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SAMOA

TAKING OF LAND ACT 1964

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TAKING OF LAND ACT 1964

1964

No. 1

AN ACT to provide for the taking of land for public purposes and for the payment of compensation therefor and for stopping roads.

[Assent and commencement date: 30 January 1964]

**PART 1
PRELIMINARY**

1. Short title – This Act may be cited as the Taking of Land Act 1964.

2. Interpretation – In this Act, unless inconsistent with the context:

“Act” includes Ordinance;

“Court” means the Supreme Court;

“Ministry” means the Ministry of Natural Resources and Environment;

“Chief Executive Officer” means the Chief Executive Officer of Natural Resources and Environment;

“forest produce” includes all trees and other plants, and the produce of trees and other plants, and also includes earth, sand, and minerals when found in or removed from any forest land;

- “forestry” means the application of business methods and technical forestry principles to operations on lands for the establishment, culture, protection and maintenance of forests or for the production, extraction or conversion of forest produce, including the provision of access to such lands;
- “Gazette” means the Samoa Gazette.
- “Minister” means the Minister of Lands, Surveys and Environment;
- “notice” means a statement conveying the general effect of a matter or thing done or intended to be done;
- “public notice” means a notice published in the Savali and in some newspaper published in Samoa; and if there is no such newspaper, then by a printed or written placard posted in some conspicuous place on the land or works affected by such notice or to which it relates;
- “public purpose” includes aerodromes and adjuncts, public health, education, public recreation, the burial of the dead, forestry, production and distribution of electricity, provision of postal, telegraph, and telephone services, the control of coasts and rivers, the safeguarding of water, soil and forest resources, water supply, drainage, lighting, defence, the provision of public buildings, the provision of sites for townships, the provision of reserves for erosion control and water catchment, the provision of roads, wharves, harbours and all lawful purposes and functions of the Government of Samoa;
- “Publicly notified” means notified by public notice;
- “Public Trustee” means the Public Trustee;
- “road” means a public highway, whether carriageway, bridle path, or footpath; and includes the soil of:
- (a) public lands over which a road is laid out and marked on the record maps lodged in the office of the Chief Executive Officer, and includes record maps compiled and approved during the German Administration;
 - (b) lands over which right of way has in any manner been granted or dedicated to the public by any person entitled to make such grant or dedication;

- (c) lands taken for or proclaimed roads under the provisions of this Act or any other Act formerly in force;
 - (d) lands over which a road has been or is in use by the public which has been formed or improved out of the public funds for the width formed, used, agreed upon, or fenced, not being more than 10 metres on either side of the middle-line thereof, and a sufficient plan whereof, approved by the Chief Executive Officer, has been or is hereafter registered by the Registrar of Land against the properties affected by it; and the Registrar is hereby authorised and required to register any such plans accordingly, anything in any other Act despite, when presented for registration by or on behalf of the Minister and, unless repugnant to the context, includes all roads which have been or may hereafter be set apart, defined, proclaimed, or declared roads under any law or authority for the time being in force, and all bridges, culverts, drains, ferries, fords, gates, buildings, and other things thereto belonging upon the line and within the limits of the road;
- “stopping” of roads includes diverting;
“Samoa” means the Independent State of Samoa.

3. Purposes may be declared to be public purposes –
The Head of State, acting on the advice of Cabinet, may by Order declare any purpose to be a public purpose within the meaning of this Act.

4. How notices to be sent – (1) A notice required by this Act to be sent to any person may be sent to the last known place of abode or business of that person by messenger or by post.

(2) If that person is absent from Samoa, the notice may be sent to his or her agent in Samoa.

(3) If that person is not known, or is absent from Samoa and has no known agent in Samoa, the notice shall be publicly notified.

(4) A notice required to be sent to the Minister shall be sent to the office in Apia of the Ministry.

5. Administration of Act – The Ministry, under the control of the Minister, shall be charged with the administration of this Act.

PART 2
TAKINGLAND FOR PUBLIC PURPOSES

6. Notice of intention to enter to carry out works – (1)

In every case where, under this or any other Act, authority is given to enter on any land to carry out works for any public purpose (other than an emergency purpose) before the land has been taken and vested in Samoa, and no other provision is made as to the giving of notice of entry, the Minister shall (when practicable) give to the owner or occupier of the land reasonable notice of intention to enter thereon.

For the purpose of this subsection “emergency purpose” means a strategic or defence purpose in time of war or imminent national danger, and any work where the delay involved in giving notice would increase the risk of loss or damage to the land or to Samoa.

(2) A person who enters or claims to enter or has entered on the land shall, if required by the owner or occupier, produce and show his or her authority to do so.

Division 1 – Power to Take and What May Be Taken

7. Empowering the taking of land – Customary land and freehold land required for any public purpose may be taken by the Head of State, acting on the advice of the Minister, under the provisions of this Act.

8. Power to take particular estates or interests or land subject thereto – (1) The power conferred by section 7 to take land for any public purpose includes the power:

- (a) to take and to hold the land subject to any particular estate, interest, easement, profit à *prendre*, or encumbrance to which the land is for the time being subject; and

- (b) to take separately any particular estate or interest in the land, whether for the time being subsisting separately or not; and
- (c) to take separately any easement or *profità prendre* over the land, whether for the time being subsisting or not.

(2) In subsection (1), the power to take separately any particular estate or interest (including a leasehold estate or interest) in the land under paragraph (b), included in the power conferred by section 7 to take land for any public purpose applies to:

- (a) public land; and
- (b) freehold land acquired by the Government or a public body by any lawful means, –

as if that public land or freehold land were freehold land taken or to be taken under the provisions of this Act.

9. Power to take licences, etc., with land – Where any land or any estate or interest in land is taken for a public purpose, any licence, permit, right, privilege or authority in respect of the land or premises may be taken at the same time or later, as if the same were an interest in land.

10. Power to take water – (1) The Head of State, acting on the advice of the Minister, may impound, divert and take away any water from any lake or stream for any water supply or to assist any other public purpose, whether that public purpose is situated on land entitled to the use of that water or not.

(2) The Minister, and all officers, workmen and others by his or her direction, may enter on any land in the daytime, with or without vehicles, for the purpose of laying or erecting waterworks in or on such land, and also may when necessary in a like manner enter thereon for the purpose of examining or repairing such waterworks.

(3) At least 12 hours' previous notice in writing shall be given by or on behalf of the Minister to the owner or occupier of such land, if resident thereon, before making any entry for the purpose of laying or erecting waterworks, and if such owner or occupier is not resident, then by posting such notice in a conspicuous place on such land; but no notice shall be necessary in cases where the entry is made for the purpose of examination or to execute repairs.

(4) In exercise of the powers conferred by subsection (2), the Minister, his or her officers, workers, and others shall do as little damage as possible, and shall repair any damage done, or compensate the owner or occupier therefor pursuant to Part 3.

11. Quarry or gravel pit or stone or gravel for construction – (1) Where any public purpose has been authorised to be carried out by or on behalf of Samoa, and gravel or stone is needed therefore, any land may be taken under this Act for the purposes of a gravel pit or quarry to be used in connection with the carrying out of such public purpose, or the Minister may by his or her servants or agents after 24 hours' notice to the occupier enter on any such land and dig and take any stone, gravel or other material therefrom.

(2) Reasonable compensation shall be paid for any injury done to or material taken from the land, and in the event of any dispute the amount thereof shall be determined in manner set out in Part 3.

(3) Nothing in this Act authorises the taking of any stone or other material from any quarry, brickfield or like place commonly used for the taking of material therefrom for sale without the consent in writing of the owner first obtained.

12. Restrictions on right to take – Nothing in this Act authorises the taking of any land occupied by any building, yard, cemetery, burial ground, or in bona fide occupation as an ornamental park or pleasure ground, without the previous consent in writing of the owner or of Cabinet.

