
- (4) A profit which is not appurtenant to land may be dealt with as though it were an estate.
- (5) A profit granted by the owner of a fixed-term estate or lease shall be capable of subsisting only during the subsistence of the estate or lease.

182 Release and extinguishment of easements and profits

- (1) Upon presentation of a duly executed release in the prescribed form, the registration of the easement or profit shall be cancelled, and thereupon the easement or profit shall be extinguished.
- (2) Upon the application of any person affected thereby, the Registrar may cancel the registration of an easement or profit upon proof to his satisfaction that:

- (a) the period of time for which it was intended to subsist has expired; or
- (b) the event upon which it was intended to determine has occurred.

183 Extinguishment and modification of easements and profits by the Court

The High Court shall have power, on the application of any person interested in land affected by an easement or profit (whether created before or after the commencement of this Act) by order wholly or partially to extinguish or modify the easement or profit (with or without payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied that:

- (a) by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Court deems material, the easement or profit ought to be held to be obsolete;
- (b) the continued existence of the easement or profit impedes the reasonable user of the land for public or private purposes without securing practical benefits to other persons or, as the case may be, will unless modified so impede such user; or
- (c) the proposed extinguishment or modification will not injure the person entitled to the benefit of the easement or profit.

PART XVI PUBLIC RIGHTS OF WAY

184 Definitions

In this Part:

“public terminal” means any part of a river to which the public has access or a right of access, the foreshore or a public road;

“foreshore” means all that land lying between the lines of mean high water and mean low water.

185 Public right of way

- (1) Subject to and in accordance with this Part, the the Board may create a right of way across public land for the benefit of the public.
- (2) A public right of way shall authorise the public to pass and repass between any specified area of land and a public terminal.

186 Creation of public right of way

- (1) An application to the Commissioner to create a public right of way may be made by any person.
- (2) Where the Commissioner is of the opinion that the creation of a public right of way is or might be expedient, he shall either hold an enquiry or make such other investigation as he thinks appropriate.
- (3) If on holding an enquiry or making an investigation the Commissioner is satisfied that it is expedient for a public right of way to be created he shall make an order creating the right of way.
- (4) An order made under subsection (3) shall:
 - (a) describe sufficiently for purposes of identification:
 - (i) the land and the public terminal between which the right of way is to run; and
 - (ii) the route of the right of way;
 - (b) state whether or not those using the right of way may pass and repass with animals and vehicles; and
 - (c) contain such conditions and limitations (if any) as the Commissioner thinks appropriate.

187 Order to be noted in land register

As soon as may be after making an order for the creation of a public right of way the Commissioner shall furnish to the Registrar a copy thereof together with such other information thereof as may be requisite and the Registrar shall enter the effect of every such order on the register.

188 Cost of survey, etc.

The cost of surveying, constructing, maintaining or repairing a public right of way shall be borne by the Commissioner.

189 Compensation

- (1) If in the exercise of the powers conferred by the preceding section any damage is caused to any building, fence, tree or crop lawfully erected or planted or to any movable property, such damage shall be made good or compensation thereof shall be paid to the owner thereof by the Commissioner.
- (2) Any dispute as to the making good of such damage or the amount of compensation payable under subsection (1) shall, unless the parties otherwise agree, be referred to and settled by a court.

190 Extinction of public right of way

- (1) Where the Commissioner is of the opinion that it is inexpedient that a public right of way should continue to exist, he may hold an enquiry and thereafter order the right of way to be extinguished.
- (2) As soon as may be after making an order under subsection (1) extinguishing a public right of way, the Commissioner shall furnish to the Registrar a copy thereof and the Registrar shall make such amendment to the register as may be necessary.

PART XVII RESTRICTIVE COVENANTS

191 Interpretation

In this Part:

“restriction” means a restriction on the user of registered land created expressly by a covenant other than a covenant contained in a charge or lease;

“dominant land” means the land to which the benefit of a restriction is annexed;

“servient land” means the land subject to the burden of a restriction.

192 Registration of restrictions

- (1) Any owner entitled to burden registered land with restrictions may do so by an instrument in the prescribed form and, subject to the provisions of this section, the Registrar shall, on presentation of the instrument in registrable form, register the restrictions and unless so registered a restriction shall not bind persons deriving title under the owner.
- (2) The Registrar shall not register any such instrument unless:
 - (a) the obligations which it purports to create are negative or restrictive; and
 - (b) the instrument clearly indicates the dominant and servient land.
- (3) The Registrar may refuse to register an instrument purporting to create a restriction if the obligations contained in the instrument are in part positive or affirmative.
- (4) An instrument containing a restraint on the right of an owner to transfer or otherwise to dispose of his interest in land shall not be registered pursuant to this section.
- (5) The registration of an instrument containing a restriction which would not have been binding on persons deriving title under the owner burdening the servient land shall not give the instrument any greater operation or effect than it would have had without such registration.
- (6) The Registrar may, upon the application of the owner of an estate in or registered lease of the servient land, or of his own motion, cancel the registration of a restriction which has become unenforceable against persons deriving title under such owner, or which for any reason should not have been registered.

193 Release and variation of restrictions

- (1) The burden of a restriction may be released wholly or in part, and the obligation created by a restriction may be varied, by an instrument in the prescribed form executed by the owner for the time being of the interest entitled to the benefit of the restriction and by every other person having a registered interest in the dominant land,

and upon application by the owner of any interest in the servient land the Registrar shall register such instrument:

Provided that the Registrar shall not register an instrument of variation which has the effect of making the restriction more onerous unless there is produced to him the consent, verified in accordance with section 203, of every person other than the applicant shown by the register to be the owner of an interest in the servient land.

- (2) Where the dominant land is not registered land the Registrar shall not be concerned to investigate the title to that land.
- (3) The registration of an instrument of release or variation shall not give the instrument any greater operation or effect than it would have had without such registration.
- (4) The Registrar shall register any order of the High Court extinguishing wholly or in part a restriction already registered, or varying the provisions of such restriction, if the order is produced to him for such purpose.

194 Duration of restrictions

- (1) Unless extended in the manner provided by this section, a restriction shall cease to be enforceable against persons deriving title under the owner burdening the servient land at the expiration of ten years from the date of registration thereof, and the Registrar shall cancel such registration.
- (2) A restriction which has not become unenforceable may from time to time be extended by an instrument in the prescribed form executed by the owner of any interest in the dominant land and entitled to the benefit of the restriction, and the Registrar shall register any such extension.
- (3) Each instrument of extension may prolong the duration of a restriction for a period of ten years from the date on which the instrument of extension has been registered.
- (4) Where for any reason (other than the expiration of the period referred to in subsection (1) and of any extension of such period) a restriction would have become unenforceable, an instrument of extension shall

not prolong the duration of such restriction beyond the time for which it would otherwise have enured.

- (5) Where the dominant land is not registered land the Registrar, for the purpose of registration of an extension executed by a person claiming to have an interest in that land shall not be concerned to investigate the title to that land; but such registration shall not prolong the duration of the restriction unless the person executing the instrument of extension was, at the relevant time, entitled to the interest which he claimed to have.
- (6) Any restriction extended pursuant to this section shall enure for the benefit of every person who, during the period of the extension, is entitled to an interest in the dominant land.

PART XVIII CO-OWNERSHIP AND PARTITION

195 Co-ownership

- (1) Every disposition whereby a registered interest in land would become vested in more than five persons shall, notwithstanding anything to the contrary contained therein, operate to vest the interest in the first five persons named in the disposition as joint owners on the statutory trusts.
- (2) An instrument required to be registered under section 116, made in favour of two or more persons, shall show whether such persons are joint owners or owners in common, and in the case of owners in common, the share of each such owner.
- (3) No interest in land shall be registered in the names of more than one Solomon Islander as joint owners, unless there is produced to the Registrar a statutory declaration made in public by each of the joint owners setting forth the names, description or group name and, so far as is practicable, the interests of the persons beneficially interested; and where any interest is so registered no disposition of the interest shall be registered unless there is similarly produced to the Registrar a statutory declaration made in public by each of the joint owners that the persons beneficially interested have been consulted and that those of such persons in favour of the disposition of the interest are entitled to the major portion of the beneficial interests in the said interest of which the disposition is sought to be

registered:

Provided that the Registrar may dispense with such statutory declaration in any case in which he is satisfied on such evidence as he may require that the joint owners alone are the persons beneficially interested:

Provided further that no statutory declaration shall be required in the case of a lease executed in pursuance of section 69 (1)(b)(ii).

196 Ownership in common

- (1) Where a registered interest in land is owned in common the owners shall be entitled to undivided shares in the interest in such proportion as may be registered and on the death of any of the owners in common his share shall be administered as part of his property.
- (2) Persons described as owners in common shall, in the absence of any expression to the contrary, be presumed to be entitled in equal shares.
- (3) No owner in common of a registered interest in land shall dispose of his undivided share in favour of any person other than another owner in common of the same interest except with the consent in writing of the remaining owner or owners of the interest, but such consent shall not be unreasonably withheld.

197 Partition

An application in writing to the Registrar for partition of the land comprised in an estate or registered lease held in common may be made by:

- (a) any one or more of the owners; or
- (b) any person in whose favour an order has been made for the sale of an undivided share in execution of a judgment,

and, subject to the consent of the Commissioner (which may be subject to conditions) and to any written law relating to minimum areas or frontages, the Registrar shall effect the partition of the land comprised in the estate or lease in accordance with any agreement

of the owners in common or in the absence of agreement in such manner as the Registrar may determine.

198 When Registrar may order sale

- (1) Where for any reason the land sought to be partitioned is incapable of partition or the partition would adversely affect the proper use of the land comprised in the estate or lease, and a demand is made by the applicant or one or more of the owners that the estate or lease or any share or shares in the estate or lease be sold, the Registrar shall, in default of an agreement between the owners in common, value the estate or lease and the shares of the owners in common, and order the sale of the estate or lease, or the separation and sale of such shares or make such other order for the disposal of the application as he thinks fit.
- (2)
 - (a) Where the Registrar orders a sale under subsection (1), such sale shall, subject to paragraph (b), be carried out as far as may be in the manner prescribed for the sale of immovable property in the execution of a judgment of the High Court.
 - (b) An owner in common may purchase the estate or lease or any share so offered for sale at any time by private treaty or otherwise.

