

THE CUSTOMARY LAND RECORDS BILL

(NAME OF BILL)

1998

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Bill
(Objects and Reasons)
Notice of Presentation
Covering letter from Minister to Clerk to Parliament
~~Authorisation from Minister of Finance under s 60 of Constitution~~

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✓ TO Minister of Finance
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✓ TO Clerk to National Parliament (for certificate by Speaker) *Andrews* 8.12.93

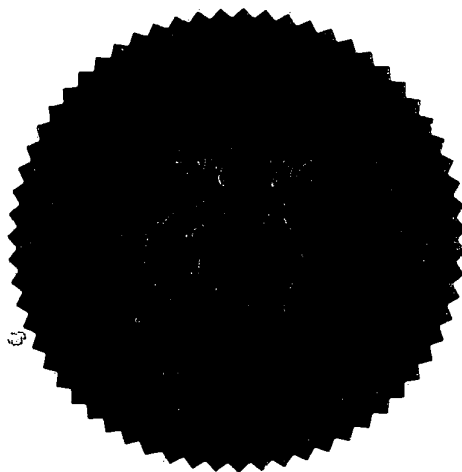
✓ TO Attorney General's Chambers (for printing)

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(for reference during 1st, 2nd and 3rd Readings)
(Date passed: 21/1/94 Act No. 3/94)

✓ TO Attorney General's Chambers (for checking before Assent) *WAG* 2/2/94

✓ TO Governor-General (for Assent) *DES* 4/2/94

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1 copy Attorney General's Chambers
1 copy Ministry *WAG* 7/2/94
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THE CUSTOMARY LAND RECORDS ACT 1994

(NO. 3 OF 1994)



THE CUSTOMARY LAND RECORDS ACT 1994

(NO. 3 OF 1994)

Passed by the National Parliament this twenty-first day of January 1994.

This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.

A handwritten signature in cursive script, appearing to read 'Andresen'.

*Elizabeth Andresen
Deputy Clerk to National Parliament*

Assented to in Her Majesty's name and on Her Majesty's behalf this fourth day of February 1994.

A handwritten signature in cursive script, appearing to read 'Lepping'.

*G.G.D. Lepping
Governor-General*

Date of commencement: see section 1.

AN ACT To Provide for the recording of customary land holdings; to empower land holding groups to appoint representatives to deal with recorded customary land holdings, the establishment of an Office of National Recorder of customary land, and record offices in the provinces and for other matters connected therewith or incidental thereto.

ENACTED by the National Parliament of Solomon Islands.

THE CUSTOMARY LAND RECORDS ACT 1994

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PART I
PRELIMINARY

Short title
and
commence-
ment.

1. This Act may be cited as the Customary Land Records Act, 1994, and shall come into operation on such date as the Minister may appoint, by notice published in the Gazette.

Interpretation.

2. In this Act, unless the context otherwise requires -
- “customary land” has the meaning ascribed thereto in section 2 of the Land and Titles Act;
 - “customary land holding group” means a tribe, clan, line, community or group of such persons owning or customarily recognised as entitled to own or exercise primary rights over customary land;
 - “Central Land Record Office” means the Central Land Record Office established pursuant to section 3;
 - “Minister” means the Minister for the time being charged with responsibility for land matters;
 - “National Recorder” means the person appointed pursuant to section 6 and charged with responsibility for general administration of customary land holding records;
 - “person” includes a land holding group;
 - “primary rights” means the right to carry out any act on the land concerned without reference to any other person;
 - “record” means the collected and finalised data entered in the record maintained by the Central Land Record Office in relation to customary land;
 - “record map” is the map prepared and maintained by the Surveyor General pursuant to section 12;
 - “recording officer” means an officer appointed pursuant to section 6(4);
 - “secondary rights” means any other right to carry out any act on the land concerned without reference to primary right holders.

Cap. 13.

PART II
ADMINISTRATION

Central Land
Record
Office.

3. For the purposes of this Act there is hereby established an office to be known as the Central Land Record Office which shall be responsible for the administration of the provisions of this Act and be the central repository of copies of all records of customary land holdings.

4. (1) Any Provincial Executive may recommend to the Minister to declare all or any part of the Province to be a Customary Land Record Area for the purposes of this Act.

Customary
Land Record
Area.

(2) The Minister may by order declare all or any part of the province so recommended to be a Customary Land Record Area (hereinafter in this Act referred to as a "declared area").

5. Land Record Offices shall be established for each province by the respective provincial executives.

Land Record
Offices.

6. (1) For the purposes of this Act, the Judicial and Legal Service Commission, shall appoint a National Recorder.

Appointment
of National
Recorder and
other officers.

(2) A person shall not be qualified for appointment as National Recorder unless he is legally qualified to practise as a barrister or solicitor.