13. Surface, subsoil or air space only of land may be taken – (1) The Head of State, acting on the advice of the Minister, may in taking land for a public purpose take only the surface, together with such part of the subsoil or of the air space above the surface as is deemed necessary, or may take only such part of the subsoil or of the air space above the surface as is deemed necessary excluding the surface.

(2) When any land is so taken and any part of the subsoil beneath that land is not taken the land so taken shall, except as agreed to the contrary, have no right of support from the subjacent subsoil.

(3) In such a case it shall not be lawful for any person to extract minerals or otherwise interfere with the subjacent subsoil until after 3 months' notice in writing of his or her intention has been given to the Minister.

(4) Where land has been so taken to the exclusion of any part of the subsoil, the Head of State, acting on the advice of the Minister, may at any time thereafter take any part of the subjacent subsoil deemed necessary for the support or protection of the surface or of a public purpose being carried out thereon.

Division 2 – Procedure for Taking

14. Surveys, plans, notices and objections in respect of freehold land – Whenever it is proposed to take freehold land for any public purpose, the Minister shall:

- (a) cause a survey to be made and a plan to be prepared and certified to be accurate, showing the land to be taken, and the names of the owners and occupiers of that land so far as they can be ascertained; and
- (b) cause a copy of such plan to be deposited in the office of the Ministry in Apia; and
- (c) cause a notice to be publicly notified and to be sent to each owner, occupier and person having an interest in the land, or the agent of any of them, whose name and address are readily ascertainable, stating the Government's proposal to take the land, the public purpose for which it is wanted, that the plan thereof may be inspected in the office in ordinary office hours, and that any person affected may give written notice of objection with reasons to the Chief Executive Officer within 28 days of the first publication of the notice; and
- (d) upon receiving from the Chief Executive Officer any such objection with any reason (other than an objection to the amount or method of payment of compensation), appoint a time and place in Samoa at which the objector may appear before the Minister or some person appointed by him or

her and support the objection by such evidence and argument as the objector thinks fit.

14A. Surveys, plans, notices and objections in respect of customary land – Whenever it is proposed to take any customary land for any public purpose, the Minister shall:

- (a) ascertain from the Samoan Land and Titles Court if that Court has determined the matai who has the pule over that land; and
- (b) cause a survey to be made and a plan to be prepared and certified to be accurate, showing the land to be taken, the names of the matai who has the pule over that land if that has been determined by the Samoan Land and Titles Court, and if not the names of the matai proposed by the Minister to be dealt with as if he or she has that pule until the Samoan Land and Titles Court has determined who has that pule; and
- (c) cause a copy of such plan to be deposited in the office of the Ministry in Apia; and
- (d) cause a notice to be publicly notified, and to be sent to the matai named in the survey plan, or his or her agent, stating the Government's proposal to take the land, the public purpose for which it is wanted, that the plan thereof may be inspected in the office in ordinary office hours, and that, within 28 days from the publication of the notice in the Savali, written notice with reasons may be given —
 - (i) to the Chief Executive Officer, by any person claiming to be affected, objecting to the taking of the land;
 - (ii) to the Chief Executive Officer and to the Secretary for Justice, by any matai (whether or not he or she is the matai named in the said survey plan), claiming that he or she has the pule over the land; and
- (e) upon receiving from the Chief Executive Officer any such objection with any reason (other than an objection to the amount or method of payment of compensation), appoint a time and place in

Samoa at which the objector may appear before the Minister or some person appointed by him or her and support the objection by such evidence and argument as the objector thinks fit.

15. Lands to be taken by Proclamation – (1) If within the period of 28 days no written notice of objection is received by the Chief Executive Officer, or if after due consideration of the objection or objections the Minister is of opinion that effect should be given to the proposal to take the land for the public purpose, and that no private injury will be done thereby for which due compensation is not provided by this Act, the Head of State, acting on the advice of the Minister, may by Proclamation, describing the land and stating the public purpose, take the land for the public purpose.

(2) On a day to be named in the Proclamation the land therein described shall, unless otherwise specially provided in this Act or in the Proclamation, become absolutely vested in Samoa, discharged from all mortgages, charges, claims, estates or interests of what kind so ever, for the public purpose stated in the Proclamation.

(3) The Proclamation shall be gazetted and publicly notified as soon as possible after it is made, but the Proclamation shall not be invalidated by any error, defect, or delay in publication.

15A. Disposal of claim to have the pule over customary land – If:

- (a) customary land has been taken by Proclamation; and
- (b) the matai named in the survey plan of that land has not been determined by the Samoan Land and Titles Court to be the matai who has the pule over that land, –

then, whether or not within the period of 28 days any matai gives written notice to the Chief Executive Officer and to the Secretary for Justice claiming that he or she is the matai who has that pule —

- (i) the written notice given by the matai named in that survey plan to the Secretary for Justice (or one taken to have been given by him or her if he or she has not done so) is

taken to have given notice of a claim to the ownership of the land as a pulefa'amau under and for the purposes of the Land and Titles Act 1981; and

- (ii) each such written notice given by any other matai to the Secretary for Justice is taken to have given notice of his or her claim as an objection to a pulefa'amau under and for the purposes of the Land and Titles Act 1981; and
- (iii) the Minister may pay the prescribed fees for each such claim and objection and deduct the same from the compensation to become payable; and
- (iv) the Secretary for Justice shall proceed accordingly under Land and Titles Act 1981; and
- (v) the Land and Titles Court shall determine which matai has the pule over the land.

16. Lapse of notice of proposal to take – (1) If land is not taken by a Proclamation under section 15 within 2 years after the notice of the proposal to take it is first sent or published under section 14, the notice shall cease to have effect and may not be used as the basis for a Proclamation.

(2) The notice may not be repeated until at least 6 months after the date on which the original notice ceased to have effect.

(3) Any notice may at any time be withdrawn in a manner similar to the manner in which the notice was given.

17. Map and Proclamation to be registered – The Minister shall cause a copy of every Proclamation taking or setting apart land and of the map referred to therein to be deposited in the Land Registry Office, whereupon they shall be registered in the Land Register without fee by the Registrar of Land.

18. Owner of country land may require small parcel of vacant land severed to be taken – If any land not situated in a town is so divided by the land taken for any public purpose as to leave on either side thereof a parcel of land not built upon of

less area than half an acre, and if the owner of such small parcel of land has no other land adjoining with which such small parcel may conveniently be worked, and if such owner so requires, the Minister shall take such small parcel together with the other land taken for such purpose.

19. Owner of Apia land may require small parcel of vacant land severed to be taken – If any land situate in the Town of Apia as described in the Third Schedule hereto is so divided by the land taken for any public purpose as to leave on either side thereof a parcel of land not built upon of less area than one fifth of an acre, and if the owner of such small parcel of land has no other land adjoining with which such small parcel may conveniently be used, and if such owner so requires, the Minister shall take such small parcel together with the other land taken for such purpose.

Division 3 – Change of Purpose

20. Public purpose may be altered – Where any land has been set aside as a reserve under any Act, or taken under this Act, for a public purpose, the public purpose for which the land is held may be altered by Act of Parliament or Order of the Head of State, acting on the advice of Cabinet.

21. Revocation of Proclamation taking land – (1) If at any time after the making of any Proclamation taking land under this Act, and before the complete payment or final award of compensation in respect of the taking thereof, it is found that the land or part thereof is not required for the purpose for which it was taken, or that any error in form or substance exists in or in relation to that Proclamation, or the making or gazetting thereof, the Head of State, acting on the advice of the Minister, may, by a subsequent Proclamation, revoke the former Proclamation either wholly or so far as he or she thinks necessary.

(2) The former Proclamation shall thereupon, to the extent to which it has been so revoked, be absolutely void as from the date thereof as if it had not been made.