199 Procedure where share small

- (1) Where the land sought to be partitioned is capable of partition generally, but the effect of partition would be that any particular owner in common would then be the sole owner of an estate or lease in an area of land less than any minimum prescribed by or under any written law, the Registrar shall add the share of such owner to the share of any of the other owners in common or distribute the share of such owner in common amongst two or more of the other owners in common in such manner and in such proportions as, in default of agreement, he thinks fit.
- (2) Where the Registrar proceeds in accordance with the provisions of subsection (1), he shall assess the value of the share added or distributed and shall order that there be paid to the owner of such

share by each owner who has received an addition to his share the value of such addition.

- (3) Where any sum is payable under subsection (2) by any owner in common to any other owner in common, the Registrar may order that such sum shall be secured by way of a charge on the share of the person liable to pay it.

200 Joint ownership

- (1) Where a registered interest in land is owned jointly the joint owners shall hold on the statutory trusts.
- (2) Where two or more persons are joint owners of a registered interest in land:
 - (a) a disposition of the interest shall be made only by all the joint owners; and
 - (b) on the death of a joint owner the interest shall vest in the surviving owner or owners.

PART XIX INSTRUMENTS AND AGENTS

201 Form of instrument

- (1) Every disposition of a registered interest in land shall be effected by an instrument in the prescribed form or in such other form as the Registrar may in any particular case approve, and every person shall use a printed form issued by the Registrar, unless the Registrar otherwise permits.
- (2) Every such instrument shall contain a true statement of the amount or value of the purchase price or loan or other consideration (if any) and, where appropriate, an acknowledgment of the receipt of the consideration.

202 Execution of instruments

- (1) Subject to the provisions of this Act, every instrument evidencing a disposition of an interest in land and required to be registered under section 116 shall be executed by all persons shown by the register

to be owners of the interest at the time of registration of the instrument and by all other parties to the instrument:

Provided that the Registrar may dispense with the execution by any other party (other than the donee in a disposition by way of gift) where he considers that such execution is unnecessary.

- (2) An instrument shall be deemed to have been executed:
 - (a) by a natural person if signed by him; and
 - (b) by a corporation:
 - (i) if sealed with the common or official seal of the corporation affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer and by a member of the board of directors, council or other governing body of the corporation, or in the presence of and attested by two members of such board, council or other governing body; or
 - (ii) in the case of a corporation not required by law to have a common seal, if signed by such persons as are authorised in that behalf by any law or by the statute or charter of the corporation or, in the absence of any express provision, by the persons duly appointed in writing for that purpose by the corporation, evidence of which appointment has been produced to the satisfaction of the Registrar.
- (3) Where a seal purporting to be the seal of a corporation has been affixed to an instrument, attested by persons purporting to be persons holding offices specified in subsection (2)(b)(i), the instrument shall be deemed to have been executed in accordance with the requirements of that subsection.

203 Verification of execution

- (1) Subject to subsection (3) a person, other than the Commissioner and a body corporate, executing an instrument required to be registered under section 116, shall appear before the Registrar or a person prescribed as an authorised officer for the purposes of this section, and, unless he is known to the Registrar or such authorised officer,

shall be accompanied by a credible witness for the purpose of establishing his identity.

- (2) The Registrar or such authorised officer shall satisfy himself as to the identity of the person appearing before him and ascertain whether he freely and voluntarily executed, and appeared fully to understand, the instrument, and shall complete thereon a certificate to that effect.
- (3) The Registrar may dispense with verification under this section:
 - (a) if he considers that it cannot be obtained or can be obtained only with difficulty and he is otherwise satisfied that the document has been properly executed; or
 - (b) in cases in which to his knowledge the document has been properly executed,

and shall record on the document his reasons for dispensing with the appearance of the parties.

204 Stamps

No instrument required by law to be stamped shall be accepted for registration unless it is duly stamped.

205 Disposal of instruments

- (1) Subject to subsection (2) all instruments accepted by the Registrar shall be retained in a land registry for as long as they support a current entry in the land register and for six years thereafter.
- (2) When a lease or charge is registered, and the duplicate or triplicate thereof is produced to the Registrar, particulars of registration shall be noted thereon and the duplicate and the triplicate shall be returned to the person who presented them, but such note shall not be taken to involve the Registrar in liability for any inaccuracy which may exist in any such duplicate or triplicate.
- (3) After six years after an entry in the register has been superseded or has ceased to have any effect, the Registrar may destroy any instrument which supported the entry.

206 Infants and persons who are mentally infirm

- (1) If the Registrar has reason to believe that any person whose name is entered on the land register is under the age of twenty-one years or incapable by reason of mental infirmity, of acting, he shall refuse to register any transaction to which that person is expressed to be a party or affecting any right or interest owned by or vested in that person, unless the transaction is effected or approved in writing by the guardian of that person.
- (2) Where any person claims to be the guardian of a person whose name is entered on the land register and who in the opinion of the Registrar is under the age of twenty-one years or incapable by reason of mental infirmity, of acting, the Registrar may in his discretion require him to apply to the High Court for confirmation of his claim.
- (3) On the hearing of an application under subsection (2), the Court may make an order:
 - (a) declaring that the applicant is the guardian of the person in question; or
 - (b) appointing some other person to be such guardian.

207 Powers of attorney

- (1) The Registrar shall, subject to the provisions of this section, maintain a register of powers of attorney in such form and manner as he may deem fit.
- (2) Upon the application of the donor or the donee of a power of attorney which contains any power to dispose of any interest in land, such power of attorney shall be entered in the register of powers of attorney and the original, or with the consent of the Registrar, a copy thereof certified by the Registrar, shall be filed in the file of powers of attorney.
- (3) Every such power of attorney shall be in the prescribed form and shall be executed and verified in accordance with sections 202 and 203, except where the Registrar in any particular case otherwise permits.

- (4) The donor of a power of attorney registered under this section may at any time give notice to the Registrar in the prescribed form, or in such other form as the Registrar may approve, that the power has been revoked, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.
- (5) Any interested person may give notice in writing to the Registrar that a power of attorney which has been registered under subsection (2) has been revoked by the death, bankruptcy or disability of the donor or the death or disability of the donee, accompanied by such evidence as the Registrar requires, and thereupon the revocation shall be entered in the register of powers of attorney and noted upon the power, and the notice shall be filed in the file of powers of attorney.
- (6) Subsections (4) and (5) shall not apply to a power of attorney given for valuable consideration during any time during which it is, by virtue of the terms thereof, irrevocable.
- (7) If, owing to the length of time since the execution of a power of attorney or for any other reason the Registrar considers it desirable, he may require evidence that the power has not been revoked, and may refuse to register any disposition by the donee of the power of attorney until satisfactory evidence is produced.

208 Effect of registered powers of attorney

- (1) A power of attorney which has been registered under section 207 and of which no notice of revocation has been registered under that section shall be deemed to be subsisting as regards the Registrar and any person acquiring any interest in land affected by the exercise of the power, for valuable consideration and without notice of revocation and in good faith, or any person deriving title under such a person.
- (2) Any person making any payment or doing any act in good faith in pursuance of a power of attorney registered under section 207, shall not be liable in respect of the payment or act by reason only that before the payment or act the donor of the power had died or become subject to a disability or become bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy or revocation was not at the

time of the payment or act known to the person making or doing the payment or act.

PART XX TRANSMISSION AND TRUSTS

209 Transmission on death of sole owner or owner in common

- (1) Where, upon the death of a sole owner or an owner in common of a registered interest, that interest belongs to the Government as *bona vacantia*, the Commissioner shall be entitled to be registered as the owner on behalf of the Government.
- (2) The Public Trustee or other personal representative, or the Commissioner, on application to the Registrar in the prescribed form accompanied by proof of his authority to act, shall be entitled to require the Registrar:
 - (a) to register him by transmission as owner in the place of the deceased and in the case of the official administrator or other personal representative, with the addition after his name of the words “as executor of the estate ofdeceased” or “as administrator of the estate of..... deceased” as the case may be; or
 - (b) to register some other specified person as owner, owner in common, or joint owner of the deceased's interest.
- (3) If no personal representative, other than the Public Trustee is appointed within a period of six months from the death of the owner, the Public Trustee may apply to the High Court for the appointment of some other personal representative.
- (4) For the purposes of subsection (2) authority to act shall consist of a certificate of grant under section 57 of the *Wills, Probate and Administration Act*, a grant of probate of a will, a grant of letters of administration or an order of the High Court.

210 Transmission in other cases

Where any person has become entitled to any registered interest under any written law or by virtue of any order or certificate of sale made or issued under any such law, the Registrar shall, on the

application of any interested person supported by such evidence as he may require, register the person entitled, as the owner of that interest.

211 Transmission on bankruptcy

- (1) Upon the bankruptcy of the owner of a registered interest, his trustee in bankruptcy shall, on proof of his appointment and of the fact that the interest is part of the property of the bankrupt divisible amongst his creditors, be entitled to be registered as owner of the interest in his place; and the official receiver shall, on proof of the receiving order and of the aforesaid fact, be entitled to be registered as owner of the interest pending the appointment of a trustee in bankruptcy.
- (2) A trustee in bankruptcy shall be described in the register as “trustee of the property of....., a bankrupt”.
- (3) The trustee in bankruptcy shall hold any interest of which he is registered as owner subject to any restrictions contained in any written law relating to bankruptcy or in any order of court and subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the bankrupt held the same, but for the purpose of any disposition of such interest the trustee in bankruptcy shall have all the rights and be subject to all the limitations conferred or imposed by this or any other written law on an owner who has acquired an interest for valuable consideration.
- (4) Where a trustee in bankruptcy disclaims a registered interest and an order is made by a court vesting the interest in any person, the Registrar shall, on being served with such order, forthwith, without notice to the bankrupt or any other person, enter the effect thereof on the register, and no right to indemnity under this Act shall arise by reason of his so doing.

