



TRIBAL LAND PANELS BILL 2019

(NO. 4 OF 2019)



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A

BILL

Entitled

AN ACT TO PROVIDE FOR THE ESTABLISHMENT AND OPERATION OF TRIBAL LAND PANELS, AND FOR RELATED PURPOSES.

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

TRIBAL LAND PANELS BILL 2019

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TRIBAL LAND PANELS BILL 2019

PART 1 PRELIMINARY MATTERS

1 Short title

This Act may be cited as the *Tribal Land Panels Act 2019*.

2 Commencement

This Act commences on the day appointed by the Minister by notice in the *Gazette*.

3 Definitions

In this Act:

“application” means an application for a dispute to be referred to a Panel made under section 17;

“approved form” means a form approved by the Director by administrative direction made under section 47;

“Chairperson” means the Chairperson of a Panel appointed under section 29;

“Chief Clerk” means the Chief Clerk of the Registry for a province mentioned in section 8(1)(a);

“Clerk” means Clerk of the Registry mentioned in section 8(1)(b);

“Director” means the National Director of the Registry appointed under section 7;

“dispute” means a dispute in relation to any interest in tribal land, including a dispute in relation to any of the following:

- (a) ownership of, or any other interest in, the land;
- (b) usage of the land;

(c) boundaries of the land;

“disputed land” means land that is the subject of a dispute;

“eligible person”, to be appointed to a Panel, means a person who is eligible under section 21(2);

“final notice of meeting” has the meaning given in section 26;

“group” includes a tribe, sub-tribe, clan, sub-clan or other community;

“land” means land within the meaning of section 2 of the *Land and Titles Act* (Cap. 133);

“meeting” means a meeting of a Panel;

“member” means a member of a Panel;

“National Membership Roll” means the National Membership Roll kept under section 11;

“nominated person” means a person nominated to be a Panel member under section 21;

“Panel” means a Tribal Land Panel established under section 18;

“Panel member” means a person appointed to a Panel under section 25;

“provisional notice of meeting” has the meaning given in section 23;

“Register of Determinations” means the Register kept under section 14;

“Registry” means the Tribal Land Panels Registry established by section 6;

“Roll” means the National Membership Roll;

“tribal land” means customary land within the meaning of section 2 of the *Land and Titles Act* (Cap. 133), including customary land covered by water.

4 Object

The object of this Act is to provide for the establishment and operation of Tribal Land Panels for the purpose of resolving disputes relating to tribal land, including through:

- (a) mediation and by encouraging and facilitating agreements between parties; and
- (b) determining the rights of parties according to custom at the time a dispute arises; and
- (c) recording the rights determined or agreed.

5 Effect of Act

This Act does not prevent the resolution of a dispute by parties without referring the dispute to a Tribal Land Panel.

PART 2 TRIBAL LAND PANELS REGISTRY

Division 1 Establishment and functions

6 Establishment

- (1) The Tribal Land Panels Registry is established.
- (2) The function of the Registry is to provide registry and secretariat services to the Panels, including by keeping the National Membership Roll.

Division 2 Staff

7 National Director

- (1) The Public Service Commission must appoint a person to be the National Director of the Registry.
- (2) The Director has the following powers and functions:
 - (a) to manage the day to day operations of the Registry, including managing its staff;

- (b) to ensure, with the assistance of the Chief Clerks, that the National Membership Roll is kept up to date and reviewed on an ongoing basis;
- (c) to administer an effective case management system that ensures the timely determination of disputes;
- (d) to ensure the requirements of this Act are applied in a consistent way by Panel members and staff;
- (e) to provide advice, training and guidance on procedural matters to Panel members and staff;
- (f) to issue administrative directions under section 47;
- (g) to keep accurate financial records for the Registry;
- (h) any other powers or functions specified in this or any other Act.

8 Staffing structure

- (1) The staff of the Registry consists of the following:
 - (a) a Chief Clerk for each province;
 - (b) Clerks;
 - (c) other staff.
- (2) The staff of the Registry are public officers appointed by the Public Service Commission and subject to the directions of the Director in the performance of their functions.
- (3) The Minister and the Public Service Commission must ensure the Registry is provided with the staff necessary to enable it and the Panels to operate effectively.