(3) A registration in respect of the taking of the land which has been effected by the Registrar of Land or any other person

in pursuance of any authority in that behalf shall thereupon be cancelled without fee and be deemed to have been of no effect as from the date of the making thereof to the same extent to which the Proclamation has been revoked.

(4) A person who has any estate or interest in the land so taken, and who has in respect of that estate or interest suffered any loss or damage by reason of the Proclamation taking the same, is entitled, in any claim made by him or her within 1 year after the publication of the Proclamation revoking the same, to compensation for that loss or damage under sections 57A and 57B.

22. Other disposal of land held for public purpose but not needed – (1) Where it is found that any land held for a public purpose, however and whenever acquired, is not required for that purpose, the Head of State, acting on the advice of the Minister, may either:

- (a) cause the land to be sold under subsections (2) and (3); or
- (b) by notice in the Savali, declare the land to be public land subject to the Land, Surveys and Environment Act 1989, whereupon it may be administered and disposed of under that Act accordingly.

(2) Such a sale may be either by private contract to the person from whom the same was taken or his or her executors or administrators or successors, or if none then to the owner of any adjacent land, and in either case at a price fixed by a competent valuer, or by public auction, or by public tender.

(3) In addition to proper public notice of any proposed sale by public auction or public tender, written notice thereof shall be given to every owner of land adjacent to the land proposed to be sold, so far as they can be ascertained, not later than 10 days before the date fixed for the auction or for the closing of tenders, as the case may be.

23. Land not wanted for immediate use may be let – If any land at any time taken for any public purpose under this or any other Act is not immediately required for that public purpose, the Minister may let the same upon such terms as he or

she thinks fit for any period not exceeding 20 years, and the rents and profits shall be available for that public purpose.

23A. Disposal of land incidental to public purpose – (1)

If, in the opinion of the Minister, it is necessary or desirable to sell or lease any land held for a public purpose, however, and whenever acquired, for the furtherance of or incidental to the development or carrying out of that purpose, the Minister, in addition to any other power to sell or lease that land conferred by or under any other Act, is empowered to sell or lease, or cause to be sold or leased, that land or any part or parts thereof under this section:

PROVIDED THAT the Minister shall not sell any such land which is held for forestry or the safeguarding of forest resources.

(2) A sale or lease under this section may be either by private contract at a price or rent fixed by a valuer appointed by the Government, or by publicly notified auction or tender.

(3) The provisions of the Land Surveys and Environment Act 1989 as to leases of land called therein Government land shall, subject to subsection (2) and to the substitution of the Minister for the Land Board and with any other necessary modifications, apply to leases under this section.

24. Selling or leasing of interest in or portion of land –

The powers conferred by this Act on the Head of State or the Minister to sell or let or lease any land held or taken for a public purpose shall include the powers:

- (a) to sell or let or lease any estate, interest, or easement in the land; or
- (b) to sell or let or lease, together with or separately from the surface of the land —
 - (i) the whole or any portion of the air space above the land; and
 - (ii) the whole or any portion of the subsoil of the land.

**PART 2A
LINES AND WORKS**

24A. Interpretation – In this Part, unless the context otherwise requires:

“electric line” or “line” includes a wire or wires, conductor, or other means used for conveying, transmitting, or distributing electricity for the purpose of communication by telephone or for other authorised purpose; together with any casing, coating, tubing, pipe-covering, insulator or post enclosing, surrounding, or supporting the same, and any wire, insulator or post and also any instrument, furniture, plant, office, building machinery, engine, excavation, work matter or thing, of whatever description or in any way connected with any electric line; and includes any portion of electric line;

“works” includes a line and any instrument, furniture, plant, office, building, machinery, engine, excavation or work of whatever description used for, or in any way connected with, a line, or a radio transmitter or radio receiver.

24B. Right of entry on land – (1) The Minister, and all officers, workmen, and others by his or her direction may enter on any land, with or without vehicles, for the purposes of constructing, placing or maintaining any line in or on the land or of examining, repairing, altering or removing any line so placed and may there remain for such reasonable time and execute and do all such works and things as may be necessary or convenient for those purposes.

(2) In the exercise of that power, the Minister, and all officers, workmen, and others by his or her direction:

- (a) may survey and take levels of any such land or any part thereof; and
- (b) may dig out, remove and carry away any earth, stone, soil, sand, and gravel whatsoever and any trees or timber suitable for the construction, maintenance or alteration of any such line or any part thereof or any other works belonging to or appertaining to any such line or connected therewith; and
- (c) may cut and remove for any space not exceeding in any case the space of 66 feet on each side of any proposed line or any existing line all such trees and underwood as may interfere or be likely to

interfere with the construction or with the proper working of any line; and

- (d) when any such line shall be constructed in any place where from the hilly nature of the country it shall appear desirable, may extend such clearing for a further space but so that the same shall not extend more than 3 chains from the line or proposed line; and
- (e) for the purpose of obtaining access to any line, may enter into an agreement with the owner or occupier of any land for the erection of any gate or gates on land adjoining such line and, when any such agreement shall be so made, may erect and maintain such gates for the use of himself or herself and of his or her officers and all other persons by his or her permission for the purposes of obtaining access to such line; and
- (f) may construct, place, and maintain lines in or upon, along, over or across or under any road, and for any of such purposes may open or break up any road, and alter the position thereunder of any pipe (not being a main) for the supply of water and may alter or remove the same or any part thereof.

24C. Lines not to interfere with traffic – If the Minister places any line:

- (a) across or along or under any road, he or she shall not place any wire of the line so low as to stop, hinder or interfere with the lawful passage of any person or vehicle along the road:
PROVIDED THAT no interference shall be deemed to be caused if the wires are placed at a height of not less than 18 feet above the surface of the road where the wires cross the road, or at a height of not less than 14 feet elsewhere;
- (b) over or under any navigable waters, he or she shall place such line in such manner as not to hinder or interfere with the lawful navigation of such waters; and in maintaining, repairing, altering or removing any such line he or she shall cause no

unnecessary or avoidable hindrance to or interference with the lawful passage along, or the lawful use of, any road or navigable waters.

24D. Restriction as to entry on freehold or customary land – Except as otherwise provided in this Part, the Minister or his or her officers, workmen or others by his or her direction shall not enter upon any land not being public land for the purpose of constructing any line except by day nor (unless with the consent in writing of the owner or occupier of the land or his or her authorised agent) until after one week's notice to the owner or occupier or agent of the intention to construct a line on the land.

24E. Entry without notice – The Minister or his or her officers, workmen or others by his or her direction may without giving any notice enter at all reasonable times upon any land whatsoever for the purpose of inspecting, altering or repairing any line wholly or in part constructed or any part of such line.

24F. Compensation – In the exercise of the powers conferred by this Part, the Minister or his or her officers, workmen or others by his or her direction shall do as little damage as may be; and every person having any estate or interest in land entered upon for the purposes of this Part or injuriously affected thereby or suffering any damage from the exercise of any of the said powers shall be entitled to full compensation to be ascertained in the same manner as compensation for land taken under Part 3.

24G. Removal of trees – (1) If the Minister is of the opinion that any line is or is likely to be in any manner injured or obstructed by any tree or shrub, whether ornamental or otherwise, growing or being on any land adjoining such line or over which any such line passes or is carried, he or she may cause notice to be given to the owner or occupier of that land to remove the said tree or shrub or any part thereof.

(2) If the owner or occupier fails to comply with the terms of such notice within the time specified therein (being less than 7 days after service) the Minister or any officer, workman or

other person by his or her direction may enter upon that land and remove the tree or shrub or any part thereof but so that no unnecessary damage is done or incurred thereby.