212 Trusts

- (1) The owner of an interest may own it for his own use and benefit or as a trustee.
- (2) The Registrar shall not enter any trust on the land register.
- (3) An instrument which declares, or is deemed to declare, any trust, or

a certified copy thereof, may be deposited with the Registrar for safe custody and reference; but such instrument or copy shall not form part of the land register or be deemed to be registered.

- (4) Wherever the Registrar becomes aware that any registered interest is affected by a trust, he may, but shall not be bound to, protect in such manner as he thinks fit the rights of any person beneficially interested under the trust or thereby required to give any consent.

213 Capital money under trusts

- (1) Neither the proceeds of the sale of an interest held upon the statutory trusts, nor any other capital money arising under any transaction relating to an interest so held, shall be paid to or applied by the direction of fewer than two persons as trustee except where the trustee is the Public Trustee or a trustee in bankruptcy or is a corporation approved for the purposes of this section by the Minister by notice; but this subsection shall not, except where capital money arises on a transaction, render it necessary to have more than one trustee.
- (2) Subject to the provisions of this Act, joint owners of an interest shall, when acting together, have all the powers of dealing with that interest which would be possessed by a person if he were sole owner thereof.

214 Statutory trusts

- (1) For the purposes of this Act, a registered interest held upon the statutory trusts shall be held upon trust to sell the same with power to postpone such sale as the trustees think fit and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale, after payment of all outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons beneficially interested in the interest.
- (2) An estate or lease held upon the statutory trusts may, subject to the provisions of section 140, be divided by the trustees amongst the beneficiaries under the trust, and on any such division the trustees may provide for the payment either in cash or by way of a charge of equality money.

- (3) Any beneficiary under the trust who objects to the exercise or proposed exercise of the powers granted by subsection (2) may, either before such exercise or within six months thereafter, apply to the High Court, which may make such order as it thinks just and may under section 229 order rectification of the land register.
- (4) The trusts and powers set out in this section shall be deemed to be incorporated in any instrument which operates expressly to vest any registered interest in land in any person upon the statutory trusts or whereby any person expressly declares that he holds upon the statutory trusts any registered interest in land already vested in him.

215 Effect of transmission by death

- (1) Subject to any restriction on his power of disposing of the interest contained in his appointment, the personal representative or the person beneficially entitled on the death of a deceased owner of a registered interest, as the case may be, shall hold the interest subject to any liabilities, rights or interests which are unregistered but are nevertheless enforceable and subject to which the deceased owner held the same, but for the purpose of any disposition he shall be deemed to have been registered as owner thereof with all the rights conferred by this Act on an owner who has acquired an interest for valuable consideration.
- (2) The registration of any person as aforesaid shall relate back to and take effect from the date of the death of the deceased owner.

216 Transmission on death of joint owner

On the proof of the death of any person registered as joint owner of any interest, the Registrar shall register the survivor or survivors as owner or owners of the interest and he or they shall thereupon become the transferee or transferees of such interest and the registered owner or owners thereof.

217 Construction of this Part

This Part shall be read and construed subject to the provisions of Part VII. and subsection (3) of section 112.

PART XXI JUDGMENTS, WRITS AND VESTING ORDERS

218 Executions, judgments and pending actions

- (1) The Registrar, on being served with a copy of a writ of execution or judgment, decree or order of any court and on being satisfied that an interest which is entered on the land register is affected thereby, shall mark on such copy the date of such service and enter a note thereof on the land register, and no disposition of the interest pursuant to such writ, judgment, decree or order shall be effected until the note has been so entered.
- (2) After the interest has been dealt with pursuant to any such writ, judgment, decree or order, the Registrar shall, on lodgement of an instrument effecting the dealings in the appropriate form, register such instrument if lodged within a period of three months from the date of service of the copy on the Registrar, in which case no other instrument disposing of the interest and lodged after the service of the copy but before the lodgement of the first-mentioned instrument shall be registered or be deemed to be lodged for registration; but if no such instrument is lodged within the period of three months the writ, judgment, decree or order shall cease to affect the interest.
- (3) On the registration of a transfer by way of sale pursuant to the provisions of subsection (2) the purchaser shall become the transferee and registered owner of the interest in all respects as if the transfer were a transfer for value by the registered owner.
- (4) Upon proof to the Registrar of the satisfaction of any writ, judgment, decree or order a copy whereof has been served as aforesaid he shall make an entry on the land register to that effect, whereupon such writ, judgment, decree or order shall cease to affect the interest concerned.
- (5) Save as in this section provided no execution or pending action shall affect any registered interest.

219 Vesting orders and instruments

No vesting order made by any court, and no instrument effecting a change in trusteeship, shall have any effect in transferring or otherwise vesting any registered interest until the same has been

registered.

PART XXII CAVEATS

220 Lodging of caveats

- (1) Any person who:
 - (a) claims an interest in registered land;
 - (b) claims a benefit under a trust affecting a registered interest;
 - (c) claims an interest in registered land under an unregistered instrument;
 - (d) claims a licence affecting a registered interest; or
 - (e) has presented a bankruptcy or winding-up petition against the owner of a registered interest,

or the agent of any such person, may lodge with the Registrar a caveat in the prescribed form forbidding the registration of any person as transferee of, or of any instrument affecting, that interest, either absolutely or conditionally, and may at any time withdraw the caveat.

- (2) A note of every caveat shall be entered on the register and the Registrar shall take such steps as he thinks fit to bring the caveat to the notice of the registered owners of interests affected by it.
- (3) Every caveat shall specify an address in Solomon Islands, and the caveator may at any time prior to the receipt by the Registrar of an application for the removal of the caveat under section 223, by notice in writing to the Registrar, appoint an address in Solomon Islands in lieu of the address specified in the caveat, whereat notices relating to the caveat or proceedings in respect thereof may be served on the caveator.
- (4) Every notice relating to any caveat and any proceedings in respect thereof shall be deemed to be duly served if served at the address in Solomon Islands specified under subsection (3).

221 Effect of caveat

So long as any caveat remains in force the Registrar shall not, except in accordance with the provisions of the caveat or with the consent in writing of the caveator or his agent, enter on the land register any change in ownership (except a transmission under sections 209, 210 or 211) of or any dealing (except a dealing which is shown to the satisfaction of the Registrar not to be to the prejudice of the person for whose protection the caveat has been lodged) affecting the interest or licence in respect of which the caveat is lodged; but no instrument already lodged and acceptable for registration shall be affected by any caveat lodged subsequently.

222 Registrar's caveat

The Registrar may enter a caveat to prohibit any transfer or dealing with any interest belonging or supposed to belong to a person under a disability or absent from Solomon Islands, or to prohibit dealings with any interest in any case in which it appears that an error has been made in the register or any instrument, or to prevent any fraud or improper dealing.

223 Duration of caveats

- (1) Subject to the provisions of this section, a caveat, other than a caveat entered by the Registrar or lodged by the Commissioner, shall lapse, as to any interest affected by any transfer or other dealing, except:
 - (a) a transmission under sections 209, 210 or 211;
 - (b) a transfer or dealing to which the caveator or his agent has lodged with the Registrar his consent in writing; or
 - (c) a transfer or dealing which is shown to the satisfaction of the Registrar not to be to the prejudice of the person for whose protection the caveat has been lodged,

upon the expiration of thirty days after notice given by the Registrar to the caveator that a transfer or dealing has been lodged for registration, which notice shall be given whenever any transfer or dealing whatsoever is lodged.

- (2) Notwithstanding the provisions of subsection (1), but subject to the provisions of subsection (6), the Registrar may at any time and from time to time and on such conditions as he deems fit extend the operation of a caveat or revive a lapsed caveat; and if the caveator serves upon the Registrar a certified copy of pending Court proceedings the Registrar shall extend the operation of the caveat until the outcome of those proceedings.
- (3) If a caveator dies the caveat may be withdrawn, or a consent to registration under subsection (1)(b) may be given by his personal representative, or if there is no such representative, by any person who appears to the Registrar to be properly entitled to the interest claimed by the caveator, subject, if the Registrar so requires, to his receiving satisfactory indemnity against claims against him or the Government arising out of his acceptance of the withdrawal or consent so given.
- (4) Any person adversely affected by any caveat may apply to the Registrar for the removal of the caveat.
- (5) The Registrar on his own motion may, or on the application of any interested person shall, give notice to a caveator requiring him to withdraw his caveat or to substantiate his claim, and if the caveator does not comply with the notice within thirty days or within the said period file with the Registrar a certified copy of pending Court proceedings the Registrar shall remove the caveat from the land register.
- (6) A caveat which has been removed in pursuance of subsection (5) shall not be renewed by or on behalf of the same person in respect of the same claim.
- (7) Any person lodging any caveat with the Registrar or allowing any caveat to remain without reasonable cause shall be liable to pay such compensation as the High Court thinks just to any person who sustains damage or who has incurred costs or expenses thereby.
- (8) In this section, the expression “***pending Court proceedings***” means pending proceedings in the High Court as a result of which the validity or invalidity of the claim of the caveator appears likely to be determined.

PART XXIII PRESCRIPTION

224 Acquisition of land by prescription

- (1) The ownership of an estate or a registered lease may be acquired, subject to Part VII, against the person registered as the owner of the estate or the lease, as the case may be, by peaceable, overt and uninterrupted adverse possession of the land comprised in the estate or lease for a period of twelve years:

Provided that:

- (a) the interest acquired in the land by virtue of this section shall be the interest of the owner against whom the adverse possession occurs; and
 - (b) no person shall so acquire the ownership of any estate or lease in any land vested in or owned by the Commissioner or a local authority.
- (2) Any person claiming to have acquired an estate or lease by virtue of the provisions of subsection (1) may, after having advertised or given notice in such manner as the High Court may direct, apply to the High Court for an order that he be registered as the owner thereof.

