



**TRADITIONAL GOVERNANCE AND CUSTOMS  
FACILITATION BILL 2018**

**(NO. 9 OF 2018)**





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A

BILL

Entitled

**AN ACT TO PROVIDE FOR THE RECOGNITION OF TRADITIONAL  
GOVERNANCE SYSTEMS, TO AMEND THE PROVINCIAL GOVERNMENT  
ACT 1997, AND FOR RELATED MATTERS**

**ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.**

**TRADITIONAL GOVERNANCE AND CUSTOMS FACILITATION BILL  
2018**

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# TRADITIONAL GOVERNANCE AND CUSTOMS FACILITATION BILL 2018

## PART 1 PRELIMINARY MATTERS

### 1 Short title

This Act may be cited as the *Traditional Governance and Customs Facilitation Act 2018*.

### 2 Commencement

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

### 3 Definitions

In this Act:

**“Codification Committee”** means a Codification Committee established by section 27;

**“customary law”** means the recognised and accepted norms, protocols and practices of a group, including the ways the group manages the use of knowledge, property and rights;

**“customary rights register”** means the customary rights register kept under section 10;

**“Director”** means the Director of Traditional Governance appointed under section 7;

**“group”** means a tribe or clan that shares a system of customary law and is governed by a tribal chief or traditional leader;

**“House of Chiefs”** means a House of Chiefs registered with the Secretariat under section 19;

**“member group”**, in relation to a House of Chiefs, has the meaning given in section 19(2);

**“Ministry”** means the Ministry responsible for the administration of this Act;

**“National Council”** means the National Council of Chiefs established by section 12;

**“Permanent Secretary”** means the Permanent Secretary of the Ministry responsible for the administration of this Act;

**“Provincial Council”** means a Provincial Council of Chiefs established by section 14;

**“registered group”** means a group registered with the Secretariat under section 16;

**“registered representative”** means a representative of a group registered with the Secretariat under section 17;

**“Secretariat”** means the Secretariat of the Chiefs established by section 8;

**“traditional leader”** means a leader of a clan who is vested with custodianship powers over the clan’s customary interests in accordance with the customary law of the clan;

**“tribal chief”** means a leader of a tribe who is vested with custodianship powers over the clan’s customary interests in accordance with the customary law of the group.

#### **4 Act binds Crown**

This Act binds the Crown.

#### **5 Objects**

The objects of this Act are as follows:

- (a) to provide a framework for the institutionalisation, management and regulation of traditional governance systems;
- (b) to provide a framework for the promotion and preservation of traditional norms, protocols, values and practices;
- (c) to empower and allow for tribal chiefs and traditional leaders to participate in decision making on social and economic matters

affecting customary rights.

## **PART 2 ADMINISTRATIVE MATTERS**

### **6 Functions of Ministry**

The Ministry has the following functions relating to the administration of this Act:

- (a) to develop and implement policies relevant to improving the systems provided for in this Act;
- (b) to facilitate institutional reforms across the Government for the purpose of achieving the objects of this Act;
- (c) to consult with the Ministry responsible for provincial government to assist provincial governments to make Ordinances codifying customary law;
- (d) other functions related to the administration of this Act determined by Cabinet.

### **7 Director of Traditional Governance**

- (1) The Public Service Commission, in consultation with the Permanent Secretary, must appoint a person to be the Director of Traditional Governance.
- (2) The Director is a public officer responsible to, and subject to the directions of, the Permanent Secretary.
- (3) The Director has the following powers and functions:
  - (a) to manage the Secretariat on a day to day basis;
  - (b) to ensure the Secretariat performs its functions efficiently;
  - (c) to report to the Permanent Secretary as required under section 11;
  - (d) any other powers and functions specified in this Act or any other law.



## **8 Secretariat of the Chiefs**

- (1) The Secretariat of the Chiefs is established.
- (2) The Secretariat has the following functions:
  - (a) registering groups, representatives and Houses of Chiefs under this Act;
  - (b) maintaining the customary rights register;
  - (c) any other function specified in this Act or any other law.
- (3) The Minister and the Public Service Commission must ensure the Secretariat is provided with the staff necessary to enable it to properly perform its functions.
- (4) The staff members of the Secretariat are public officers subject to the directions of the Director in the performance of their functions.