24H. Notice in extraordinary cases – (1) If neither the owner nor the occupier of any land nor an authorised agent of either of them can after reasonable inquiry be found, then it shall be sufficient if the Minister causes to be publicly notified a notice of his or her intention to enter on the land or any part thereof for the purposes of this Part at the expiration of 7 days from the later date of publishing or the date of posting as the case may be.

(2) After the expiration of the period of 7 days specified in any such notice the Minister or his or her officers, workmen or others authorised by him or her may exercise all the powers hereby conferred upon the Minister as effectually as if notice had been served on the owner or occupier of the land or his or her authorised agent.

24I. Entry in emergency – (1) Nothing in this Part is to be construed to require notice to or consent of any one to precede entry by the Minister or any officer, workman or other person authorised by him or her on any land or the removal of any tree or shrub or any part thereof from any land or the doing of any other work on any land in any case of emergency causing or likely to cause damage to any person or property or interruption in the supply of electricity or the telephone service: **PROVIDED THAT**, if possible in the circumstances, oral notice shall be given to the occupier of the land before entry thereon.

(2) The cost of any work done under this section shall, if the Minister so requires, be borne and paid by the person in control of the land on which the work is done.

PART 3 COMPENSATION

25. Persons entitled to compensation, and for what payable – (1) A person having any estate or interest in any land taken under this Act for any public purpose, or injuriously affected thereby, or suffering any damage from the exercise of

any of the powers given by this Act, is entitled to a full and just compensation for the same from the Minister.

(1A) Despite subsection (1), where it is customary land which has been taken under this Act for any public purpose, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers given by this Act, the Minister and the Court are entitled to proceed as if the matai who had the pule over that land at the relevant date is the only person so entitled to a full and just compensation from the Minister and to be paid that compensation.

(2) No compensation shall be payable in respect of:

- (a) any land taken for a road under this Act the right to make a road over which is otherwise reserved to Samoa, and has not lapsed or become barred; or
- (b) any public land taken or set apart for any public purpose under this or any other Act.

26. How compensation ascertained – (1) As soon as reasonably possible after the Minister is satisfied:

- (a) that compensation has become payable under this Act; and
- (b) as to the person entitled to such compensation, by reason, if the land taken or affected or suffering is customary land, of the matai having the pule thereover at the relevant date having been determined by an order of the Samoan Land and Titles Court, –

the Minister shall offer such sum as the Minister thinks fit as compensation to that person, and that person may agree with the Minister as to the compensation payable by the Minister.

(2) Any such agreement between the Minister and such a matai shall be binding on any other person claiming an interest in that land under Samoan custom and usage.

(3) If the compensation payable is not agreed upon between the Minister and that person, it shall be determined by the Court and in the manner hereinafter prescribed.

27. Limitation of time for claiming compensation – (1) No claim for compensation under this Act, or any former enactment relating to the taking of land for public purposes, shall be made (in respect of any lands taken) after a period of 5 years after the

date of the Act or Proclamation taking the lands, or (in respect of any damage done) after a period of 12 months after the execution of the purpose out of which the claim has arisen or may hereafter arise.

(2) Subject to subsection (3), all right and title to any compensation in respect of such lands or for damage arising out of the execution of such purpose, as the case may be, shall absolutely cease after such respective periods.

(3) The period of 12 months after the execution of the purpose allowed by subsection (1) for the making of any claim for compensation in respect of damage done may, on application made either before or after the expiration of that period, be extended by the Court, upon or subject to such conditions as it thinks fit to such period, not exceeding 5 years after the execution of the purpose, as the Court thinks fit.

(4) In this section, "execution of the purpose" means the completion of the construction of any portion of a purpose or work where such portion in itself (and without reference to any other part of the purpose or work) causes damage; and such portion of the purpose or work is taken to be completed when anything further that may be required to be done thereon to finish the same will have no effect either to increase or lessen the damage.

28. By whom claim may be made – (1) A claim for compensation may be made by any person (including an executor or administrator) seized, possessed of, or entitled to such lands, or to any estate or interest therein, whether such person has or has not the power to sell and convey the same.

(2) Any such claim on behalf of beneficiaries, infants or mentally defective persons may be made by their trustees, guardians or committees respectively.

(3) Where a beneficiary, infant or mentally defective person does not have a trustee, guardian or committee in Samoa, the Public Trustee is taken to be his or her trustee, guardian or committee, as the case may be, for the purposes of this Act.

(4) A claim for compensation for customary land, or any estate or interest therein, taken under this Act may be made by the person who had the pule over that land at the date of taking, on behalf of all persons interested therein.

29. Minister may take proceedings if person entitled fails to claim – (1) At any time after the expiration of 12 months after the date on which any person has acquired any right to make a claim for compensation, if he or she has failed to make the claim, the Minister may give notice in writing to that person of his or her intention, after the expiration of 2 months from the date of the notice, to apply to the Court to hear the expected claim to determine what amount of compensation (if any) shall be paid to that person in respect of the matters and land specified in the notice, and in respect of all claims arising at or about the same time which that person may have in the same general connection.

(2) If after the expiration of the period of 2 months and of any extension thereof which the Court may allow on application made to it within the said period of 2 months that person has failed to make the claim in accordance with section 31, the Minister may apply to the Court to determine what amount of compensation (if any) shall be paid to that person in respect of the matters and land specified in the application, and to fix a suitable date for the hearing of the application.

(3) At least 2 months' notice of the fixture of the hearing of the application shall be given to that person, and he or she may:

- (a) not less than 30 days before the fixture, file in the Court and serve on the applicant particulars of his or her claim (if any) in respect of the matters and land specified in the application;
- (b) appear and be heard on the application or claim so filed.

(4) Subject to the provisions of this section, the Court shall proceed to hear the parties, and to examine any claim filed, and if none to examine the application as if it were a claim made by the person whose rights are to be determined:

PROVIDED THAT, where no claim is filed under subsection (3)(a) but that person has appeared and been heard, the applicant is entitled to an adjournment for a reasonable period if sought.

(5) Two or more applications under this section may be heard together.

30. Where person entitled is absent without leaving agent – If a person who has a claim for compensation under this Act is absent from Samoa, and has no known agent in Samoa, or is not known, the Minister may apply to the Court to appoint the Public

Trustee as agent of that person to make and prosecute a claim on his or her behalf.

31. Method of making and serving claim – (1) In order to obtain compensation the claimant shall serve upon the Minister a claim in writing, in one of the forms in the First Schedule, stating:

- (a) the several areas and descriptions of the lands taken or to be taken or injuriously affected in respect of which the claimant makes his or her claim and the nature and particulars of his or her interest therein;
- (b) if he or she claims as owner and the land is encumbered, leased, or subject to any easement, particulars of such encumbrance, lease, or easement;
- (c) each matter on account of which he or she claims compensation, with full particulars of the nature and extent of the claim;
- (d) the amount which he or she claims respectively for land taken or to be taken or for land injuriously affected, giving in both cases the amount for each item for such claim separately;
- (e) the total amount claimed;
- (f) the claimant's full name, together with the claimant's address, which address shall be deemed to be the last known place of abode or business of the claimant within the meaning of section 4 hereof, unless and until special notice in writing of a change of address is delivered to the Minister.

(2) Claims for compensation under this Act shall be served by being sent by registered letter addressed to the Chief Executive Officer at the office of the Ministry at Apia or by being delivered at that office.

(3) In any case the claimant is entitled on demand to receive from the officer for the time being in charge of that office a receipt stating the day on which such claim was delivered or received; and any officer refusing to give such receipt on demand shall be liable to a fine of 0.1 penalty unit.

(4) The service of any such claim may be proved by producing the receipt of the officer receiving the same.