9 Chief Clerks

- (1) A Chief Clerk for a province has the following powers and functions:
 - (a) to maintain the part of the National Membership Roll that relates to the province;

- (b) to assist the Director with the operation of Panels in the province;
 - (c) to receive and process applications for referral of disputes related to land in the province;
 - (d) to assist the Director to provide advice, training and guidance on procedural matters to Panel members and staff;
 - (e) to perform the functions of a Clerk if required;
 - (f) any other powers or functions specified in this or any other Act.
- (2) A Chief Clerk for a province must report to the Director on the operation of Panels within the province as requested.
- (3) In this Act, a reference to a Chief Clerk in relation to a dispute is a reference to the Chief Clerk for the province in which the disputed land is located.

10 Clerks

- (1) A Clerk has the following powers and functions:
- (a) to maintain accurate records of proceedings of Panels, including determinations made and reasons for those determinations;
 - (b) administering the financial operation of Panels, including collecting fees from applicants and disbursing allowances to Panel members;
 - (c) administering oaths and affirmations by Panel members;
 - (d) any other powers or functions specified in this or any other Act.
- (2) A Clerk must report to the Chief Clerk on the operation of Panels as requested.

Division 3 National Membership Roll

11 National Membership Roll

- (1) The Director must maintain a roll of persons eligible to be appointed as Panel members (the ***“National Membership Roll”***).
- (2) The people on the Roll must be arranged by their province, locality and group.
- (3) The Chief Clerk for a province must keep an up to date extract from the Roll of persons listed in the Roll for the province.

12 Appointment to Roll

- (1) A group may nominate a person to be appointed to the Roll for a specified locality by lodging the approved nomination form with the Director.
- (2) If there is a House of Chiefs for the locality, the nomination form must be endorsed by the House of Chiefs.
- (3) The Director may appoint the person to the Roll for the locality if the Director is satisfied that the person:
 - (a) is recognised by the group that nominated the person as having a good knowledge of the language and genealogy of the group and the customary rules applying to land in the locality; and
 - (b) is indigenous to the locality;
 - (c) is not a member of Parliament, a Provincial Assembly or a city council; and
 - (d) has not been convicted of an offence involving dishonesty or carrying a potential penalty of more than 6 months imprisonment.
- (4) There is no limit to:
 - (a) the number of persons who may be nominated for appointment to the Roll by a group; or

- (b) the number of persons who may be appointed to the Roll; or
 - (c) the number of persons who may be appointed to the Roll for a particular locality.
- (5) In this section:

“House of Chiefs” means:

- (a) a House of Chiefs registered or otherwise recognised under a written law; or
- (b) another body representing traditional leaders (however described) that is recognised by the group nominating a person to be appointed to the Roll.

13 Inspection of Roll

The Roll must be made available for inspection by the public for no fee at the office of the Registry and the office of each Chief Clerk.

Division 4 Administrative matters

14 Register of Determinations

- (1) The Director must keep a Register of each:
 - (a) determination of a Panel made under Part 3, Division 4; and
 - (b) agreement of parties to a dispute recorded under Part 3, Division 4.
- (2) The Register must be made available for inspection by the public for no fee at the office of the Registry and the office of each Chief Clerk.

15 Delegation

The Director may delegate any of his or her powers or functions (except this power of delegation) to a Chief Clerk, a Clerk or any other member of the staff of the Registry.

PART 3 RESOLUTION OF TRIBAL LAND DISPUTES

Division 1 Jurisdiction and referral of disputes

16 Jurisdiction

- (1) A Tribal Land Panel has jurisdiction to determine any dispute relating to tribal land.
- (2) However, a Panel does not have jurisdiction to determine a dispute that was finally determined by a court before the commencement of this Act.
- (3) For subsection (2), a dispute is finally determined when no avenue remains to appeal the determination.

17 Application for referral of dispute

- (1) A person or group of persons claiming an interest in tribal land may apply for a dispute relating to the land to be referred to a Panel.
- (2) The application must be:
 - (a) made in the approved form to the Chief Clerk for the province in which the disputed land is located; and
 - (b) accompanied by the prescribed fee.