225 Principles of adverse possession

- (1) For the purposes of section 224:
 - (a) possession of land shall be adverse possession when it is possessed by a person, not being the owner, without the permission of the person lawfully entitled to possession and accordingly possession by a person of land comprised in a lease without the permission of the owner of the lease shall be adverse possession against that owner but not against the owner of an estate or lease from whom the owner of the lease derives title;
 - (b) where land is subject to a lease the receipt of the rents and profits of the land by any person who is not the lessor for the time being or a person authorised by him shall be deemed to be adverse possession against the lessor; and

- (c) possession of a claimant shall not qualify as adverse possession unless it is possession of the claimant in person or is deemed to have been such possession by the following provisions in this section.
- (2) Where it is shown that a person has been in possession of land, or in receipt of the rents or profits thereof at a certain date and is still in possession or receipt thereof, it shall be presumed that he has, from that date, been in continuous possession of the land or in continuous receipt of the rents or profits until the contrary is shown.
- (3) Possession of land or receipt of the rents or profits thereof by any person through whom a claimant derives his title shall be deemed to have been possession or receipt of the rents or profits by the claimant.
- (4) Adverse possession by a succession of persons not claiming through one another shall not be deemed to be uninterrupted adverse possession within the meaning of section 224.
- (5) Where from the relationship of the parties or from other special cause it appears that the person in possession of land is or was in possession on behalf of another, his possession shall be deemed to be or to have been the possession of that other.
- (6) If a person whose possession of land is subject to conditions imposed by or on behalf of the owner of an estate therein or lease thereof continues in such possession after the expiry of the term during which such conditions subsist without fulfilling or complying with such conditions and without any exercise by the owner of his right to the land, such subsequent possession shall be deemed to be peaceable, overt and uninterrupted adverse possession for the purposes of section 224.
- (7) For the purposes of subsection (6):
 - (a) a tenancy at will shall be deemed to have determined at the expiration of a period of one year from the commencement thereof unless it has been previously determined;
 - (b) a tenancy from year to year or other period shall be deemed to have been determined at the expiration of the first year or other

period:

Provided that where any rent has been subsequently paid in respect of the tenancy, it shall be deemed to have determined at the expiration of the period for which the rent has been paid.

(8) Possession shall be interrupted:

- (a) by physical entry upon the land by any person claiming it in opposition to the person in possession with the intention of causing interruption if the possessor thereby loses possession:
- (b) by the institution of legal proceedings by the owner of the estate or lease to assert his right thereto; or
- (c) by any acknowledgment made by the person in possession of the land to any person claiming to be the owner of an estate therein or lease thereof that such claim is admitted.

(9) No person possessing land in a fiduciary capacity on behalf of another shall acquire by prescription any title to the land as against such other.

226 Acquisition of easements and profits by prescription

(1) Easements and profits may be acquired by peaceable, overt and uninterrupted enjoyment thereof for a period of twelve years:

Provided that no easement or profit:

- (i) may be acquired over or in an interest which is vested in the Commissioner or a local authority;
- (ii) shall be so acquired over or in an estate or lease, or freehold or leasehold interest (within the meaning of section 9 (1)) unless the owner thereof is, or by reasonable diligence might have been, aware of such enjoyment and might by his own efforts have prevented it; and
- (iii) shall be so acquired over or in an estate or lease, or freehold or leasehold interest as aforesaid, where the easement or profit has been enjoyed with the permission of the owner of the estate, lease, freehold or leasehold interest, as the case may

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be.

- (2) Any person claiming to have acquired any easement or profit by virtue of subsection (1) may, after having advertised or given notice in such manner as the High Court may direct, apply to the High Court:
 - (a) where the land burdened by the easement or profit is unregistered land, for a declaration that he is entitled to the easement or profit; and
 - (b) where the land burdened by the easement or profit is registered land, for an order that a record thereof be entered in the register in respect of any estate or lease affected thereby.

227 Transitional provisions relating to prescription

- (1) Where an estate or registered lease takes effect under Part III, adverse possession prior to the date on which the estate or registered lease so took effect, of the land comprised in the estate or registered lease, shall, for the purposes of this Part, be deemed to be adverse possession of the land comprised in the estate or registered lease.
- (2) In ascertaining the aggregate period of adverse possession under this Part:
 - (a) where any period of uninterrupted adverse possession commenced on or after the 1st February 1963, but before the 3rd August 1965, the period of adverse possession shall be deemed to have commenced on the 3rd August 1965; and
 - (b) where any period of uninterrupted adverse possession commenced before the 1st February 1963, and was not interrupted prior to the 3rd August 1965, it shall be deemed to have continued uninterrupted during the period which commenced on the 1st February 1963, and ended on 3rd August 1965, but that period shall not be taken into account for the purpose of calculating the aggregate period of adverse possession.

PART XXIV RECTIFICATION OF LAND REGISTER, INDEMNITY AND REGISTRAR'S POWERS

228 Rectification by Registrar

- (1) If it appears to the Registrar that any register does not truly declare the actual interest to which any person is entitled under this Act or is in some other respect erroneous or imperfect, the Registrar, after taking such steps as he thinks fit to bring to the notice of any person shown by the land register to be interested his intention so to do, and giving every such person an opportunity to be heard, may, subject to section 229(2) (which shall apply as if it appeared in this section), as from such date as he thinks fit, rectify the register:

Provided that it shall not be necessary for the Registrar to take steps to bring the rectification to the notice of any person shown by the land register to be interested nor to give such person an opportunity to be heard, in formal matters and in the case of errors and omissions not materially affecting the interests of any owner.

- (2) Upon the written application of any owner accompanied by such evidence as the Registrar may require, the change of name or of address of that owner shall be recorded in the register.
- (3) Subject to subsection (4), if for any reason it appears to the Registrar that in respect of any of such fixed-term estates specified in the First Schedule and registered between the 14th August 1985 and the 12th December 1985 the grant of such fixed-term estate ought not to have been registered, the Registrar may rectify the register as from the date the grant of the fixed-term estate was registered by cancelling such registration.
- (4) The Registrar shall not rectify the register as provided for in subsection (3) unless the Registrar:
 - (a) has brought to the notice of the person who has been registered as owner of the estate the Registrar's intention to rectify the register and the reason for which such rectification is intended to be made; and
 - (b) has given that person an opportunity to be heard as to why the register should not be rectified.

- (5) Where the Registrar rectifies the register under subsection 3, the person who has been registered as owner of the estate:
- (a) shall account for and pay to the Commissioner any moneys received by him from another person as premium and rent for the occupation of the estate by that other person during the period that he has been registered as owner of the estate;
 - (b) shall pay rent to the Commissioner in respect of the occupation of the estate, either by himself or by another person on his behalf, during the period that he has been registered as owner of the estate; and
 - (c) shall not be entitled to charge rent to the Commissioner or a public officer in respect of the occupation of the estate by the public officer during the period that the person has been registered as owner of the estate.
- (6) The Registrar shall rectify the register to give effect to an order of rectification of the land register made by the High Court.

229 Rectification by the Court

- (1) Subject to subsection (2), the High Court may order rectification of the land register by directing that any registration be cancelled or amended where it is so empowered by this Act, or where it is satisfied that any registration has been obtained, made or omitted by fraud or mistake.
- (2) The land register shall not be rectified so as to affect the title of an owner who is in possession and acquired the interest for valuable consideration, unless such owner had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.

230 Indemnity

- (1) Subject to the provisions of this Act and of any written law relating to the limitation of actions, any person suffering damage by reason of:
- (a) any rectification of the land register under this Act;

- (b) any mistake or omission in the land register which cannot be rectified under this Act;
- (c) any error in a copy of or extract from the land register or any copy of or extract from any document or plan in each case certified under this Act; or
- (d) the loss or destruction of any document lodged with the Registrar for registration or inspection,

shall be entitled to be indemnified by the Government.

(2) No indemnity shall be payable under this section:

- (a) to any person who has himself caused or substantially contributed to the damage by his fraud or negligence, or who derives title, otherwise than under a registered disposition made *bona fide* for valuable consideration, from a person who so caused or substantially contributed to the damage;
- (b) in respect of any loss or damage occasioned by the breach of any trust;
- (c) in respect of any damage arising out of any matter into which the Registrar is exonerated from enquiry under section 119; and
- (d) unless action is commenced or application is made to the Registrar under subsection (3) within six years from the date on which the person bringing the action or making the application (or if the right to indemnity first accrued to some other person through whom he claims, that other person) discovered the facts on which the claim is based, or could with reasonable diligence have discovered them:

Provided that where a person entitled to bring such an action or make such an application was at any time within the said period of six years under a disability by reason of being a minor or of unsound mind, the time during which he was under such disability shall not be taken into account in calculating that period.

(3) The Registrar may, on the application of an interested party,

determine whether a right to indemnity has arisen under this section and, if so, award indemnity, and may add thereto any costs and expenses properly incurred in relation to the matter.

- (4) Every award of indemnity shall include interest thereon at five *per centum per annum* from the date of the award up to the date of payment.
- (5) Where an indemnity is awarded in respect of the loss of any interest in the land it shall not exceed:
 - (a) where the register is not rectified, the value of the interest at the time when the mistake or omission which caused the damage was made; or
 - (b) where the register is rectified, the value of the interest immediately before the time of rectification.
- (6) Where any moneys are paid by way of indemnity under this section, the Registrar may recover by action before the High Court, the amount so paid, or such lesser amount as the Court thinks fit, from any person who has caused or substantially contributed to the loss by his fault or negligence or may enforce any express or implied agreement or other right which the person who is indemnified would have been entitled to enforce in relation to the matter in respect of which the indemnity has been paid.

231 Errors in survey

- (1) As between the Government and any person registered as the owner of an interest in land, no claim to indemnity shall arise and no suit shall be maintained on account of any surplus or deficiency in the area or measurement of that land disclosed by a survey showing an area or measurement differing from the area or measurement disclosed on any subsequent survey or from the area or measurement shown in the land register, on the registry map or on any filed plan.
- (2) As between such a person so registered and any person from or through whom he has acquired the interest, no claim to indemnity shall be maintainable on account of any surplus or deficiency in the area or measurement above or below that shown in any other survey

or above or below the area or measurement shown in the land register, on the registry map or on any filed plan, after a period of six months from the date of registration of the instrument under which such person so registered acquired the interest.