32. Court may compel claimant to state particulars – If the claimant does not give full particulars of his or her claim, or does not specify in his or her claim the amount claimed for each matter on account of which he or she claims compensation, the Minister may by notice in writing require him or her to furnish such particulars; and if such particulars are not supplied at least 21 days before the date appointed for the sitting of the Court to hear the claim, the Court may:

- (a) if it thinks fit on the application of the Minister made before or at the hearing order the claimant to furnish such particulars; and
- (b) adjourn the further hearing of the claim until such particulars are supplied, and until the Minister has had reasonable time to consider the same; and
- (c) order that the costs occasioned by such adjournment shall be borne by the claimant.

33. Filing claims in Court – If the Minister does not within 60 days after receiving any such claim give notice in writing to the claimant that he or she does not admit it, the following provisions shall apply:

- (a) at any time after the expiration of the 60 days the claimant may file a copy of his or her claim, together with the receipt for the service thereof, in the Court; and thereupon the claim, unless the filing thereof is set aside as hereinafter provided, shall have the effect of an award filed in the Court, and may be enforced in manner provided in section 44;
- (b) on the application of the Minister the Court may if it appears reasonable so to do, and on such terms as to costs and otherwise as the Court deems just, set aside the filing of the claim, and if necessary stay or set aside any proceedings subsequent to the filing of the claim, and may allow further time within which the Minister may give the notice referred to in this section.

34. Minister may make offer; procedure if offer not made or refused – (1) If the Minister gives notice in writing within that 60 days, or within such further time as is allowed by the Court in this behalf, that he or she does not admit the claim, he or she may within 90 days after receiving the claim, by notice in writing, make the claimant an offer of the sum which he or she is willing to pay in lieu of the amount claimed, and may file a copy of such notice in the Court.

(1A) In making the claimant an offer of the sum under subsection (1), the Minister may offset any debt relating to the land (or estate or interest in the land) taken owed to the Government or a public body in arriving at the sum of the offer.

(2) If the Minister gives notice in writing within the 60 days, or within such further time as may be allowed by the Court, that he or she does not admit the claim, but makes no such offer, or if the claimant does not accept the offer so made, the claimant may file a copy of his or her claim in the Court, together with a notice in the form in the Second Schedule, that he or she requires the claim to be heard in the Court.

(3) If the claimant does not file such notice as aforesaid within 30 days after the time limited for the Minister to make an offer as hereinbefore provided, the claimant shall be deemed to have abandoned the proceedings in respect of his or her claim, and is not entitled to prosecute the same further, except with the leave of the Court, to be granted upon such terms and conditions as to the time and mode of procedure, and as to the costs of the application for such leave, as the Court thinks fit.

35. Minister may require claim to be determined by Court – (1) In any claim or matter arising for compensation under this Act, where a written offer on behalf of the Minister has been made therefor to the claimant not less than 30 days previously and the same has not been accepted, the Minister shall have the same right to require such claim to be heard by the Court as is given to a claimant by section 34.

(2) At any time after the Minister has filed a copy of his or her notice as mentioned in the section 34, the Minister may give notice in the form or to the effect contained in the Second Schedule requiring such claim to be heard.

36. Amendment of claim – (1) On the hearing of any claim for compensation under this Act it shall not be lawful for the claimant to adduce evidence in relation to any matter not disclosed in his or her claim but he or she may with the leave of the Court amend his or her claim in any particular, but may not thereby formulate a new cause of action or make a new claim.

(2) Such leave shall be granted only on such terms and conditions as to notice to parties, payment of costs, or otherwise as the Court thinks fit.

37. Assessment of compensation – (1) In this section, “specified date” means:

- (a) for any claim in respect of land of the claimant which has been taken pursuant to sections 14 and 15, the date on which the land became by Proclamation vested in Samoa;
 - (b) for any other claim in respect of land of the claimant which has been or is proposed to be taken for any public purpose, the date on which the land became by Proclamation vested in Samoa, or the date on which the land was first entered upon for the purpose of the construction or carrying out of the purpose or work, whichever is the earlier;
 - (c) for any claim in respect of any purpose or work for which no land of the claimant has been taken and no land of the claimant is proposed to be taken, the date of the commencement of the execution of the portion of the purpose or work that causes damage to or injuriously affects the land of the claimant.
- (2)** In determining the amount of compensation to be awarded, the Court shall act under the following rules:
- (a) no allowance shall be made on account of the taking of any land being compulsory;
 - (b) the value of land shall, subject as hereinafter provided, be taken to be the amount, which the land if sold in the open market by a willing seller on the specified date might be expected to realise:

PROVIDED THAT the provisions of this paragraph do not affect the assessment of compensation for any matter which is not directly based on the value of land and in respect of which a right to compensation is conferred under this or any other Act;

- (c) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority;
- (d) where the value of the land taken for any public purpose has on or before the specified date been increased or reduced by the purpose or work or the prospect thereof or by the existence or prospect of any more comprehensive public purpose or scheme or development or reconstruction of which the purpose or work forms part and concerning which a notice is in force under subsection (3) at the time of the taking of the land, the amount of that increase or reduction shall not be taken into account;
- (e) the Court shall take into account by way of deduction from the total amount of compensation that would otherwise be awarded on any claim in respect of a public purpose or work (whether for land taken or injuriously affected or otherwise) any increase in the value of any land of the claimant that is injuriously affected, or in the value of any other land in which the claimant has an interest, caused before the specified date or likely to be caused thereafter by the purpose or work or the prospect thereof or by the existence or prospect of any more comprehensive public purpose or scheme or development or reconstruction of which the purpose or work forms part and concerning which a notice is in force under subsection (3) at the time of the

taking of the land or, as the case may be, at the time of the commencement of the execution of the purpose or work or the portion thereof that causes the damage.

(3) For a comprehensive public purpose or scheme of development or reconstruction, the Minister shall by notice gazetted and publicly notified state the nature of the works included in the comprehensive public purpose or scheme and the approximate boundaries of the area affected thereby.

(3A) The notice under subsection (3) remains in force for such period as may be specified therein, and may at any time be revoked or amended by notice gazetted and publicly notified.

(3B) While any notice under subsection (3) remains in force as aforesaid, the Minister may by a further notice gazetted and publicly notified extend the operation of the notice for such further period as he or she thinks fit.

(3C) Any notice under subsection (3) may include works commenced before the date of the notice, and whether before or after the passing of this Act.

38. Claimant's acts making execution of purpose more costly – (1) In this section, “the specified date” means, for land which is subject to a notice in respect of a comprehensive public purpose or scheme of development or reconstruction under section 37, which has remained continuously in force since the first publication of the notice, the date of that publication, and, where no such notice under that section is in force:

- (a) for land taken for a public purpose pursuant to sections 14 and 15, the date of the first publication of the notice referred to in section 14(1)(c);
- (b) for land taken for any other public purpose, the date of the Proclamation taking the land.

(2) If the Court is of opinion that the claimant in respect of any land taken for a public purpose has, at any time after the specified date, done anything upon or under such land with the intention and effect of rendering the execution of such purpose or work more difficult or costly, the Court shall take into account, by way of deduction from the amount of compensation to be awarded, any increase in the cost of executing such purpose or work caused or likely to be caused thereby; and if in

the opinion of the Court such increase in cost exceeds the value of the land taken, the award shall be for the payment by the claimant to the Minister of the amount of such excess and the costs of the inquiry.

(3) Where any such claimant has, at any time after the specified date, done anything upon or under the land with the effect of rendering the execution of the purpose or work more difficult or costly he or she is presumed to have intended to cause that effect unless he or she proves that in so doing he or she took reasonable precautions to avoid that effect.

(4) If the owner or occupier of any land wishes to do anything upon or under the land which may cause the amount of compensation payable to him or her to be reduced under this section, he or she may apply for permission to do that thing upon or under his or her land; and the application shall:

- (a) specify what the applicant wishes to do, on what part of his or her land he or she proposes to do it, and the address to which any reply to him or her may be sent; and
- (b) be made in writing sent by post in a registered letter addressed to the Chief Executive Officer.