Division 2 Establishment and membership

18 Establishment of Panel

- (1) The Director must establish a Panel to determine a dispute that is:
 - (a) referred to a Panel on application under section 17; or
 - (b) referred to a Panel by a court; or
 - (c) transferred to a Panel under section 49;
- (2) A Panel ceases to exist on the determination of the dispute before it.

19 Time for meeting requirements of this Division

- (1) This section sets out the time within which specified requirements of this Division must occur.
- (2) For this section, a dispute is taken to be referred to a Panel on:
 - (a) the date the relevant application is lodged; or
 - (b) if the dispute is referred to the Panel by a court— the date the Registry receives the referral.
- (3) The meeting must be:
 - (a) started at least 3 months after the dispute is referred to the Panel; and
 - (b) concluded within 10 months after the dispute is referred to the Panel.
- (4) The provisional notice of meeting must be given and publicised under section 23 within 4 weeks after the dispute is referred to the Panel.
- (5) An objection to a nominated person under section 24 must be made within 6 weeks after the provisional notice of meeting is publicised under section 23.
- (6) The final notice of meeting must be given and publicised under section 26 within 14 days after the members of the panel are appointed under section 25.

20 Place of meeting

The place of a meeting must be on the disputed land or as close to it as is reasonably practicable.

21 Nomination of Panel members

- (1) On the establishment of a Panel, the Chief Clerk for the province in which the disputed land is located must nominate at least 7 eligible persons to be members of the Panel (***“nominated persons”***).
- (2) A person is an ***“eligible person”*** to be appointed to the Panel if:

- (a) either:
 - (i) the person is listed on the Roll for the locality in which the disputed land is located; or
 - (ii) if there are insufficient persons on the Roll for that locality – the person is listed on the Roll for a locality as near as possible to that locality; and
 - (b) the person is not a party to the dispute.
- (3) At least one of the nominated persons must be female, unless there is no eligible person who:
- (a) is female; or
 - (b) is female and who agrees to be a Panel member.

22 Disclosure of interests

- (1) The Chief Clerk must:
- (a) ask each nominated person whether the person agrees to be a Panel member; and
 - (b) if the person agrees to be a Panel member – require the person to disclose whether the person has or may have:
 - (i) an interest in the disputed land; or
 - (ii) a personal, professional, commercial or other relationship with any of the parties to the dispute; or
 - (iii) a personal, professional, commercial or other relationship with a person and the nature of the relationship is likely to, or may reasonably be regarded as likely to, inhibit or prevent the person from exercising independent judgment in relation to the dispute.
- (2) A nominated person who fails to comply with a requirement to disclose a matter under subsection (1)(b) commits an offence.

Maximum penalty: 5,000 penalty units or imprisonment for 6 months, or both.

- (3) If a nominated person discloses a matter under subsection (1)(b), the Chief Clerk must refer the disclosure to the Director.
- (4) The Director must consider the disclosure and may:
 - (a) revoke the person's nomination; or
 - (b) maintain the person's nomination and inform the parties to the dispute of the disclosure in the provisional notice of meeting.

23 Provisional notice of meeting

- (1) The Chief Clerk must give written notice of the meeting in the approved form (the "***provisional notice of meeting***") to each party to the dispute.
- (2) The notice must state:
 - (a) the date and place of the meeting; and
 - (b) the name of each nominated person; and
 - (c) details of any disclosure made by a nominated person under section 22(1)(b); and
 - (d) the timeframe and procedure for objecting to a nominated person being appointed to be a Panel member.
- (3) The Chief Clerk must also ensure that:
 - (a) the notice is:
 - (i) displayed in each village located on or adjacent to the disputed land; and
 - (ii) displayed at the provincial government headquarters for the province in which the disputed land is located; and
 - (ii) published in a newspaper circulating generally in Solomon Islands; and
 - (b) the contents of the notice are broadcast on a national radio broadcaster in both English and Pijin.

24 Objection to nominated person

- (1) A party to the dispute may object to a nominated person being appointed to be a Panel member by lodging an objection notice in the approved form with the Chief Clerk.
- (2) An objection may be made whether or not the nominated person made a disclosure under section 22(1)(b).
- (3) The Director must consider each objection and either:
 - (a) revoke the person's nomination; or
 - (b) maintain the person's nomination if the Director believes on reasonable grounds that:
 - (i) the person objected to is an eligible person; and
 - (ii) the person's presence on the Panel will not result in a perceived or actual conflict of interest in relation to the determination of the dispute.