232 Registrar's powers

- (1) The Registrar may, for the purposes of this Act:
 - (a) require any person, within such reasonable time as he may specify, to produce any document, make a statutory declaration or give any information upon oath or affirmation or otherwise relating to land or to an interest, and for any of the foregoing purposes may require any person to attend before him, and may administer oaths and take affirmations and statutory declarations;
 - (b) at his discretion dispense with the production of any signature or the supply of any information or any advertisement or notice;
 - (c) make or delete all such entries upon or from the land register or any instrument, map, plan or other document as are necessary by reason of the operation of this or any other written law;
 - (d) order that the costs of or incidental to any proceedings before him or before the Commissioner, a Provincial Secretary or an Adjudication Officer on reference by him under the provisions of paragraphs (c) or (f) of section 18 (2) incurred by the Registrar or by any person shall be paid by any party to the proceedings and may settle the amount of any costs to be paid under any such order or direct in which manner they are to be taxed, and, subject to section 233, any costs so ordered to be paid, or ordered by the High Court to be paid, may, without prejudice to any other means of recovery or enforcement, be sued for and recovered as a civil debt; and
 - (e) retain any documents produced to him.
- (2) The Registrar may, in connection with the exercise of his powers under this Act, state any case or reserve any question for consideration by the High Court, and the Court shall thereupon have

power to hear and determine the case or question.

233 Appeals against Registrar

Any person aggrieved by a decision of the Registrar given in pursuance of his powers under this Act may, within six months of the decision, appeal to the High Court, which may confirm, quash or vary the decision as it thinks just and may under section 229 order rectification of the land register:

Provided that no appeal shall lie under this section in any case where the decision of the Registrar has been given in conformity with the determination by the Court of a case or question stated or reserved by him in connection with the same matter for its consideration under section 232(2).

PART XXV SURVEY

234 Power to enter and survey

Any Surveyor may at any reasonable time enter upon any land which he is required to mark out or survey for any purpose, and upon any neighbouring land, and may make all such enquiries as may be necessary, and may affix or set up any boundary mark in or upon such land and dig up any ground for the purpose of so doing, and may cut down and remove any timber or other growth which may obstruct any survey line or any boundary; but he shall do as little damage as possible to the land or any property thereon.

235 Power to require clearance of survey lines

- (1) Any Surveyor may cause a notice to be served upon:
 - (a) the owner of an interest in any parcel the subject of investigation of title under Part III; or
 - (b) the owner of an interest in any parcel in a settlement area,requiring him to clear any boundary line of such parcel.
- (2) If any person on whom such a notice has been served fails to comply therewith, the Surveyor may cause to be performed the work

specified in the notice which has not been performed, and such Surveyor, or the Surveyor-General if such Surveyor is a public officer, may by action in any court recover the reasonable cost of so doing from the person so in default.

236 Repair or replacement of boundary marks

- (1) Whenever a Surveyor becomes aware that any boundary mark, trigonometrical station or other survey mark has been damaged, destroyed or removed or has fallen into disrepair, he shall report the fact to the Surveyor-General, and shall if so authorised by the Surveyor-General cause the mark or station to be repaired or replaced as the case may require.
- (2) The Surveyor-General may by action in any court recover the cost of marking out the boundaries of any land or of affixing, setting up, repairing or replacing any such mark or station on any land from the owner of the estate in or lease of the land.

237 Removal of boundary marks

- (1) Any person who desires the temporary or permanent removal of any boundary mark, trigonometrical station or other survey mark may apply therefor in writing to the Surveyor-General setting forth his reasons for such application, and the Surveyor-General may, if he thinks fit, remove the mark or station and, in the case of a temporary removal, restore or replace it in due course.
- (2) The Surveyor-General may recover by action in any court the expenses incurred in acting upon any such application from the person making it.

238 Compensation

- (1) If, in the exercise by a Surveyor of the powers conferred by the preceding sections of this Part, any damage is caused to any buildings, fences, trees or crops lawfully erected or planted or to any movable property, such damage shall be made good or compensation therefor shall be paid to the owner thereof by the Surveyor-General in any case in which the Surveyor was a public officer and in all other cases by the Surveyor.

- (2) Any dispute as to the making good of such damage or the amount of compensation payable under subsection (1) shall, unless the parties otherwise agree, be referred to and settled by a court.

PART XXVI CUSTOMARY LAND

239 Customary land

- (1) The manner of holding, occupying, using, enjoying and disposing of customary land shall be in accordance with the current customary usage applicable thereto, and all questions relating thereto shall be determined accordingly.
- (2) For the purpose of ascertaining any current customary usage, a court required to determine a question in accordance therewith may refer to any books, treatises, reports (whether published or not), or other works of reference, and may accept any matter or thing stated therein as *prima facie* evidence of the usage in question unless and until the contrary is proved.

240 Dealings in customary land

Subject to the provisions of this Act, every transaction or disposition of or affecting interests in customary land shall be made or effected according to the current customary usage applicable to the land concerned.

241 Restrictions on disposition of customary land

- (1) Except to the extent to which the contrary is expressly provided in this Act, no person other than a Solomon Islander may hold or enjoy any interest of whatsoever nature in over or affecting customary land.
- (2) Nothing in subsection (1) shall affect the acquisition or enjoyment of any interest in customary land by a person, not being a Solomon Islander, who:
- (a) is or has been married, whether according to current customary usage or otherwise, to a Solomon Islander, and who according to current customary usage becomes entitled to acquire or enjoy the interest in question in right of his being or having been so married; or

- (b) acquires or becomes entitled to enjoy such interest by inheritance according to current customary usage.
- (3) Every contract, agreement or arrangement made or entered into, orally or in writing, whether before or after the commencement of this Act, shall, so far as it has or purports to have the purpose or effect of in any way, directly or indirectly, defeating, evading or preventing the operation of subsection (1), be utterly void and of no effect; and the Commissioner may in his discretion institute proceedings in the High Court against any person for a declaration that any such alleged contract, agreement or arrangement is void and of no effect, and in any such proceedings the Court may make such declaration and such further or other order as may appear to it expedient for giving effect to subsection (1).

242 Declaration of land as customary land

The Commissioner may by declaration to be published in the *Gazette* declare any land held in his name free from any encumbrances to be customary land and shall in the case of registered land notify the Registrar who will thereupon remove any such land from the register.

PART XXVII OFFENCES

243 Trespass

- (1) Any person who, without lawful excuse, occupies or asserts any right or privilege over any land comprised in a freehold or leasehold interest in land as defined in section 9(1), or in an estate or lease vested in the Commissioner, shall be guilty of an offence and liable to a fine of five thousand penalty units.
- (2) Any person, other than a Solomon Islander, who without lawful excuse, occupies or asserts any right or privilege over any customary land, shall be guilty of an offence and liable to a fine of ten thousand penalty units.
- (3) Any court which has recorded a conviction under subsections (1) or (2) shall, upon the application of the prosecutor, issue a warrant, addressed to all police officers requiring them forthwith to remove from the land the person convicted, together with any movable property belonging to him found thereon, and any police officer into

whose hands the warrant may come shall forthwith proceed to carry it into execution.

- (4) Any court which has recorded a conviction under subsections (1) or (2) may, upon the application of the prosecutor, enquire into and assess any damage caused to the land or to any property, movable or immovable, on the land by the commission of the offence, and may, in addition to imposing a penalty for the offence, order the offender to pay the amount of the damage as so assessed together with a specified amount in respect of the expenses incurred in making any survey which in the opinion of the court was necessary to establish the offence or the extent of such damage, to the person entitled thereto, and the order may, in addition to any other mode of enforcement, be enforced in the same manner as the payment of a fine.
- (5) An application under subsections (3) or (4) may be made, without further process, before the court recording the conviction adjourns, but if not so made shall be made by summons returnable in the court recording the conviction, in which event the court shall before making any order require proof of the service of the summons upon the person convicted.

244 Obstruction, of Surveyor, etc.

- (1) Any person who:
 - (a) without lawful excuse obstructs or hinders any Surveyor in the execution of the powers conferred upon him by section 234;
 - (b) having been served with a notice under section 235, without lawful excuse fails to comply therewith; or
 - (c) without lawful authority defaces, obliterates, moves, damages, destroys, impairs or renders useless any boundary mark, trigonometrical station or other survey mark,

shall be guilty of an offence and liable to a fine of fifty penalty units or to imprisonment for a term of two months or to both such fine and such imprisonment.

- (2) Where a person is charged with an offence under subsection (1)(a),

the fact, if proved, that at the time of committing the alleged offence he did not know and had no reason to believe that the person purporting to execute the powers or making the requirement, as the case may be, was a Surveyor shall be a lawful excuse; and if evidence of that fact be given, it may be rebutted by proof that at or immediately before the time when the alleged offence was committed, the Surveyor produced to the person charged reasonable evidence of his registration or appointment as a Surveyor.

- (3) A court recording a conviction under subsection (1)(c) may, upon the application of the prosecutor, enquire into and assess the cost of making good the damage caused by the commission of the offence, and may, in addition to imposing a penalty for the offence, order the offender to pay to the Surveyor-General the cost as so assessed, together with a specified amount in respect of the expenses incurred in making any survey which in the opinion of the court was necessary to establish the offence or the extent of such damage, and the order may, in addition to any other mode of enforcement, be enforced in the same manner as the payment of a fine; and an application under this subsection may be made, without further process, before the court recording the conviction adjourns, but if not so made shall be made by summons returnable in the court recording the conviction, in which event the court shall before making any order require proof of the service of the summons upon the person convicted.
- (4) On the trial of an offence under subsection (1) (b), the court shall enquire whether any action has been taken under section 235(2), and, if so, whether any judgment given therein has been satisfied in whole or in part; and the court shall:
 - (a) if it is shown that any such judgment has been wholly satisfied, dismiss the charge; or
 - (b) in any other case in which it proceeds to conviction, if it is shown that any such judgment has been partly satisfied, take that matter into consideration when deciding upon the penalty for the offence.
- (5) After a conviction for an offence under subsection (1) (b) has been recorded, no action shall be commenced or, if an action has already been commenced, no judgment shall be given therein, under section 235(2) in respect of the same matter.