(5) If on receiving any such application the Chief Executive Officer so requires, the applicant shall supply plans to the Chief Executive Officer and shall place pegs in the ground to show exactly what part of the land will be affected by the proposals, and shall notify the Chief Executive Officer when he or she has placed the pegs in the ground as aforesaid; and for the purposes of subsection (6) the period between the date of any such requirement and the date of compliance therewith shall not be taken into account.

(6) The Chief Executive Officer may decline any application made to him or her as aforesaid; and every such application that is not declined by notice in writing given to the applicant within 3 months after the date of receipt of the application (exclusive of any period which is not to be taken into account in accordance with subsection (5) is taken to have been granted and anything done on or under the land after approval of that thing has been granted or is taken to have been granted shall not be subject to the provisions of this section.

(7) Notice under subsection (6) may be given to any applicant by delivering it to him or her personally or by sending

it to him or her by post in a registered letter addressed to him or her at the address specified in his or her application. Where any application or notice is sent by post as aforesaid it is taken to be made or given at the time at which the letter would have been delivered in the ordinary course of post.

39. Separate sums to be awarded for items of claim – The Court having jurisdiction may not award a gross sum in respect of 2 or more items of any claim for compensation, but shall in respect of each item of the claim award a particular sum as compensation to be paid to the claimant, subject to such conditions as it may think equitable, or determine that no compensation is payable in respect thereof.

40. Costs in claims for compensation – (1) Subject to the provisions of this section, the costs of an inquiry by the Court under this Part shall be in the discretion of the Court, which may direct to and by whom and in what manner those costs or any part thereof shall be paid.

(2) Where the Minister has made an offer of any amount for compensation pursuant to section 34(1) and the compensation awarded does not exceed the amount so offered, the Court shall, unless for special reasons it thinks it proper not to do so, order the claimant to bear his or her own costs and to pay the costs of the Minister in so far as the costs of either party are incurred after the making of the offer.

(3) Where subsection (2) does not apply, the Court shall, unless for special reasons it thinks it proper not to do so, order the Minister to bear his or her own costs and to pay the costs of the claimant. Without limiting the foregoing provision, the fact that the Court in any case considers that the amount claimed was unreasonably high, having regard to the compensation awarded, shall be a special reason that the Court may take into consideration for the purposes of this subsection.

41. Costs may be deducted from compensation awarded – Costs payable by the claimant may be deducted from the compensation payable to the claimant under the award; and if such costs exceed the compensation payable, the award shall be for the payment by the claimant of the amount of such excess.

42. Costs in claims beyond jurisdiction of Court – The power of awarding costs conferred upon the Court by section 40 shall extend to cases in which it is determined that the Court has no jurisdiction to hear and determine the claim for compensation or any particular portion thereof, and any such award of costs in respect of such claim or such part thereof shall be dealt with and enforced in the same manner as an award of compensation.

43. Costs in claims withdrawn or abandoned – When any claim for compensation is at any time after the making thereof withdrawn or abandoned, whether wholly or in part, costs may be awarded by the Court in the same manner as if the claim or that part thereof had been heard and determined by the Court, and any such award of costs shall be dealt with and enforced in the same manner as an award of compensation.

44. Award to be in writing, finality and enforcement –
(1) The Court shall make its award in writing, which shall be drawn up and signed by the Judge as soon as conveniently may be after the making thereof; and the Judge shall deliver or transmit the same to the Registrar of the Court to be by him or her filed in the Court.

(2) The Court may within 1 month after making the award reverse, alter, or modify the same; and may hear such evidence and make such order as to costs or otherwise as the Court may deem just.

(3) Subject to subsection (2) and to section 45, any award shall be final as regards the amount awarded, but is taken not to be final as regards the right or title of the claimant or any other person to receive the same or any part thereof.

(4) If the money awarded is not paid into the Public Trust Office, under section 46(a), within 60 days after the filing of the award in the Court, the award so made and filed has the effect of a judgment of the Court, and may be enforced accordingly, subject however, to the provisions of this Act.

45. Appeal to Court of Appeal – Either the claimant or the Minister may appeal as of right to the Court of Appeal against any award of the Supreme Court. Application to the Supreme Court for leave to appeal under this section shall be made in

accordance with section 54 of the Judicature Ordinance 1961. Part 3 of that Ordinance applies accordingly as if the appeal were one to which that Part 3 relates.

46. When title to freehold land doubtful, compensation to be paid to Public Trust Office – If any doubt or dispute arises as to the right or title of any person having any estate or interest in any freehold land taken under this Act for any public purpose or injuriously affected thereby or suffering any damage from the exercise of any of the powers given by this Act to receive any compensation awarded by the Court, or agreed to be paid by the Minister, under this Act:

- (a) for compensation awarded by the Court, the Minister may, within the period of 60 days after the award has been filed in the Court, cause the money awarded to be paid into the Public Trust Office;
- (b) for compensation agreed to be paid, the Minister may pay the same into the Public Trust Office;
- (c) for compensation paid into the Public Trust Office under paragraph (a) or (b), the Court, on the application of any person claiming an interest therein, may make such order as it thinks fit;
- (d) in any case heard and disposed of by the Court under this section, the Court may order that all or any costs incurred in or in relation to the case shall be paid by any of the parties, whether claimant, respondent or a person claiming an interest as aforesaid, or be apportioned among them, in such manner as the Court thinks fit;
- (e) the Public Trustee shall deal with and pay the compensation covered by any such order in accordance therewith.

47. Compensation in case of partial or qualified interests in freehold land – (1) If compensation is awarded or agreed to be paid as aforesaid to any person having a partial or qualified interest only in any freehold land taken under this Act for any public purpose or injuriously affected thereby or suffering any damage from the exercise of any of the powers given by this

Act, and not entitled to sell or convey the same, such compensation shall be dealt with as follows:

- (a) if the compensation amounts to \$2,000 or more, it shall be paid into the Public Trust Office, and the Court, on the application of any person claiming an interest therein, may make an order that it shall be applied by the Public Trustee to one or more of the following purposes —
 - (i) to the discharge of any debt or encumbrance affecting the said land, or affecting any of the lands settled therewith, or to the same or like uses, trusts or purposes;
 - (ii) in the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts or purposes;
 - (iii) in removing any buildings on the said land, or substituting others in their stead;
 - (iv) in the purchase of such securities as the Court may direct, to be settled in the same manner as the said land;
 - (v) in payment to any party becoming absolutely entitled thereto:
- (b) if the compensation is more than \$100 but less than \$2,000, it shall be paid into the Public Trust Office, and the Public Trustee may apply the same to any one or more of the above mentioned purposes without an order of the Court:
PROVIDED THAT in any such case the Public Trustee may, if he or she thinks fit, apply to the Court for directions as to the purposes for which compensation shall be applied;
- (c) if the compensation is not more than \$100, it shall be paid to the parties entitled to the rents and profits of the land, or, in case of the disability or incapacity of those parties, to their respective husbands, guardians, committees or trustees, as the case may be.

(2) The provisions of this section are taken not to prevent any person who has a partial or qualified interest in freehold land to which interest he or she is solely entitled, and which he or she may absolutely sell or dispose of, from receiving any

compensation in respect of such interest to which he or she may be declared entitled under any award, or which has been agreed to be paid to him or her as aforesaid.

47A. Compensation in case of customary land – If the land taken, affected or suffering is customary land, and the person having the partial or qualified interest therein and not entitled to sell or convey it is the matai who has the pule thereover, the Minister shall cause the compensation to be paid to that matai, and his or her receipt shall be a complete discharge to the Minister therefor.