25 Appointment of Panel members

- (1) Having dealt with any objections, the Director must appoint the remaining nominated persons to be the Panel members.
- (2) However, if there are less than 3 nominated persons remaining, the Director must direct the Chief Clerk to begin the nomination process under section 21 again until a Panel of at least 3 members is appointed.

26 Final notice of meeting

- (1) The Chief Clerk must give written notice of the meeting in the approved form (the ***"final notice of meeting"***) to each party to the dispute.
- (2) The notice must state:
 - (a) the date and place of the meeting; and
 - (b) the name of each Panel member.

(3) The Chief Clerk must also ensure that:

(a) the notice is:

(i) displayed in each village located on the disputed land; and

(ii) displayed at the provincial government headquarters for the province in which the disputed land is located; and

(iii) published in a newspaper circulating generally in Solomon Islands; and

(b) the contents of the notice are broadcast on a national radio broadcaster in both English and Pijin.

27 Application to join as party

(1) A person or group of persons claiming an interest in the disputed land may join the dispute as a party by lodging an application to join with:

(a) the Chief Clerk; or

(b) if the proceeding has already commenced, the Clerk to the Panel.

(2) The application must be:

(a) made in the approved form; and

(b) accompanied by the prescribed fee.

Division 3 Conduct of meetings

28 Clerk to Panel

(1) The Chief Clerk must appoint a Clerk to the Panel.

(2) The Clerk must be present at all times during a meeting.

(3) If the Clerk does not understand the language in which the meetings are conducted, the Panel must appoint an interpreter for the Clerk.

29 Chairperson of Panel

The members of the Panel must select one member to be the Chairperson of the Panel before the opening of the first meeting of the Panel.

30 Requirement for oath or affirmation

The members of the Panel must take the oaths or affirmations prescribed for Magistrates by the *Official Oaths Act* (Cap. 24) before the Clerk at the opening of the first meeting of the Panel.

31 Conduct of meetings generally

- (1) Subject to this Act and any practice directions issued by the Director, the procedures for a meeting of the Panel may be agreed by its members in accordance with the customary procedures ordinarily used to settle disputes in the area of the disputed land.
- (2) The Panel must conduct its meetings with as little formality and technicality as the circumstances allow.
- (3) The rules of evidence do not apply to the meetings of the Panel and the Panel may inform itself on any matter as it considers appropriate.

32 Meeting to be open

A meeting must be open to the public.

33 Representation of parties

- (1) A party is not allowed to have legal representation at a meeting.
- (2) However, the Chairperson may allow a party or witness with a disability to be assisted by an adult person (other than a legal representative).
- (3) A party or witness who is unable to communicate in the language used for the meeting may be assisted by an interpreter selected by the person and approved by the Panel.

34 Panel may join additional parties

At any time during meetings in relation to a dispute, the Panel may join a person or group of persons as a party if the Panel is satisfied that the person or group of persons has an interest in the disputed land.

35 Panel to visit disputed land

The Panel must:

- (a) visit the disputed land; and
- (b) must inspect the boundary of the land if the dispute relates to the boundary.

36 Record of meetings

- (1) The Clerk must record the meetings of the Panel, including by:
 - (a) recording and transcribing each submission made by a party or other witness; and
 - (b) recording:
 - (i) the determination of the Panel and the reasons for it; or
 - (ii) the agreement reached by the parties.
- (2) If the Clerk makes an audio or visual recording of the meetings, the Clerk must transcribe the recording.
- (3) If meetings are not conducted in English, the Clerk must transcribe the record of meetings into English.

37 Contempt

- (1) A person commits an offence if the person:
 - (a) insults, threatens, intimidates or obstructs a Panel member, a Clerk to a Panel or a member of staff of the Registry in relation to his or her performance of functions or exercise of powers under or connected to this Act; or
 - (b) interrupts, obstructs or hinders a meeting; or

- (c) fails to comply with a lawful direction or order of the Chairperson of a Panel, including an order under subsection (2).

Maximum penalty: 10,000 penalty units or imprisonment for 12 months, or both.