(3) The National Recorder shall administer the Central Land Record Office and shall be assisted by such other officers as may be appointed by the Public Service Commission.

(4) The National Recorder may from time to time appoint such Recording Officers as he may deem necessary for the purposes of this Act.

7. (1) The National Recorder shall be responsible for -
- (a) the policy and general administration of customary land holding records;
 - (b) the administration of Central Land Record office and any other Land Record Offices.
 - (c) the custody, preservation and arrangement of customary land records;
 - (d) the preparation, maintenance and publication of customary land records.

Functions of
National
Recorder.

(2) For the purpose of performing the functions conferred upon the National Recorder by this Act, he may issue directions and delegate his powers and functions to Recording Officers and as he may deem necessary.

8. Each Land Record Office 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 National Recorder.

Seal of Land
Records
Office.

PART III
PROCESSING OF CLAIMS

Application
for recording.

9. (1) Any customary land holding group or any person, who claims an interest in any customary land may apply to the Land Record Office in the province for the recording of such primary rights and the demarcation of the extent of the boundaries of such customary land.

(2) Every application made under this section, shall be made in the prescribed form to the Recording Officer.

(3) The Recording Officer on receipt of such application shall inform the applicant in writing to pay such fees as specified.

(4) In determining the fees to be paid by the applicant the Recording Officer shall take into consideration the costs involved in the preparation of the record and the record map.

Publicising
claim.

10. (1) Where the Recording Officer, on the receipt of an application made under section 9 is satisfied that the application is in order for the purposes of recording the claim to primary rights and the boundaries of such customary land, he shall with a view to bringing the matter to the attention of all persons that may be affected -

(a) publish such notices at such places as he may consider appropriate; and

(b) cause the substance of such notice to be made known throughout the declared area, in such a manner as he shall consider to be adequate and most effective for the purpose.

(2) The notices referred to in subsection (1), shall -

(a) state the names of the claimants, set out the date and time (which shall not be less than three months from the date of the notices) at which members of the customary land holding group who make the claim to the primary rights in the application shall meet the Recording Officer on the land subject to the claim, for the purpose of collecting data for record;

(b) set out the date on which he together with the survey staff and members of the customary land holding group (who make the claim to the primary rights) shall walk the boundary of the land in question; and

(c) require land holding groups or individuals claiming secondary rights to be present and state the nature and extent of the secondary rights claimed.

11. (1) Subject to the provisions of subsections (2) and (3), the Recording Officer shall for purposes of compiling a record cause to be recorded -

Functions of
Recording
Officer.

- (a) the recognised name of the customary land holding group claiming the primary rights in the application made under section 9;
- (b) the genealogy of the group showing the basis for membership of the customary land holding group;
- (c) the method in which membership of the customary land holding group may be granted to others;
- (d) the name of the person, or the names of the persons who shall represent the customary land holding group and give effect to any dealing which may be made in respect to the land affected by the application made under section 9;
- (e) the method by which the person or persons referred to in paragraph (d) are appointed, dismissed and substituted; and
- (f) the names of the groups of persons claiming secondary rights and the extent of the rights claimed.

(2) Notwithstanding the compiling of a record pursuant to subsection (1), where the land in question has prior to the commencement of this Act been the subject of a court decision, the decision of the court shall prevail.

(3) Where any person is substituted in place of another under subsection (1)(e), the name of the new appointee shall be notified by the land holding group to the Record Office in writing within 28 days of such appointment.

(4) The survey staff on visiting the land on the date set out in section 10(2)(b) shall for the purpose of section 12, in the manner approved by the Surveyor General gather and record data relating to -

- (a) the boundary and the primary rights claimed in the application made under section 9; and
- (b) the nature and extent of the secondary rights claimed, if any.

12. The Surveyor General shall prepare a map of the land which is subject to the claim, from data collected by the survey staff and recorded in accordance with the provisions of section 11(4) and any other data which may have been deposited in the office of the Surveyor General in the past.

Record map.

Boundary
disputes to
be settled by
negotiation.

13. (1) Where, in determining the primary rights, a dispute arises between two customary groups in respect of the boundaries, such dispute shall be resolved by discussion and negotiation between the leaders of the respective customary land holding groups.

(2) In determining a dispute under this section, the leaders of the respective customary land holding groups shall have regard to the relevant genealogy and secondary rights.

(3) Where settlement is reached pursuant to discussions held in the manner provided for in subsection (1), the parties shall demarcate the respective boundaries and signify such settlement by holding a customarily accepted ceremony in the presence of the Recording Officer or his agent.