48. Public Trustee may invest compensation money – Until any compensation deposited in the Public Trust Office under this Act is applied as provided by section 47 the Public Trustee shall invest the same upon investments upon which any money in the Public Trust Office may by law be invested, and shall pay the annual proceeds thereof to the party for the time being entitled to the rents and profits of the lands in respect of which such compensation was awarded or paid.

49. Mortgaged lands – (1) If the land for which compensation is awarded or paid is subject to a mortgage such compensation, or so much thereof as is required for the purpose, shall upon the application of the mortgagee be paid in discharge of the mortgage debt, or of part thereof, so far as the compensation will go.

(2) If such land is a part of lands subject to a mortgage debt, and the mortgagee requires a part of such debt to be discharged the Samoan Land and Titles Court as to compensation arising from customary land, and the Supreme Court as to compensation arising from freehold land or public land, on the application of the mortgagee, shall determine what part of the compensation shall be paid in discharge of part of the mortgage debt so that the remaining part of the mortgaged lands constitute as good security as theretofore for the part of the mortgage debt remaining undischarged.

(3) In this section, “mortgage debt” includes the interest payable on such mortgage up to 6 months beyond the day on which notice was received by the mortgagee of the lands affected being taken under this Act.

50. Lands subject to rent charge – Section 49 applies to land which is subject to a rent charge or annuity as if the capitalised value of the rent charge or annuity as at the date up to which it is paid were the “mortgage debt” and with any other necessary modifications.

51. Lands on which rent payable – If the land is part of land for which any rent is payable the Court shall determine what part of such rent shall cease to be payable, so that the rent ceasing to be payable shall bear the same proportion to the whole rent as the value of the land in respect of which compensation is awarded or paid bears to the value of the whole land.

52. Minister may grant easements in lieu of compensation – In any case where the amount of compensation to be paid to any person is determined by agreement between such person and the Minister, the Minister may agree to grant to such person, his or her executors, administrators, assigns, and successors, any easement, right of way, right of occupation, or any other right, privilege, or concession, upon, over, or under any land taken or reserved for any public purpose, in satisfaction or part satisfaction or mitigation of the compensation claimed by such person:

PROVIDED THAT no such agreement shall be of any validity at law or in equity until notice of the assent of the Minister thereto has been gazetted.

53. Court may award easements in lieu of compensation – In any case where the amount of compensation to be paid to any claimant is determined by the Court, the Minister may offer and the Court may award to the claimant, his or her executors, administrators, assigns, and successors, in satisfaction or part satisfaction or mitigation of the compensation claimed, any easement, right of way, right of occupation, or any other right, privilege, or concession in, upon, over or under any land taken or reserved for any public purpose; and the Court may by its award declare which (if any) of such easements, rights, privileges, or concessions so offered shall be granted to the

claimant in satisfaction or part satisfaction or mitigation of his or her claim to compensation.

54. Head of State may grant surplus land in lieu of compensation – In payment or satisfaction or in part payment or satisfaction of the compensation payable for any land taken, or for any damage done by reason of the construction or use of a public purpose or work, the Head of State, acting on the advice of the Minister, may grant to the person entitled any public land or any land reserved or taken for any public purpose or for the use, convenience, or enjoyment of any public purpose but which is not required for any public purpose:

PROVIDED THAT before such land is conveyed the Minister shall certify that the land to be conveyed has been valued by a competent valuer, and that the total value (with money compensation, if any) does not amount to more than the sum which would be paid by the Government for the land taken and the damage done if compensation for the same were made wholly in money in the usual way.

55. Provision for bringing down encumbrances when land is granted in lieu of compensation – (1) If any land that is subject to any registered encumbrance, lien or interest is taken for a public purpose and other land is granted to the person entitled under section 54, such other land may, with the consent of that person and of the person entitled to the encumbrance, lien or interest, be granted subject to that encumbrance, lien or interest.

(2) On the issue of a title for any land granted subject to any registered encumbrance, lien, or interest as aforesaid, every instrument creating or evidencing or affecting that encumbrance, lien, or interest, and all covenants and other provisions expressed or implied therein shall be construed as if the land so granted were the land or, as the case may be, part of the land to which the instrument relates.

(3) On the issue of a title for any land granted subject to any registered encumbrance, lien, or interest as aforesaid, the Registrar of Land shall enter in the Land Register and record on any relevant instrument a memorial setting out the effect in the circumstances of subsection (2).

(4) If any land that is subject to any reservation or restriction is taken for a public purpose and other land is granted to the person entitled under the section 54, then, unless in any case the Minister otherwise directs, the other land shall be granted subject to that reservation or restriction.

55A. Alternative form of compensation where land taken for forestry – If land or any estate or interest in land or any easement or profit *à prendre* over land is taken for forestry and has millable timber trees growing thereon, then, despite anything to the contrary in this Act, the compensation payable therefor under this Part, whether ascertained by agreement or by order of the Court, may take the form, wholly or partly, of royalties or stumpage payable as the trees are felled or removed from the land or as at other times.

56. Out of what funds compensation to be paid – Money payable as compensation or as costs under this Act shall be paid out of money appropriated by Parliament for the purpose in respect of which the claim for compensation arises; and the Minister shall not be personally liable for any compensation or costs payable under this Act.

57. Place of payment of compensation – If land is taken under this Act, then in the absence of any order of any Court or agreement of the parties to the contrary the place of payment of the compensation for the land shall be the office of the Bank of Samoa nearest to the residence of the claimant if he or she resides in Samoa and the Treasury at Apia if he or she does not reside in or is absent from Samoa.

57A. Assessment of compensation for the temporary taking of land – (1) This section and section 57B apply despite any other law, including but not limited to the other provisions of this Act.

(2) Wherever a conflict arises between this section and section 57B and any other law, including but not limited to the other provisions of this Act, this section and section 57B prevail.

(3) Where a Proclamation taking land is revoked under section 21, a person who has any estate or interest in the land

and who has in respect of that estate or interest suffered any loss or damage by reason of the Proclamation taking the land is, subject to the limitation period provided in section 21(4), entitled to compensation under section 57B.

57B. Principles of assessment for temporary taking of land – (1) Compensation for the taking of land, where the Proclamation taking the land is revoked under section 21, shall be agreed to or assessed under this section.

(2) Subject to subsections (3) and (4), compensation shall be agreed to or assessed and payable only under the following heads of compensation:

- (a) compensation (if any) for any actual loss of income from the use of the land during the period of compulsory acquisition;
- (b) compensation (if any) for any actual costs incurred in purchasing or leasing other land, where such purchase or lease is for the sole purpose of providing substitute land to be used for the same purpose for which the land compulsorily acquired was used immediately prior to its compulsory acquisition;
- (c) compensation (if any) for any damage caused to the land by the Government during the period of compulsory acquisition; and
- (d) compensation (if any) for any other actual loss which the claimant has suffered during the period of compulsory acquisition, where such loss is directly attributable to the compulsory acquisition of the land.

(3) Where other land is purchased under subsection (2)(b), the amount of compensation (if any) agreed to or assessed and payable under subsection (2)(b) shall be reduced by the value of such other land as at the date compensation is agreed to or assessed under this section.

(4) In determining the amount of compensation payable under this section, the Government or the Supreme Court, as the case may require, shall deduct or offset from any compensation agreed to or assessed and payable under subsection (2):

- (a) any increase in the value of the land compulsorily acquired where such increase is caused by or results from the Government's compulsory;
- (b) any payment of compensation already made in respect of the land compulsorily acquired.

(5) Subject to subsections (3), (4), (6), (7), (9), (10) and (11), the Government shall pay to the person being compensated the amount of any compensation agreed to or assessed under this section.

(6) Subject to subsections (10) and (11), if any payment of compensation already made is less than the amount of compensation agreed to or assessed under this section, the Government shall pay to the person being compensated the difference between the amount of compensation agreed to or assessed under this section and the payment of compensation already made.