- (2) The Chairperson of a Panel may order a person to leave a meeting if the person engages or has engaged in any of the conduct mentioned in subsection (1)(a) or (b).

Division 4 Determination of disputes

38 Agreement by parties

- (1) The Panel must encourage the parties to resolve the dispute by reaching an agreement.
- (2) The Panel may adjourn a meeting for up to 14 days to allow an agreement to be negotiated.
- (3) The Clerk must record an agreement of the parties and each party must sign the record.
- (4) The record must be:
 - (a) placed on the Register of Determinations; and
 - (b) forwarded to any authority (such as a Ministry or statutory body) responsible for matters related to the rights agreed by the parties.
- (5) The agreement has effect as if it were a determination by the Panel, that is, it is:
 - (a) final; and
 - (b) binding on the land and all persons affected by the agreement, whether or not those persons were parties to the dispute; and
 - (c) enforceable in the Magistrates' Court as if it were an order of that court.

39 Determination by Panel

- (1) If the parties are unable to reach an agreement, the Panel must determine the rights of the parties according to custom.
- (2) The following procedures apply to the determination:
 - (a) the Panel must attempt to make the determination by consensus of all members;
 - (b) if no consensus can be reached, the determination is made by the majority of members;
 - (c) if there is an equality of votes, the Chairperson has a casting vote.
- (3) The Panel must:
 - (a) make the determination on a date specified at the conclusion of the meeting, which must be within 14 days; and
 - (b) deliver its determination in public at the place the meeting was held.
- (4) The Panel must give full reasons for its determination.
- (5) The Panel must determine all the issues in dispute.
- (6) Without limiting subsection (5), the determination may:
 - (a) specify the nature and extent of the rights or interests of any person or group of persons, including rights of occupation or usage of land; and
 - (b) require the payment of compensation for the use of land, damage to land or other property or injury of persons in relation to the dispute, taking into account any applicable provisions of another written law relating to compensation.

40 Effect of determination

A determination of a Panel:

- (a) is final; and

- (b) is binding on the land and all persons affected by the determination or order, whether or not those persons were parties to the dispute; and
- (c) is enforceable in the Magistrates' Court as if it were an order of that court; and
- (d) cannot be appealed against, set aside, reviewed or altered by any court or other body except as provided for in Division 6.

41 Record and registration of determination

- (1) The Clerk must record the determination of the Panel.
- (2) If the determination is not given in English, the Clerk must transcribe the determination into English for the purposes of the record.
- (3) The Chairperson must check the record for accuracy and sign it.
- (4) The record must be:
 - (a) placed on the Register of Determinations; and
 - (b) forwarded to any authority (such as a Ministry or statutory body) responsible for matters related to the rights agreed by the parties.
- (5) Each party must be given a copy of the record, together with a written notice specifying the timeframe and procedure for applying for leave to appeal the determination.

42 Publication of determination

A determination of a Panel must be publicised in the way a final notice of meeting is required to be publicised under section 26(3).

Division 5 Appeals

43 Right to seek leave to appeal

- (1) A person claiming an interest in land that is the subject of a determination of a Panel may apply to the High Court for leave to appeal against the determination or order on the grounds of:

- (a) denial of natural justice; or
 - (b) lack of jurisdiction.
- (2) The application must be made within 6 months after the date of the determination or order.

44 Decision on appeal

- (1) In deciding an appeal, the High Court may:
- (a) confirm the determination or order of the Panel; or
 - (b) remit the matter back to a Panel for a fresh determination or order in accordance with the directions of the Court; or
 - (c) if the Court finds the Panel did not have jurisdiction to determine the dispute – quash the determination or order.
- (2) If the Court remits the matter back to a Panel, the Director must establish a Panel, which may consist of the same members as the Panel that made the original determination or order.

45 No appeal from decision on appeal

The decision of the High Court under section 44 is final and cannot be appealed.

PART 4 MISCELLANEOUS MATTERS

46 Protection from liability

A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:

- (a) a member;
- (b) the Director;
- (c) a Chief Clerk;
- (d) a Clerk;

- (e) a member of the staff of the Registry;
- (f) an interpreter appointed under section 28(3).