245 General offences

Any person who:

- (a) knowingly misleads or deceives any person authorised by or under this Act to require information in respect of any land or interest in land;
- (b) fraudulently issues or makes or fraudulently procures the issue or making of, any instrument, map, plan or other document relating to any interest in land or any matter or thing under this Act, or any registration, or any erasure or alteration in any instrument, map, plan or other document as aforesaid or in any register;
- (c) fraudulently uses, assists in fraudulently using or is privy to the fraudulent use of any instrument, map, plan or other document or form purporting to be issued or authorised by the Registrar;
- (d) causes any defacement, obliteration, mutilation or unauthorised entry or alteration to be made on or in any register or in the registry map or in any filed instrument, plan or other document; or
- (e) continues to remain on land repossessed by the Commissioner under this Act.

shall be guilty of an offence and liable to a fine of four hundred penalty units or to imprisonment for one year or to both such fine and such imprisonment.

246 Contempt of the Registrar

- (1) Any person who, upon being required by the Registrar under the powers conferred by this Act to attend before the Registrar or to produce any document or to make any statutory declaration or to give any information on oath or otherwise, or to do any other thing, within a specified time, neglects or refuses without reasonable cause so to do, shall be guilty of an offence and liable to a fine of fifty penalty units.
- (2) No prosecution under this section shall be instituted without the

written consent of the Director of Public Prosecutions.

247 Offences under Part XIV

- (1) Any person who fails to comply with the provisions of Part XIV shall be guilty of an offence and liable to a fine not exceeding one thousand penalty units.
- (2) Any proceedings for an offence under this section which is committed outside Solomon Islands may be instituted, tried or determined at any place in Solomon Islands

PART XXVIII MISCELLANEOUS

248 Licences by Commissioner

- (1) A licence to occupy any public land may be granted by the Board, upon such terms and conditions as it may see fit to impose, and shall be for a period not exceeding three years:

Provided that where the land concerned was compulsorily acquired under Division 2 of Part V, no licence as aforesaid shall be granted without the prior written consent of the Minister.

- (2) Any provision in any licence issued under the preceding subsection which, but for this subsection, operates, or is intended to operate, to confer upon the licensee a right to obtain a renewal of the licence, shall be void and of no effect.

249 Signification of Minister's powers under certificates of occupation

Where any certificate of occupation granted before the commencement of this Act confers any power, imposes any duty or otherwise vests any function in the Minister, the exercise of such power, performance of such duty or discharge of such function may be signified under the hand of the Commissioner.

250 Preservation orders for places of public interest

- (1) Whenever the Minister is of opinion that the preservation of any land is a matter of public interest, by reason of the historic, architectural,

traditional, artistic, archaeological, botanical or religious interest attaching thereto he may make a preservation order placing the land under his protection.

- (2) A preservation order shall:
 - (a) specify the land to which it applies;
 - (b) prohibit the doing of all such acts, being acts the doing of which would, in the opinion of the Minister, be or tend to the injury of the public interest by reason of any of the aforesaid matters, on or affecting the land as may be specified.
- (3) As soon as may be after a preservation order has been made, the Commissioner shall:
 - (a) cause notices thereof, in the prescribed form, to be posted in prominent positions on or near to the boundaries of the land concerned;
 - (b) take such other steps as may, in his opinion be necessary or expedient to bring the order to the notice of all persons who may be affected by it.
- (4) Any person may submit to the Minister a petition in writing praying that a preservation order be varied or revoked.
- (5) It shall be the duty of the Provincial Secretary to assist any person requesting him to do so to draw up and submit a petition under subsection (4); but a failure by him to perform such duty shall not give rise to any cause of action.
- (6) The Minister may, after receiving a petition under subsection (4), make or cause to be made such enquiries with respect to any matter appearing to him to arise therefrom as he thinks fit; and, after considering the petition and the information resulting from such enquiries (if any) he may vary or revoke the order as he thinks fit.
- (7) The Minister may, from time to time vary or revoke any preservation order made by him.
- (8) A preservation order shall remain in force until revoked by a further

order made by the Minister.

- (9) The Commissioner shall furnish to the Registrar a copy of every preservation order together with such other information thereof as may be requisite, and in relation to registered land the Registrar shall enter the effect of every such order on the land register.
- (10) Any person who contravenes a preservation order shall be guilty of an offence and liable to a fine of one hundred penalty units or to imprisonment for three months or to both such fine and such imprisonment.

251 Presumption as to age

The parties to any transaction effecting or concerning an interest shall, until the contrary is proved, be presumed to be of the age of twenty-one years or more at the date thereof.

252 Service of notices

- (1) Any notice required or authorised to be served by or under this Act upon any person shall be in writing.
- (2) The notice may be delivered to the person personally.
- (3) If the address of the person in Solomon Islands be known and there be postal communication with that place, notice may be served by posting it by registered letter addressed to the person at the said address, and, unless the letter be returned to the sender as undelivered, the notice shall be deemed to have been served at the time when it ought, in due course of post, to have been delivered at the address to which it was sent.
- (4) If the person be absent from Solomon Islands, the notice may be served upon his agent in Solomon Islands, and if the person be dead, the notice may be served upon his personal representative.
- (5) If it is impracticable to serve notice in any of the manners specified in subsections (2) to (4), the notice may be served in such manner as may be directed by an order of any court.
- (6) Notwithstanding anything in subsections (1) to (5):

- (a) it shall be the duty of any person seeking to serve the notice to do everything reasonably practicable to ensure that the contents of the notice come to the knowledge of the person affected thereby; and
- (b) any court may in any case make an order directing the manner in which any notice is to be served or dispensing with the service thereof.

253 Cases not provided for

- (1) Any question connected with or incidental to any of the provisions or purposes of this Act arising before the High Court which is not expressly or impliedly provided for in this Act or any other written law shall be determined by the Court either by way of analogy to the provisions of this Act, or if in the opinion of the Court no such analogy appears to exist, so far as may be possible in conformity with the general tenor of this Act, and in either case without recourse, so far as possible, to the legal rules, principles, or decisions obtaining in any other state or country.
- (2) But, for the avoidance of doubt, it is hereby declared that nothing in subsection (1) shall prevent the application, in the determination of any question relating to interests in land which is not expressly or impliedly provided for in this Act or any other written law, of the general rules of law applicable to any of the following matters, that is to say:
 - (a) trusts and trustees;
 - (b) wills;
 - (c) executors and administrators;
 - (d) the administration of the estates of deceased persons;
 - (e) bankruptcy, and the administration of the estates of persons who have committed an act of bankruptcy;
 - (f) incapacity by reason of age, and the guardianship of persons who have not attained full age; and

- (g) incapacity by reason of mental infirmity, and the administration of the estates of persons who are so incapable.

254 Jurisdiction of local courts

- (1) A local court shall, subject to the provisions of this section, sections 12, 13 and 14 of the *Local Courts Act*, have exclusive jurisdiction in all matters and proceedings of a civil nature affecting or arising in connection with customary land other than:
 - (a) any such matter or proceeding for the determination of which some other provision is expressly made by this Act; and
 - (b) any matter or proceeding involving a determination whether any land is or is not customary land.
- (2) A local court shall have jurisdiction to hear and determine any matter or proceeding of a civil nature referred to it by the High Court or a customary land appeal court under this Act.
- (3) The decision of a local court given in exercise of its jurisdiction under this section shall be final and conclusive, and shall not be questioned in any proceedings whatsoever save an appeal under section 256.
- (4) The provisions of this section shall have effect notwithstanding anything contained in any other law, other than sections 12, 13 and 14 of the *Local Courts Act*, or in any warrant establishing any local court.
- (5) Nothing in the foregoing provisions of this section shall operate to confer or be construed as conferring, upon a local court any jurisdiction over any person who by reason of his status would not, apart from those provisions, be subject to the jurisdiction of a local court, except with the consent of such person.

255 Customary land appeal courts

- (1) The Chief Justice may by warrant establish in Solomon Islands such customary land appeal courts as he shall think fit which shall have jurisdiction over the area or areas of such local court or courts as the Chief Justice may in the warrant, or by order provide.

- (2) A customary land appeal court shall consist of a President, Vice-President and not less than three other members of whom at least one shall be a Magistrate, all of whom shall be appointed by the Chief Justice in his discretion for such periods as he shall at the time of appointment specify.
- (3) The Chief Justice in his discretion may suspend for such period as he thinks fit or may remove or dismiss any member of a customary land appeal court who shall appear to have abused his power or to be unworthy or incapable of exercising his powers justly or for other sufficient reasons.
- (4) A customary land appeal court shall have and may exercise all the powers of a local court.
- (5) A quorum of a customary land appeal court shall be five members of whom at least one shall be a Magistrate.
- (6) No legal practitioner shall be permitted to appear before a customary land appeal court.

256 Appeals to and from customary land appeal courts

- (1) Any person aggrieved by any order or decision of a local court given in exercise of its jurisdiction under section 254 or section 13(d) or (e) of the *Local Courts Act* may, within three months from the date of such order or decision, appeal therefrom to the customary land appeal court having jurisdiction.
- (2) On any appeal to it under subsection (1) a customary land appeal court may substitute for the decision appealed against, such decision, and may make such order, as to it may seem just.
- (3) Any person aggrieved by any order or decision of a customary land appeal court may within three months from the date of such order or decision, appeal therefrom to the High Court on the ground that such decision or order is erroneous in point of law (which expression for this purpose shall not include a point of customary law) or on the ground of failure to comply with any procedural requirement of any written law.
- (4) Any order or decision of the High Court, and, subject to subsection

(3), of a customary land appeal court, in each case given in exercise of the jurisdiction conferred by this section, shall be final and conclusive and shall not be questioned in any proceedings whatsoever.