## **9 Registration requirements**

The regulations may provide for the procedures and requirements for the registration of a group, representative or House of Chiefs under this Act.

## **10 Customary rights register**

- (1) The Secretariat must maintain a customary rights register containing a record of the following:
  - (a) each group registered under section 16;
  - (b) each representative registered under section 17;
  - (c) each House of Chiefs registered under section 19;
  - (d) each application for registration received, whether the application resulted in a registration or not;
  - (e) the boundaries within which each registered group holds customary rights;
  - (f) any other matter required to be included on the register by this or any other law.

- (2) An extract from the customary rights register certified by the Director is evidence of the contents of the extract in the absence of proof to the contrary.

## **11 Reporting requirements**

- (1) The Director must submit a report to the Permanent Secretary on the performance of the Secretariat's functions during each financial year.
- (2) The report must be submitted by 31 March following the end of the financial year.
- (3) The Permanent Secretary may require the Director to provide additional periodic reports on specified matters.

## **PART 3 TRADITIONAL GOVERNANCE STRUCTURES**

### **Division 1 National Council of Chiefs**

#### **12 Establishment and composition**

- (1) The National Council of Chiefs is established.
- (2) The National Council is comprised of the chairperson of each Provincial Council of Chiefs.
- (3) The Permanent Secretary must ensure the National Council is provided with an office space appropriate for the discharge of its functions.

#### **13 Powers and functions**

- (1) The National Council has the following functions:
  - (a) representing the Provincial Councils of Chiefs and the Houses of Chiefs in their interactions with the Government or any other body;
  - (b) assisting in the resolution of disputes between different language groups;
  - (c) facilitating the provision of assistance by the Government or any other body to the Provincial Councils of Chiefs and the

Houses of Chiefs;

- (d) liaising with the Provincial Council of Chiefs and the Houses of Chiefs in relation to the development of government legislation, policies, plans and strategies affecting customary matters;
  - (e) any other functions specified in this Act or any other law, including any functions prescribed by regulation.
- (2) The National Council has the powers:
- (a) specified in this Act or any other law; or
  - (b) necessary for the performance of its functions.

## **Division 2 Provincial Councils of Chiefs**

### **14 Establishment and composition**

- (1) A Provincial Council of Chiefs is established for each province.
- (2) A Provincial Council is comprised of 2 representatives of each House of Chiefs in the province, appointed by the Minister by Gazette notice on the recommendation of the relevant House of Chiefs.
- (3) The Permanent Secretary must liaise with the relevant provincial government to ensure a Provincial Council is provided with an office space appropriate for the discharge of its functions.

### **15 Powers and functions**

- (1) A Provincial Council has the following functions:
  - (a) ensuring each House of Chiefs in the province performs its functions and exercises its powers in accordance with the requirements of this Act, any other applicable law and applicable customary law;
  - (b) liaising with the Secretariat to arrange conferences, meetings and training for the benefit of the Houses of Chiefs in the province;
  - (c) dealing with matters referred to it by a House of Chiefs in the province;

- (d) assisting the National Council to perform its functions as required;
  - (e) liaising with the Houses of Chiefs in the province on matters related to the codification of customary law and the development of provincial government policies, plans and strategies affecting customary matters;
  - (f) representing the Houses of Chiefs in the province on the National Council;
  - (g) any other functions specified in this Act or any other law, including any functions prescribed by regulation.
- (2) A Provincial Council has the powers:
- (a) specified in this Act or any other law; or
  - (b) necessary for the performance of its functions.

### **Division 3 Registered groups and representatives**

#### **16 Registration of groups**

A group may register itself with the Secretariat for the purposes of this Act if the group is:

- (a) a tribe; or
- (b) a clan that does not form part of a tribe.

#### **17 Registration of representatives**

- (1) A registered group may register with the Secretariat 2 persons to represent it for the purposes of this Act, one of whom must be a tribal chief or traditional leader of the group.
- (2) The representatives must be selected by the group in accordance with the customary law of the group.

#### **18 Powers and functions of registered tribal chiefs and traditional leaders**

- (1) The powers and functions of a registered tribal chief or traditional

leader of a group include the following:

- (a) to manage the customary property and rights of his or her group;
  - (b) to speak on behalf of the group;
  - (c) to ensure that worthy customary practices, knowledge, property and rights are preserved and passed on;
  - (d) to liaise with other tribal chiefs or traditional leaders in relation to their areas of responsibility.
- (2) In exercising his or her powers and performing his or her functions, a registered tribal chief or traditional leader must consult the group in accordance with the group's customary procedures.