47 Administrative directions

The Director may make administrative directions in relation to the following matters:

- (a) how proceedings, determinations and orders of Panels must be recorded;
- (b) procedures for the conduct of meetings;
- (c) forms for use under this Act;
- (d) the ways in which parties to disputes can be served;
- (e) the administrative procedures of the Registry and Panels.

48 Regulations

The Minister may make regulations for this Act.

PART 5 TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS

Division 1 Transitional provisions

49 Pending proceedings

- (1) In this section:

“commencement date” means the date this Act commences;

“pending proceeding” means a proceeding relating to a dispute that, immediately before the commencement date, was not concluded.

- (2) A pending proceeding before a local court or a customary land appeal court is transferred to a Panel on the date of commencement for determination under this Act.

- (3) A pending proceeding before the High Court may be transferred to a Panel:
 - (a) with the agreement of the parties to the proceeding; or
 - (b) by order of the Court.
- (4) Section 19 does not apply to a proceeding transferred under this section.

50 Transitional regulations

- (1) A regulation made by the Minister may provide for a matter of a transitional nature:
 - (a) because of the enactment of this Act; or
 - (b) to allow or facilitate the transition to the operation of this Act.
- (2) The regulation may have retrospective operation to a day not earlier than the date this section commences.
- (3) However, to the extent to which the regulation has retrospective operation, it does not operate to the disadvantage of a person by:
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The regulation must declare it is made under this section.
- (5) Each regulation made under this section expires 2 years after the date this section commences.

Division 2 Consequential amendments

51 Customary Land Records Act (Cap. 132) amended

The *Customary Land Records Act* (Cap. 132) is amended as follows:

- (a) in section 2, by inserting the following new definition in alphabetical order:

“Tribal Land Panel” means a Tribal Land Panel established under the *Tribal Land Panels Act 2019*;

- (b) in section 11(2), by deleting “court decision, the decision of the court shall prevail” and substituting “court or Tribal Land Panel decision, the decision of the court or Panel prevails”;
- (c) in section 13(4), by deleting all the words from “the dispute” to “the groups” and substituting “a party to the dispute may apply under the *Tribal Land Panels Act 2019* for the dispute to be referred to a Tribal Land Panel.”;
- (d) in section 13(5), by inserting “Tribal Land Panel,” before “the High Court”.

52 Interpretation and General Provisions Act (Cap. 85) amended

The *Interpretation and General Provisions Act* (Cap. 85) is amended by deleting the definition of **“customary land appeal court”** in section 16(1).

53 Forest Resources and Timber Utilisation Act (Cap. 40) amended

The *Forest Resources and Timber Utilisation Act* (Cap. 40) is amended as follows:

- (a) in section 10(1), by deleting all the words from “appeal” to “appeal” and substitute “apply under the *Tribal Land Panels Act 2019* for the dispute to be referred to a Tribal Land Panel.”;
- (b) by repealing section 10(2) and (3);
- (c) in section 11(a), by deleting “lodging an appeal” and substituting “making an application”;
- (d) in section 11(b), by deleting “appeal has been lodged” and substituting “application has been made”;
- (e) in section 11(c), by deleting “an appeal under section 10 with

the order of the court determining such appeal” and substituting “an application under section 10, with the determination of the Tribal Land Panel”.

54 Land and Titles Act (Cap. 133) amended

The *Land and Titles Act* (Cap. 133) is amended as follows:

- (a) by repealing sections 254, 255, 256 and 260(2)(a)(v);
- (b) in section 257(2), by deleting “other than a local court exercising its jurisdiction under section 254”.

55 Local Courts Act (Cap. 19) amended

The *Local Courts Act* (Cap. 19) is amended by repealing sections 11, 12, 13 and 14 and the Schedule.

56 Mines and Minerals Act (Cap. 42) amended

The *Mines and Minerals Act* (Cap. 42) is amended as follows:

- (a) by inserting the following new subsection after section 21(7):
 - “(7A) Any dispute about the nature or extent of the interests of a group of people in customary land may be referred to a Tribal Land Panel for determination under the *Tribal Land Panels Act 2019*.”; and
- (b) by inserting the following new subsection after section 32(4):
 - “(4A) Any dispute about the nature or extent of the interests of a group of people in customary land may be referred to a Tribal Land Panel for determination under the *Tribal Land Panels Act 2019*.”.