(4) Where no agreement or settlement is reached pursuant to discussions held as required by subsection (2), the dispute shall be referred by the Recording Officer to the traditional chiefs and the decision of the traditional chiefs shall be final and conclusive, in so far as it relates to the respective boundaries of the groups.

(5) Where the boundaries in respect of any customary land has been the subject of determination by the High Court or the Court of Appeal, the Recorder shall make such entry in the record and take no further action in that regard.

Completion
of the Record.

14. (1) Where the Recording Officer is satisfied that the data collected pursuant to the application made under section 9 is complete and on receipt of the record map from the Surveyor General, the Recording Officer shall issue a notice of such completion and give adequate publicity to that notice so as to bring it to the attention of the general public.

(2) The completed record shall be available for public inspection at the Central Land Record Office and the appropriate Land Record Offices for the disclosure of errors and omissions in the closed record.

(3) Where any land holding group or persons who claim an interest on land are of the view that their claims have not been adequately considered, such group or persons may make written representations to the National Recorder to have their claims reconsidered.

(4) The National Recorder shall finalise each record within six months after the Recording Officer has issued a completion notice of the record and deliver a certificate to that effect to the group concerned.

When the record is finalised by the National Recorder, the customary rights of the land holding group referred to in the record shall not be liable to be defeated except as provided by the provisions of this Act and shall be held by the customary land holding group, together with all privileges and appurtenances attaching thereto, free from all other interests and claims whatsoever, but subject to the leases, charges and other encumbrances, and to conditions and restrictions (if any) affecting the rights shown or referred to in the Record.

Interest on recording.

(1) Every copy or extract of the finalised record certified by the National Recorder to be a true copy or extract shall, in all proceedings be received as prima facie evidence of the contents of the document.

Evidence.

(2) Every entry or note in, or on, any finalised record or recording map shall be received in all proceedings as conclusive evidence of the matter for transaction on record.

(3) No process for compelling the production of a record or the record map 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 with it a statement that it is issued with leave of the court.

PART IV LAND RECORD OFFICE

- (1) Each Land Record Office shall establish and maintain a record of customary land in its area, which shall consist of -
- (a) records of the customary land holding groups in their respective areas, known as the Customary Land Record;
 - (b) a record map prepared under section 12;
 - (c) files containing the instruments supporting the entries of the records;
 - (d) a book known as a Presentation Book, in which shall be entered, in their order of presentation, applications made under section 9, together with any subsequent action taken in the processing of the application; and
 - (e) an alphabetic index of the customary land holding groups, together with the name or names of those currently under appointment to represent the customary land holding group.
- (2) Duplicates of each finalised customary land holding group record shall be stored in the Central Land Record Office and the appropriate Land Record Office.

Contents of Record.

Customary
land maps.

18. (1) The Surveyor General shall prepare and maintain a series of maps to be called the customary land maps, on which shall be recorded the boundaries of all recorded customary land holding groups entitled to primary rights and secondary rights with a unique number in respect of each entry for the purpose of identifying the record.

(2) The National Recorder may direct the Surveyor General to correct any error which may be found in the customary land maps and any such correction shall, if it materially affects the Record be brought by the Recorder to the notice of any group affected.

(3) The National Recorder may require the Surveyor General to prepare a new edition of the customary land maps or any part thereof, and there may be omitted from the new map any matter which the National Recorder deems obsolete.

Registration
of Primary
Rights.

19. (1) Any customary land holding group whose primary rights are entered in the record may apply to the Registrar of Titles in the prescribed form to have their recorded primary rights registered.

(2) The Registrar of Titles shall on receipt of such application take such steps as he may consider appropriate to effect such registration.

Rights of
land holding
groups where
land is recorded.

20. Subject to the provisions of this Act and the Land and Titles Act, any customary land registered and recorded in the name of a customary land holding group under this Act, shall grant such land holding group all rights to use, occupy, enjoy and dispose of such land in accordance with current customary usage.

PART V MISCELLANEOUS

Regulations.

21. (1) The Minister may make such regulations as he may, consider necessary or desirable for carrying into effect any of the purposes of provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing, such regulations may -

- (a) prescribe the nature and type of evidence required to be collected by the National Recorder;
- (b) prescribe the form of the customary land records;
- (c) regulate the practice and prescribe the duties of the National Recorder and the recording officers and other officers appointed for the purpose of this Act and the fees and charges to be made for any act, matter or thing to be done or made under or in connection with this Act;

- (d) prescribe the procedure to be followed in connection with any act, matter or transaction to be done or made under or in connection with this Act; and
- (e) provide for the remission of any fees or charges.

22. From and after the commencement of this Act, the provisions of Part XX of the Land and Titles Act in relation to prescription shall not apply to any interest in land recorded as customary land.

Part XX of
Land and
Titles Act not
to apply.
Cap. 95.