#### **Division 4 Houses of Chiefs**

##### **19 Registration and composition**

- (1) A House of Chiefs may be registered with the Secretariat for each language group in Solomon Islands.
- (2) Each registered group belonging to the language group is a **"member group"** of the House of Chiefs.
- (3) A House of Chiefs is comprised of the 2 registered representatives of each member group.

##### **20 Powers and functions**

- (1) A House of Chiefs has the following functions in relation to its member groups:
  - (a) through its chairperson, making recommendations in relation to the codification of customary law to the Codification Committee for the province;
  - (b) liaising with the Secretariat to develop and implement plans and strategies to promote and preserve cultural heritage, values, principles and practices;
  - (c) assisting tribal chiefs and traditional leaders to develop plans

and strategies for assessing and resolving all forms of disputes relating to customary rights;

- (d) recommending representatives to sit on the relevant Provincial Council;
- (e) liaising with tribal elders and other community leaders and responsible Ministries in relation to community related matters;
- (f) receiving and ensuring that visitors to communities are looked after;
- (g) officiating in customary ceremonies and festivals;
- (h) any other functions specified in this Act or any other law, including any functions prescribed by regulation.

(2) A House of Chiefs has the powers:

- (a) specified in this Act or any other law; or
- (b) necessary for the performance of its functions.

## **Division 5      Procedural matters**

### **21      Definition**

In this Division, **“body”** means any of the following:

- (a) the National Council;
- (b) a Provincial Council;
- (c) a House of Chiefs.

### **22      Meetings of bodies**

- (1) Subject to this section, a body may, in consultation with the Secretariat, determine its own procedures for meetings.
- (2) The chairperson of a body may convene a meeting of the body at any time, but the minimum number of meetings that must be held each year is as follows:
  - (a) in the case of the National Council – 1 meeting;

- (b) in the case of a Provincial Council – 2 meetings;
  - (c) in the case of a House of Chiefs – 4 meetings.
- (3) At a meeting of a body:
- (a) the quorum is half the members of the body; and
  - (b) a decision of the body must be determined by the majority vote of members present and voting; and
  - (c) if there is an equality of votes, the chairperson has a casting vote.

## **23 Executive officers**

- (1) A body must appoint the following executive officers:
- (a) a chairperson;
  - (b) a vice chairperson;
  - (c) subject to subsection (3), a secretary;
  - (d) a treasurer.
- (2) The National Council must appoint a chairperson representing a different province each year, on a rotational basis.
- (3) The Director is the secretary to the National Council.
- (4) The Director must appoint a secretary to each Provincial Council.
- (5) The body must ensure the Secretariat has an up to date list of its executive office holders, and the Secretariat must keep this information on the customary rights register.

## **24 Co-opting of experts**

The National Council may co-opt any person with expertise in relation to a matter the Council is considering, on terms approved by the Permanent Secretary.

**25 Oath of office**

A registered representative must take an oath or affirmation in the prescribed form.

**26 Common seal**

- (1) A body must adopt a common seal.
- (2) The common seal is evidence of the execution of a document by the body in the absence of proof to the contrary.

**PART 4 CODIFICATION OF CUSTOMARY LAW**

**27 Codification Committees**

- (1) A Codification Committee is established for each province.
- (2) The Committee consists of the following members:
  - (a) the Attorney-General, or his or her nominee;
  - (b) the chairperson of each House of Chiefs in the province, or his or her nominee;
  - (c) the Director, or his or her nominee;
  - (d) the following members appointed by the Minister:
    - (i) a member to represent women, youth and children;
    - (ii) 2 members to represent churches.

**28 Function**

- (1) The function of a Codification Committee is to advise the Provincial Executive in relation to the codification of customary law by Ordinance.
- (2) In carrying out its function, the Codification Committee must ensure any proposed codification of customary law by Ordinance is consistent with the Constitution and Acts of Parliament.



**29 Procedures**

Subject to this Act and the regulations, a Codification Committee may adopt its own procedures.

**30 Allowances of members**

Members of a Codification Committee must be paid the allowances for attending meetings applicable to public officers.