57 Wills, Probate and Administration Act (Cap. 33) amended

The *Wills, Probate and Administration Act* (Cap. 33) is amended as follows:

- (a) in section 3, by deleting the definition of “**local court**”;

- (b) by deleting section 104(a) and substituting the following:
 - “(a) if the matter relates to customary land – to refer the matter to a Tribal Land Panel for determination under the *Tribal Land Panels Act 2019*; or”;
- (c) in section 104(c), by deleting “custom” and substituting “custom, including records kept on the Register of Determinations under the *Tribal Land Panels Act 2019*”.

TRIBAL LAND PANELS BILL 2019

OBJECTS AND REASONS

The Tribal Land Panels Bill 2019 establishes a decision making body to resolve disputes about the rights, interests and usage of tribal land. It provides for panels of persons with a good knowledge of the customary law, genealogy and language applicable in a particular area to resolve disputes about land in that area. It replaces the current system comprising Chiefs, Local Courts, Customary Lands Appeal Courts and the High Court with a single entity which makes a final and binding decision. Limited appeals to the High Court are allowed by leave, only on the grounds of denial of natural justice or lack of jurisdiction.

The panels consist of at least 3 appointees from the local area, nominated by the community and/or House of Chiefs in a fair and transparent manner from a public register. They are selected for duty by the Clerk. Members are entitled to receive sitting, sustenance and travel allowances at the same rate as Local Court members. Panel members must disclose any interest in the disputed land or any reason that would make them ineligible to sit on a panel.

Meetings are widely advertised well in advance and are held on or near to the subject land. Public notices are displayed and broadcast stating the time, date and place of the meeting and naming the proposed members of the panel. All parties have an opportunity to object to any member. Any person with an interest in the land can apply to be joined as a party.

Meetings are public, informal and non-adversarial. A full record must be made and kept by a Clerk. A national register of all meetings and determinations is maintained by the National Director. Parties are encouraged to reach agreement. If no agreement is reached, the panel must deliver a determination within 7 days of the meeting which addresses all the issues in dispute and gives full reasons for the decision.

Panels are supported and administered by a Secretariat consisting of a National Director who is appointed by the Public Service Commission. In addition, each Province shall have a Chief Clerk and each panel will have a Clerk allocated to it.

The Bill provides that all cases currently pending before the Local Court or the Customary Land Appeals Court shall be transferred to a panel for hearing. For

proceedings pending before the High Court, matters can be transferred to panels with the agreement of the parties or at the direction of the Court.

The Bill provides a fair, just and effective method of solving issues about tribal land ownership and usage. It is essential to the social, cultural and economic development of the nation. It will resolve land issues for the people who are living on tribal land and are dependent on it for their livelihood. It is necessary for the people who may not reside on the land but have continuing ties, rights and interests in the tribal land. Timely tribal land dispute resolution is also required for economic development to assist communities to use tribal land or the resources contained in or upon tribal land. It is most important that all people who are affected by land disputes have a belief and confidence in a strong and effective the system set up to resolve them.

**HON. MAKARIO TAGINI
MINISTER FOR JUSTICE AND LEGAL AFFAIRS**

TRIBAL LAND PANELS BILL 2019

EXPLANATORY MEMORANDUM

The Tribal Land Panels Bill 2019 provides for the establishment and operation of Tribal Land Panels for the purpose of hearing and determining disputes relating to tribal land.

The Bill is divided into five parts with each part covering a separate area of subject matter.

Part 1 sets out the name of the Act, states when the Act commences and provides a list of definitions of the terms used in the Act. It sets out the objects of the Act which are to encourage agreements between parties, to determine rights of parties according to local custom and to record the rights that are determined or agreed.

Part 2 provides for the establishment of the Tribal Land Panels Registry (the Registry) and creates the administrative structure required to support the Tribal Land Panels (the Panels).

Division 1 establishes the Tribal Land Panels Registry and sets out its functions.

Division 2 allows for the appointment of staff to the Registry by the Public Service Commission and lists their duties and responsibilities. This includes a National Director, a Chief Clerk for each province, Clerks for each of the Panels and other staff required to enable the Registry and Panels to operate effectively.