257 Jurisdiction of the High Court

- (1) Except as expressly provided in this Act, the High Court shall have exclusive jurisdiction in all matters and proceedings of a civil nature arising under this Act or involving its interpretation.
- (2) If in any matter or proceeding before any court, person, body or tribunal, other than a local court exercising its jurisdiction under section 254, the matter or proceeding cannot be determined without deciding a question involving the interpretation of this Act, that court, person, body or tribunal may, and if requested by any party to the matter or proceeding shall, state the question in the form of a case for determination by the High Court and adjourn the matter or proceeding until the question shall have been determined.
- (3) Except where otherwise expressly provided, a decision, whether given in an original proceeding or on appeal, of the High Court given in any matter or proceeding arising under this Act or involving its interpretation, shall, subject to the provisions of subsection (4), be final and conclusive and not subject to any appeal.
- (4) Any person aggrieved by any such decision as is referred to in subsection (3), may, within three months after the issue of the decision, appeal to the Court of Appeal, if, and only if:
 - (a) the decision was not given by the Court in exercise of its jurisdiction under sections 19, 57, 66, 115(6) or 140(2); and
 - (b) some question other than a question of fact is raised by the appeal; and
 - (c) the person aggrieved obtains leave to appeal either from the High Court or from the Court of Appeal.

258 Attorney-General may intervene

The Attorney-General shall have the right to intervene and be heard

in any matter or proceeding arising under this Act or involving its interpretation.

259 Fees

- (1) There shall be payable in respect of registration, searches, surveys and survey plans, printed forms and all other matters connected with registration, such fees as shall from time to time be prescribed under this Act, and the Registrar may refuse registration until the fees are paid.
- (2) The Registrar may act notwithstanding that the prescribed fee or any part thereof has not been paid, but the unpaid fee or part of a fee shall be recorded in the land register.
- (3) The Registrar may refuse to register a disposition of any registered interest in land against which unpaid fees are recorded until such fees are paid.
- (4) Unpaid fees payable to the Registrar shall constitute a civil debt recoverable by the Registrar in a court.

260 Regulations

- (1) The Minister may make such regulations as may seem to him expedient for carrying into effect any of the purposes or provisions of this Act.
- (2) In particular and without prejudice to the generality of the foregoing, such regulations may:
 - (a) regulate the practice to be followed on any application made to, or in any proceedings before, the Board or the Commissioner, or the Registrar, or a Settlement Officer, or an Adjudication Officer, or an Acquisition Officer, or a Provincial Secretary, or, after consultation with the Chief Justice, any court other than the High Court, under or arising out of this Act, and in particular make provision:
 - (i) as to the form in which any decision thereon or therein is to be given;

- (ii) as to the fees chargeable in respect thereof;
 - (iii) as to the evidence which may be required or admitted thereon or therein;
 - (iv) as to the time within which any such application or proceedings shall be made or begun, if no such time is specified in this Act; and
 - (v) in relation to customary land appeal courts, as to the challenging of any member of a court by any party to proceedings before it, and as to the preservation and duplication of records and their inspection by the public;
- (b) prescribe what kind of evidence shall be required where any matter has to be proved to the Board or the Commissioner or to the Registrar;
 - (c) prescribe the manner in which any public auction of estates to be transferred or granted by the Board or the Commissioner shall be conducted;
 - (d) prescribe the manner in which any ballot or tender for the transfer or grant of estates by the Board or the Commissioner shall be conducted, or dealt with;
 - (e) determine the manner in which any premium or rent incident to an estate transferred or granted by the Board or the Commissioner shall be fixed;
 - (f) apply the provisions of this Act relating to the transmission of interests in or affecting land on death or bankruptcy to the case of the dissolution or liquidation of a corporation, with such adaptations as may seem requisite;
 - (g) prescribe the form of the land register;
 - (h) regulate the practice, and prescribe the duties, of the Board or the Commissioner and the Registrar and the other officers referred to in sections 3 and 6, and the fees and charges to be paid or made for any act, matter, or thing to be done or observed under this Act;

- (i) prescribe forms to be followed in connection with any act, matter or transaction to be done or made under or in connection with this Act;
 - (j) appoint any specified public officers, or all public officers of any specified class or classes, as persons to whom any document or instrument which is required to be submitted to the Board or the Commissioner or the Registrar may be delivered, or through whom any document or instrument issued by the Board or the Commissioner or the Registrar may be transmitted;
 - (k) specify the persons, or class or classes of person, who shall be authorised officers for the purposes of this Act;
 - (l) provide for any proceedings or class of proceedings arising under this Act to be conducted wholly or partly in private;
 - (m) provide for the remission of any fees or charges;
 - (n) provide for the payment, to the owners of estates, or of any specified class of estates, of compensation for any buildings erected on or other improvements made to the land comprised in such estates during their subsistence; and
 - (o) prescribe any fee, rate, matter, or thing which is required or appears to be expedient, to be prescribed under or in connection with this Act.
- (3) Before the Minister makes any regulations relating to any power or function given by this Act to the Board, he shall consult with the Board on the matter and take its views into account.

261 Crown to be bound

This Act shall bind the Crown.

262 Treaties to prevail in case of conflict

Where there is any conflict between the provisions of this Act and the provisions of any treaty, convention, arrangement, or engagement with any foreign power, the latter shall prevail.

FIRST SCHEDULE

(Section 228)

PARCEL NUMBER	LOT NUMBER
191-006-60	Lot 38/III/H
191-006-61	“ 39/III/H
191-012-13	“ 607/III/H
191-012-50	“ 765/III/H
191-012-51	“ 793/III/H
191-012-56	“ 676/III/H
191-013-9	“ 495/III/H
191-013-73	“ 666/III/H
191-013-76	“ 669/III/H
191-013-77	“ 670/III/H
191-013-112	“ 593/III/H
191-013-114	“ 595/III/H
191-014-56	“ 753 & 805/III/H
191-014-68	“ 800/III/H
191-014-79	“ 504/III/H
191-014-81	“ 506/III/H

191-014-91	“ 835/III/H
191-014-96	“ 503 & 809/III/H
191-015-53	“ 777/III/H
191-018-45	“ 270/I/H
191-018-106	“ 702/I/H
191-018-112	“ 708/I/H
191-018-113	“ 709/I/H
191-018-115	“ 711/I/H
191-018-127	“ 735/I/H
191-019-35	“ 375/I/H
191-019-50	“ 452/I/H
191-019-83	“ 485/I/H
191-019-84	“ 486/I/H
191-019-85	“ 487/I/H
191-019-86	“ 450/I/H
191-019-88	“ 490/I/H
191-028-21	“ 132/V/H

191-028-29	“ 180/V/H
191-028-34	“ 185/V/H
191-028-43	“ 163/V/H
191-032-63	“ 1457/VI/H
191-032-65	“ 1459/VI/H
191-032-66	“ 1460/VI/H
191-032-72	“ 1466/VI/H
191-032-90	“ 1484/VI/H
191-033-37	“ 1161/VI/H
191-033-60	“ 1187/VI/H
191-034-37	“ 1100/VI/H
191-034-57	“ 1130/VI/H
191-034-68	“ 1398/VI/H
191-034-69	“ 1399/VI/H
191-034-71	“ 1401/VI/H
191-034-72	“ 1402/VI/H
191-034-75	“ 1405/VI/H
191-034-93	“ 25/VIII/H

191-035-71	“ 357/VI/H
191-035-140	“ 1412/VI/H
191-035-143	“ 1415/VI/H
191-035-156	“ 1428/VI/H
191-035-170	“ 1221/VI/H
191-035-171	“ 1271/VI/H
191-036-60	“ 1138/VI/H
191-036-61	“ 1139/VI/H
191-036-71	“ 1149/VI/H
191-036-72	“ 1150/VI/H
191-036-90	“ 1193/VI/H
191-036-94	“ 1197/VI/H
191-037-23	“ 1217/VI/H
191-038-50	“ 467/VI/H
191-039-172	“ 133/VIII/H

191-051-2	“ 253/VI/H
191-051-3	“ 254/VI/H
191-051-19	“ 270/VI/H
191-051-21	“ 272/VI/H
191-051-28	“ 279/VI/H
191-051-29	“ 280/VI/H
191-051-30	“ 281/VI/H
191-051-48	“ 299/VI/H
191-051-63	“ 314/VI/H
191-051-66	“ 317/VI/H
191-051-68	“ 319/VI/H
191-051-70	“321/VI/H
191-051-74	“325/VI/H
191-051-75	“326/VI/H
191-051-80	“80/VI/H
191-051-87	“1201/VI/H
191-056-70	“ 688/VI/H
191-056-106	“ 725/VI/H
191-056-175	“ 1245/VI/H
191-056-177	“ 1247/VI/H

191-056-178	" 1248/VI/H
191-056-185	" 1258/VI/H

SECOND SCHEDULE

(Section 8B)

1. Board membership

(1) The Board shall consist of the following members:

- (a) five nominated members; appointed by the Minister;
- (b) Permanent Secretary of the Ministry responsible for land or his nominee, *ex officio*;
- (c) Clerk to the Honiara City Council or his nominee, *ex officio*;
- (d) Chairman, Town and Country Planning Board or his nominee, *ex officio*;
- (e) Permanent Secretary of the Ministry responsible for provincial governments or his nominee, *ex officio*;
- (f) Permanent Secretary of the Ministry responsible for commerce or his nominee, *ex officio*;
- (g) Permanent Secretary of the Ministry responsible for environment or his nominee, *ex officio*; and
- (h) Permanent Secretary of the Ministry responsible for infrastructure development or his nominee, *ex officio*.
- (i) The Commissioner of Lands, Registrar of Titles, Surveyor General, Valuer General and Director of Physical Planning or such other officer as may from time to time be required for any specific purpose and when required by the Board shall attend any meeting of the Board *ex officio*.

(2) Only members referred to in paragraph (1)(a) to (h) shall be voting members.

(3) The members in paragraph (1)(a), shall be appointed by the Minister in the following manner:

- (a) by selection of three members, one of whom must be a female nominated by the Ministry responsible for women, youth, children and family affairs, in response to public advertisement;
- (b) by selection of one member, from a list of three candidates, submitted by the Solomon Islands Chamber of Commerce; and
- (c) in consultation with Cabinet, the selection of one member from the public who is considered to be in a position to contribute to the Board by reason of his or her experience and knowledge in land.