**PART 5 MISCELLANEOUS MATTERS**

**31 Delegation**

The Director may delegate any of his or her powers or functions (except this power of delegation) to an officer of the Secretariat.

**32 Regulations**

- (1) The Minister may make regulations under this Act.
- (2) Without limiting subsection (1), the regulations may:
  - (a) prescribe additional functions of the National Council of Chiefs, a Provincial Council of Chiefs or a House of Chiefs; and
  - (b) prescribe procedures of a Codification Committee, including procedures for appointing members; and
  - (c) prescribe procedures and requirements for any registration provided for in this Act.

**PART 6 CONSEQUENTIAL AMENDMENT**

**33 Act amended**

Schedule 3 to the *Provincial Government Act 1997* is amended by inserting the following at the end:

*“Customary law*

*Codification of customary law.”*

# **TRADITIONAL GOVERNANCE AND CUSTOMS FACILITATION BILL 2018**

## **OBJECTS AND REASONS**

The object of this Bill is to provide a framework to regulate the traditional governance system in Solomon Islands. This Bill provides for the institutionalization, management and regulation of traditional governance systems. It formally establishes a platform to recognise, strengthen and empower the informal governing structures. On that basis, the current traditional governance system will become part of the formal system.

Further, the Bill provides for the promotion and preservation of traditional norms, protocols, values and practices. Traditional norms and practices are essential aspects of traditional governance in Solomon Islands in terms of identity and belonging to a certain tribe or clan. Additionally, these customary attributes play a major role in social cohesion, harmony and respect in traditional Solomon Islands society since time immemorial. This Bill aims to preserve and pass on these customary practices and norms to future generations.

The Bill aims to empower tribal chiefs and traditional leaders in dispute resolution. It facilitates their participation, coordination and contribution in partnership dialogues between the government and traditional institutions. It establishes a platform for traditional leaders and tribal chiefs to participate in peacebuilding, community policing, community respect, environmental preservation, development partnerships and the management of customary properties. It enables traditional leaders and tribal chiefs to play an active formal role in decision making process. This allows them to be involved in economic and social matters.

**HON. COMMINS ASTON MEWA  
MINISTER FOR NATIONAL UNITY, RECONCILIATION AND PEACE**

# **TRADITIONAL GOVERNANCE AND CUSTOMS FACILITATION BILL 2018**

## **EXPLANATORY MEMORANDUM**

### **PART 1 PRELIMINARY MATTERS**

Part 1 provides for preliminary matters such as the short title and commencement of the Act, and defines terms used in the Act. It also outlines the objects of the Act. The Act provides the framework for institutionalisation of traditional governance systems, so that they can be incorporated into the broader legal framework. The Act codifies traditional governance structures at a tribal, language group, provincial and national level, with the intention that existing laws will be amended to incorporate these structures into processes for determining customary rights.

### **PART 2 ADMINISTRATIVE MATTERS**

Part 2 establishes the administrative structure that will support the operation of the Act and the traditional governance framework.

Clause 6 provides for the role the Ministry responsible for the administration of the Act will play in supporting the provinces in the codification of customary law, and in facilitating institutional reform at a national level to ensure traditional governance systems are appropriately integrated into decision-making processes.

Clause 7 establishes the position of Director of Traditional Governance. The Director manages the Secretariat of the Chiefs, and is also a member of the National Council of Chiefs and each Codification Committee. In this way, the Director connects these bodies with the supporting administrative structure provided by the Ministry.

Clause 8 establishes the Secretariat of the Chiefs, which is responsible for the registration of groups, representatives and Houses of Chiefs, and maintaining the customary rights register.

Clause 9 allows regulations to be made providing for the procedures and requirements for the registration of groups, representatives and Houses of Chiefs. Such regulations could prescribe procedures for applications for registration as well as procedures for determining applications for registration,

including dispute resolution procedures.

Clause 10 requires the Secretariat to maintain a customary rights register. The register records the registration of groups, representatives and Houses of Chiefs, as well as the boundaries within which a registered group holds customary rights. Other laws could be amended in the future to refer to the customary rights register where a determination of customary rights is required.

Clause 11 requires the Director to report to the Permanent Secretary on the functioning of the Secretariat on an annual basis and as required.

### **PART 3 TRADITIONAL GOVERNANCE STRUCTURES**

Part 3 provides a framework for the legal recognition of traditional governance structures.