Division 3 sets out the requirements for creating and maintaining the National Membership Roll (the Roll) of potential panel members. It provides the process for making appointments to the Roll by local communities. It sets out the criteria for appointment which is that the person must be indigenous to the locality and have a good knowledge of the language, genealogy and customary rules applying to the land in the locality. It clarifies that there is no limit to the number of persons who can be on the Roll for a particular area. It states that the Roll must be available for inspection by the public free of charge at the Registry and in the Office of the Chief Clerk of each province.

Division 4 requires that the Director and each Chief Clerk keep a register of all Panel determinations or agreements which must be available for inspection by the public free of charge.

Part 3 describes the processes and procedures for resolving disputes about tribal land.

Division 1 grants the Panels the jurisdiction to hear and determine any dispute relating to tribal land except disputes that have already been determined by a court before the commencement of this Act. It allows for persons claiming an interest in tribal land to make an application to the Chief Clerk for the dispute to be referred to a Panel.

Division 2 requires the Director to establish a new panel for each dispute. It sets out strict timeframes for the holding of the meeting, publication of the notice of the meeting and objecting to Panel members. It states that the meeting must be held on or near the disputed land. It provides a process for the Chief Clerk to appoint Panel members. It requires members to disclose any interest in the land and requires the Director to determine whether to remove the member from the Panel. It provides that the Chief Clerk must give written notice of the meeting and the proposed Panel members to the parties. The Chief Clerk must also display the notice in each village on or near the disputed land and at the provincial government headquarters for the province. The contents of the notice of the meeting must be published in a newspaper and broadcast on national radio in English and Pijin. Parties may object to a nominated person on the Panel and the Director must consider the objection and determine whether to revoke the person's membership. If less than 3 nominated persons remain, the Chief Clerk must begin the nomination process again. When the Panel membership is finalized, the final notice of meeting must be displayed, published and broadcast. Other persons or groups claiming an interest in the land may join the dispute by lodging an application with the Chief Clerk or the Clerk of the Panel.

Division 3 sets out the procedure for conducting the Panel meetings. The Chief Clerk appoints a Clerk to the panel. The Clerk must record and transcribe all the submissions and the agreement or determination. Panel members must select a Chairperson and take an oath or affirmation before the Clerk. Meetings must be conducted with as little formality as possible and in accordance with the local custom for solving disputes. Court rules of evidence do not apply. The meeting must be open to the public and parties are not allowed to have legal representation. The Panel may join parties to a dispute if they believe the party or parties have an interest in the disputed

land. The Chairperson may order a person to leave a meeting if they are obstructive. There is an offence of contempt for persons who threaten or obstruct meetings or members.

Division 4 sets out the procedures for determining disputes. Parties are encouraged to come to an agreement and a meeting can be adjourned for 14 days to allow a settlement to occur. Agreements by parties are recorded and have the same effect as decisions. If no agreement can be reached, the Panel makes the decision which must be delivered within 14 days of end of the meeting. Decisions must be delivered in public at the place of the meeting and reasons must be given. Decisions are final, are binding on the land and all persons affected. The Clerk must record the determination, place it on the Register, give it to each party and send a copy to any Ministry responsible for areas related to the decision. The decision must also be displayed, published and broadcast.

Division 5 sets out the limited appeals procedure. It permits an application for leave to appeal to the High Court only on the grounds of denial of natural justice or lack of jurisdiction. Appeal applications must be made within six months of the determination. The High Court may confirm the determination or remit the matter back to a Panel.

Part 4 contains provisions dealing with miscellaneous matters. It provides a protection from civil and criminal liability for panel members, registry staff and interpreters. It allows the Director to make administrative directions relating to procedures, forms, service of notices and administration of the Registry and Panels. It contains a regulation making power.

Part 5 contains transitional provisions and consequential amendments to other Acts.

Division 1 provides that all cases pending before a local court or Customary Land Appeals Court are transferred to a Panel upon the commencement of this Act. Cases pending before the High Court may be transferred to a Panel with the consent of the parties or by order of the Court. The division also allows for transitional regulations to be made by the Minister.

Division 2 makes consequential amendments to seven other Acts. These amendments remove references to the jurisdiction and procedures of the courts over tribal land and replace it with references to the Panels and procedures created under this Act.

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