(4) A member appointed under paragraph (1)(d) shall:

- (a) only attend a meeting of the Board when matters for consideration relate to its Province or City; and
- (b) at such meeting only vote on such matters.

2. Term of Office

Subject to paragraph 3, a nominated member:

- (a) appointed by the Minister shall be published by notice in the *Gazette*
- (b) shall be appointed for a term not exceeding two years;
- (c) is not eligible to have his appointment extended;
- (d) is not eligible for re-appointment until five years have passed since the expiration of the member's appointment; and
- (e) holds office on such terms and conditions as are determined by the Minister.

3. Termination of appointment of members of the Board

(1) A member of the Board, other than an *ex officio* member, may resign his office by writing signed by him and delivered to the Minister, and from the date

of receipt by the Minister, the member shall cease to be a member of the Board.

(2) A member of the Board shall cease to hold office:

- (a) in the case of an *ex officio* member, when he ceases to hold office in the capacity he was appointed;
- (b) in the case of a nominated member, when his term expires, or when the Minister terminates his appointment;
- (c) in the case of all members, upon election to any national, provincial or local government body.

(3) The Minister shall terminate a member other than an *ex officio* member if the member:

- (a) becomes permanently incapable of performing his duties; or
- (b) is certified by a qualified medical practitioner to be of unsound mind; or
- (c) is absent, except with the written consent of the Chairman of the Board, from three consecutive meetings of the Board; or
- (d) fails to disclose an interest in accordance with paragraph 9; or
- (e) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of a criminal offence involving dishonesty or an offence punishable under a law by a term of imprisonment of one year or longer; or
- (g) ceases to be ordinarily resident in the country.

(4) The Minister may on the advice of the Board and by written notice issue a warning to a member other than an *ex officio* member, on suspected misbehaviour likely to bring the Board into disrepute.

(5) A member terminated under paragraph (3) may appeal the decision to the Minister within 14 days from the date of receipt of the termination letter.

Failing to appeal within the stipulated time bars a member from invoking this right.

(6) Where an appeal is made under paragraph (5) the Minister shall deal with it taking into account all the relevant facts and law and make a decision thereafter informing the member within 14 days.

4. Remuneration

The members of the Board shall be entitled to be paid such remuneration (including travelling and subsistence allowances where appropriate) as the Minister may prescribe by regulation from time to time.

5. Chairperson and Deputy Chairperson

(1) The voting members of the Board shall elect a Chairperson and Deputy Chairperson herein after referred to as the Deputy from among the nominated members.

(2) The Chairperson and Deputy hold office as Chairperson or Deputy until the expiration of the period of their respective appointments or until they cease to be members, whichever first occurs.

(3) At a meeting of the Board:

- (a) the Chairperson, or in his absence the Deputy, shall preside as Chair; or
- (b) in the absence of both the Chairperson and the Deputy, a nominated member elected by the voting members present shall preside as Chair.

6. Meetings

(1) The Board shall meet at such times and places decided, provided that there shall not be less than one meeting per quarter in any calendar year.

(2) The Secretary shall, at least one week before a meeting of the Board distribute to the members:

- (a) the agenda of that meeting;
- (b) copies of supporting papers; and

(c) the minutes of the previous meeting

(3) Upon deciding the agenda the Chairperson may call on each of the *ex officio* members and cause discussions on the need or not for personal attendance.

(4) Subject to the provisions of this Schedule, the Board may regulate its own proceedings.

7. Voting

All decisions of the Board shall be made by a majority of votes of the voting members present and voting, and if on any question the votes are equally divided, the presiding Chairperson shall have and exercise a second or casting vote.

8. Quorum

The quorum of any meeting of the Board shall be seven voting members.

9. Disclosure of interest by member of the Board

(1) A member who has a direct or indirect interest:

- (a) in a matter being considered or about to be considered in a meeting of the Board; or
- (b) in a thing being done or about to be done by the Board,

shall, as soon as the relevant facts relating to the interest come to his knowledge, disclose the nature of the interest to the Board before deliberation on the matter containing the interest.

(2) A disclosure by a member at a meeting of the Board that the member:

- (a) is a director or shareholder of a company falling under subparagraph (1) company or is a relative of a director or shareholder of such a company; or
- (b) has some other specified interest relating to a specified company or other body or to a specified person; or
- (c) has a personal interest in the land to be dealt with;

shall be sufficient disclosure of the nature of the interest.

(3) The Board shall cause particulars of any disclosure made under this paragraph to be recorded in a book kept for the purpose and such book shall be open at all reasonable hours for inspection by person on payment of such fee as the Board may, from time to time, determine.

(4) A disclosure under subsection (1), shall be recorded in the minutes of the Board, and the member:

- (a) shall not, after the disclosure:
 - (i) take part in any deliberation or decision of the Board in relation to the matter; or
 - (ii) exercise any function under this Act with respect to that thing; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Board for any such deliberation or decision.

10. Validity of proceedings

The validity of any proceedings of the Board shall not be affected by any vacancy among the members nor by any defect in the appointment of a member.

11. Assistance

(1) The Board may:

- (a) seek assistance or advice on any matter from any person; and
- (b) co-opt a person other than an officer in subparagraph (1)(i) to be an additional non-voting member of the Board for the purposes of consideration of a particular matter.

(2) A person who is co-opted under subparagraph (1)(b) shall act in an advisory capacity only and may be reimbursed reasonable travelling and accommodation expenses necessarily incurred in attending meetings of the Board and may be paid such sitting allowance as the Minister determines.

12. Non-liability of Board members

No member shall be liable in respect of anything done or omitted to be done by him in good faith in the execution or purported execution of his powers and duties under this Act.

13. Secretary

The Commissioner shall act as Secretary to the Board, and may delegate any of the functions of Secretary to the Deputy Commissioner.

14. Minutes and List of Successful Applicants

(1) The Secretary shall keep full and accurate minutes of each meeting of the Board. The minutes shall be made available for public inspection soon after the meeting and shall be confirmed by the Board at a later meeting.

(2) The Secretary shall forward notice of allocations made by the Board to every person who, in his opinion, is interested in an application or matter dealt with by the Board.

(3) The Commissioner shall, as soon as practicable after the Board has made an allocation:

- (a) publish a list of successful applicants at some place to which the public has unhindered access; and
- (b) make public notification, in the media, that the list is available for inspection.

15. Authentication of acts, decisions, minutes etc.

All acts, decisions, minutes and documents that require authentication, shall be signed by the Chairperson, his Deputy or Secretary of the Board in accordance with the decisions of the Board.

16. Forms and Procedure

The Board shall approve and issue Forms and publish directions relating to its procedure. Parties shall adhere to such directions when dealing with the Board.

17. Offices not public offices

The offices of the Chairperson, his Deputy and members of the Board shall not be public offices for the purpose of Chapter XIII of the *Constitution*.

ENDNOTES

1

KEY

amd = amended	Pt = Part
Ch = Chapter	rem = remainder
Div = Division	renum = renumbered
exp = expires/expired	rep = repealed
GN = Gazette Notice	Sch = Schedule
hdg = heading	Sdiv = Subdivision
ins = inserted	SIG = Solomon Islands Gazette
lt = long title	st = short title
LN = Legal Notice	sub = substituted
nc = not commenced	

NOTE

This Reprint comprises the Act and amendments as in force on 1 March 1996 and published as Chapter 133 of the Revised Edition of the Laws of Solomon Islands, together with amendments made to the Act from that date to 1 December 2014.

2

LIST OF LEGISLATION

Land and Titles Act (Cap. 133)

<i>Constituent legislation:</i>	6 of 1968 (Commenced 1 January 1969)
	11 of 1970
	18 of 1972
	8 of 1974
	11 of 1974
	11 of 1977
	14 of 1978
	LN 88 of 1978
	12 of 1979
	24 of 1979
	9 of 1985
	2 of 1987
	4 of 1987
	19 of 1988

Secured Transactions Act 2008 (No. 4 of 2008)

Assent date	22 August 2008
Gazetted	5 September 2008
Commenced	31 August 2009

Penalties Miscellaneous Amendments Act 2009 (No. 14 of 2009)

Assent date	29 July 2009
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Gazetted	1 October 2009
Commenced	1 October 2009

Land and Titles (Amendment) Act 2014 (No. 11 of 2014)

Assent date	12 June 2014
Gazetted	1 December 2014*
Commenced	1 December 2014*

*[*Note: The date of publication in the Gazette and the date of commencement are validated by s4 of the Constitution (Amendment and Validation) Act 2023 and s47 of the Legislation Amendment, Repeal and Validation Act 2023]*

3 LIST OF AMENDMENTS

s 2	amd by Act No. 11 of 2014
s 3	amd by Act No. 11 of 2014
s 4	amd by Act No. 11 of 2014
Pt IIA	ins by Act No. 11 of 2014
s 8A	ins by Act No. 11 of 2014
s 8B	ins by Act No. 11 of 2014
s 8C	ins by Act No. 11 of 2014
s 8D	ins by Act No. 11 of 2014
s 8E	ins by Act No. 11 of 2014
s 14	amd by Act No. 14 of 2009
s 25	rep by Act No. 11 of 2014
s 84	amd by Act No. 11 of 2014
s 105	amd by Act No. 14 of 2009
s 120	amd by Act No. 11 of 2014
s 123	amd by Act No. 4 of 2008
s 132	amd by Act No. 11 of 2014
s 135	amd by Act No. 11 of 2014
s 136	amd by Act No. 11 of 2014
s 139	amd by Act No. 11 of 2014
s 140	amd by Act No. 11 of 2014
s 142	amd by Act No. 11 of 2014
s 185	amd by Act No. 11 of 2014
s 243	amd by Acts No. 14 of 2009; No. 11 of 2014
s 244	amd by Act No. 14 of 2009
s 245	amd by Acts No. 14 of 2009; No. 11 of 2014
s 246	amd by Act No. 14 of 2009
s 247	amd by Act No. 14 of 2009
s 248	amd by Act No. 11 of 2014
s 250	amd by Act No. 14 of 2009
s 260	amd by Act No. 11 of 2014
First Sch hdg	amd by Act No. 11 of 2014
Second Sch	ins by Act No. 11 of 2014