**Division 1** establishes the National Council of Chiefs. The National Council is comprised of the Permanent Secretary of the Ministry responsible for the Act, the chairperson of each Provincial Council of Chief, and the Director. This membership composition provides a bridge between the national government, the Provincial Councils and the Houses of Chiefs (because the Provincial Councils are comprised of representatives of the Houses of Chiefs).

The National Council's functions include representing the Provincial Councils and the Houses of Chiefs in their interactions with the national government, including by facilitating the provision of assistance by the national government and ensuring the Provincial Councils and the Houses of Chiefs are involved in the development of national government policies. It also has any powers and functions specified in another law. This allows for laws dealing with matters that affect customary rights to be amended to provide a role for the National Council in decision making.

**Division 2** establishes a Provincial Council of Chiefs for each province. A Provincial Council consists of 2 representatives of each House of Chiefs in the Province. The Provincial Council of Chiefs is a bridge between the Houses of Chiefs and the National Council of Chiefs. It also has any powers and functions specified in another law. This allows for laws dealing with matters that affect customary rights to be amended to provide a role for Provincial Councils in decision making.

**Division 3** provides for the registration of groups and their representatives. This

process is the foundation of the operation of the rest of the system. This is because registered groups form the membership of the Houses of Chiefs.

Under clause 16, a group can register itself with the Secretariat if it is a tribe or a clan that does not form part of a tribe. This ensures that there is no overlap in registration, preventing, for example, a tribe from registering itself and a clan that forms part of that tribe from also registering itself separately. The procedures and requirements for registration are not dealt with in the Act – there is the power to make regulations prescribing such matters (see clauses 9 and 32). It will be for the Secretariat to ensure that it is appropriate to register a group in accordance with the requirement that the group must either be a tribe or a clan that does not form part of a tribe.

Clause 17 allows a registered group to register 2 representatives. One of those representatives must be the group's tribal chief or traditional leader. The group selects its representatives in accordance with its customary law. Clause 18 sets out some of the powers and functions of the registered tribal chief or traditional leader, including the power to speak on behalf of the group.

**Division 4** provides for the registration of Houses of Chiefs. A House of Chiefs may be registered for each language group. All the registered groups belonging to the language group are member groups of the House of Chiefs, and the House of Chiefs consists of the 2 registered representatives of each member group.

A House of Chiefs is responsible for a range of matters, including providing a representative on the Codification Committee for the province, assisting tribal chiefs and traditional leaders with dispute resolution, and any other powers or functions specified in any other law. This allows for laws dealing with matters that affect customary rights to be amended to provide a role for Houses of Chiefs in decision making.

**Division 5** prescribes some basic procedural requirements for the National Council, the Provincial Councils and the Houses of Chiefs, such as procedures for meetings, requirements to appoint executive officers and oaths of office. The majority of procedures for meetings of these bodies can be determined by the bodies themselves.

## **PART 4      CODIFICATION OF CUSTOMARY LAW**

Part 4 establishes a Codification Committee for each province. The purpose of a Codification Committee is to advise the Provincial Executive in relation to the codification of customary law by Ordinance in a way that is consistent with the

Constitution and Acts of Parliament (this is a requirement under Schedule 3 of the Constitution). Each Codification Committee consists of the chairperson of each House of Chiefs in the province, the Director of traditional governance (or his or her nominee), the Attorney-General (or his or her nominee) and members appointed by the Minister to represent women, youth and children and churches.

## **PART 5 MISCELLANEOUS MATTERS**

Clause 31 allows the Director of Traditional Governance to delegate his or her powers and functions to a staff member of the Secretariat.

Clause 32 empowers the Minister to make regulations prescribing (among other things), additional functions of the National Council, Provincial Councils and Houses of Chiefs, procedures of the Codification Committees, and procedures and requirements for registration of groups, representatives and Houses of Chiefs.

## **PART 6 CONSEQUENTIAL AMENDMENT**

Clause 33 amends the *Provincial Government Act 1997* to add codification of customary law to the list of matters in relation to which a Provincial Assembly may legislate. Codification of customary law about land is already a matter within the legislative competence of Provincial Assemblies. The expansion is consistent with the role of the Codification Committees, which are established to advise Provincial Executives on the codification of customary law in relation to all matters.