(7) Subject to subsections (9) and (10), if any payment of compensation already made exceeds the amount of compensation agreed to or assessed under this section, the person to whom such payment has been made shall repay to the Government the difference between the payment of compensation already made and the amount of compensation agreed to or assessed under this section.

(8) Subject to subsections (9) and (10), if a Proclamation taking land is revoked under section 21, the Minister shall comply with section 26.

(9) Prior to the Minister entering into any agreement under this section and prior to the Supreme Court assessing and determining an entitlement to compensation under subsection (14), where there is any doubt or concern as to who is eligible to be compensated:

- (a) for freehold land, the Minister or other interested persons may apply to the Supreme Court to determine who (if any person) is eligible for compensation under this section; and
- (b) for customary land, the Minister or other interested persons may apply to the Land and Titles Court to determine who (if any person) is eligible for compensation under this section.

(10) Prior to the Minister entering into any agreement under this section and prior to the Supreme Court assessing and

determining an entitlement to compensation under subsection (14), in the case of customary land held by one or more persons under customary law and usage, the Minister or other interested persons may apply to the Land and Titles Court to determine who (if any person) is eligible under customary law and usage:

- (a) to enter into any legally binding agreement with the Minister under section 26 for and on behalf of the persons claiming an estate or interest in such land; and
- (b) to whom compensation is to be paid for and on behalf of such persons.

(11) For all purposes, any determination by the Supreme Court and the Land and Titles Court under subsections (9) and (10) shall be final and binding on the Supreme Court, the Land and Titles Court, the Court of Appeal, the Minister and all parties and persons subject to or affected by the determination.

(12) To remove doubt, any agreement made by the Minister and interested persons in accordance with the provisions of this section shall be binding on:

- (a) the parties to the agreement;
- (b) all persons subject to or affected by a determination made under subsections (9) or (10); and
- (c) all other persons claiming an interest in the land.

(13) Despite any other law, no party to or person subject to or affected by an agreement under this section and no party to or person subject to or affected by a determination under subsection (10) shall be entitled to bring or maintain any application to or any other proceedings before the Supreme Court for or concerning compensation under this section where an agreement as to compensation has been entered into under this section.

(14) Subject to this section and the limitation period provided in section 21(4), if compensation is not agreed to under this section, any person claiming an entitlement to compensation under this section may apply to the Supreme Court to assess and determine what compensation (if any) the person is eligible for.

(15) In determining who is eligible for compensation and the level or amount of compensation under this section, the Supreme Court and the Court of Appeal shall:

- (a) comply with this section; and
- (b) assess or otherwise determine compensation only under this section.

**PART 4
STOPPING OF ROADS**

58. Existing roads – All roads existing in Samoa at the commencement of this Act continue to exist as if established under this Act.

59. Proclamation of existing roads – (1) The Head of State, acting on the advice of the Minister, if satisfied that any public or other land was continuously used as a public highway as of right for not less than 5 years before 1 April 1920 (being the date of the commencement of the Samoa Constitution Order 1920 (N.Z.)), may, by warrant under the Public Seal of Samoa, proclaim that land as a road under this section.

(2) The warrant shall be conclusive that the road so proclaimed was theretofore a public highway, and no compensation shall be payable to any person in respect thereof.

60. Roads to be vested in Samoa – All roads in Samoa, whether established or constituted before or after the commencement of this Act, shall, subject to the public right of way thereon, be vested in Samoa, and may be formed, maintained, and repaired by the Government of Samoa.

61. Road not to be stopped unless way left to lands in vicinity – Subject to the Land, Surveys and Environment Act 1989, no road shall be stopped unless and until a way to the lands in the vicinity as convenient as that theretofore afforded by the road is left or provided, unless the owners of such lands consent in writing to such stoppage.

62. Procedure preliminary to stopping roads – (1) Subject to the Land, Survey and Environment 1989 and to section 61 of this Act, any road may be stopped in accordance with the provisions hereinafter set out.

(2) The Minister shall:

- (a) have a plan prepared of the road proposed to be stopped, and have a certificate as to the accuracy of the plan endorsed thereon by the Chief Executive Officer; and
- (b) cause a copy of such plan to be deposited in the office of the Ministry in Apia; and
- (c) cause a notice to be publicly notified twice at an interval of not less than 7 days and to be sent to each owner, occupier and person having an interest in the lands in the vicinity of the road proposed to be stopped, or the agent of any of them, whose name and address are readily ascertainable, stating the Government's proposal to stop the road, that the plan thereof may be inspected in the said office in ordinary office hours, and that any person affected may give written notice of objection with reasons to the Chief Executive Officer on or before a date to be specified in the notice, being not earlier than 40 days after the first publication of the notice; and
- (d) upon receiving from the Chief Executive Officer any such objection with reasons, appoint a time and place in Samoa at which the objector may appear before the Minister or some person appointed by him or her and support the objection by such evidence and argument as the objector thinks fit.

63. Roads to be stopped by Proclamation – If no written notice of objection is received by the Chief Executive Officer on or before the specified date, or if after due consideration of the objection or objections the Minister is of opinion that effect should be given to the proposal to stop the road, the Head of State, acting on the advice of the Minister, may stop the road by Proclamation publicly notified.

64. Disposition of stopped roads – The Head of State, acting on the advice of the Minister, may dispose of any stopped road in manner provided by section 22.

PART 5

MISCELLANEOUS

65. Repeal and savings – (1) The following sections shall cease to have effect as part of law of Samoa; the Samoa Act 1921 (N.Z.), sections 268, 270, 271, 271A (as inserted by section 38 of the Samoa Amendment Act (No. 2) 1956 (N.Z.)), 271B (as inserted by section 39 of the Samoa Amendment Act (No. 2) 1956 (N.Z.)), 272, 274, 275, 280 and 342 to 348 inclusive; the Samoa Amendment Act 1938 (N.Z.), section 8; the Samoa Amendment Act 1951 (N.Z.), section 14; and the Samoa Amendment Act (No. 2) 1956 (N.Z.), subsections (1) and (4) to (8) inclusive of section 37.

(2) The provisions of sections 20, 20A and 21 of the Acts Interpretation Act 1924 (N.Z.), (section 20A having been inserted therein by section 2 of the Acts Interpretation Amendment Act 1960 (N.Z.)) shall apply with respect to the enactments cited in subsection (1) as if they had been repealed by this section.

In subsection (2), as to the Acts Interpretation Act 1924 (N.Z.), the corresponding enactment at the date of this consolidation is the Acts Interpretation Act 1974, s. 27 of which repealed the Acts Interpretation Act 1924 (N.Z.).

SCHEDULES

FIRST SCHEDULE

(Section 31)

FORM A

FOR CASES WHERE LANDS ARE TAKEN

Claim to Compensation under the Taking of Land Act 1964

To the Minister of Lands.

WHEREAS by a Proclamation by His Highness the Head of State dated the _____ day of 20., the lands mentioned in Table A hereunder, in which I have an interest as described in Table B hereunder, have been taken and vested in the Independent State of Samoa for the purpose of
[Here insert the public purpose mentioned in the Proclamation]:

Taking of Land Act 1964

AND WHEREAS the lands mentioned in Table C below, adjacent to the land so taken, in which I have an interest as described in Table D below, will be injuriously affected by the said purpose or work by reason that [Here state items of claim, with a reference number to each, and give in each case full particulars of the nature and extent of claim]:

This is to give notice that I claim the sum of \$ _____ as compensation for all loss arising out of the taking of the aforesaid lands and the construction of the said public purpose or work, which sum is made up as follows:

_____ acres _____ roods _____ perches of land taken at _____ per acre.

Land injuriously affected as follows: [Here state reference number and short heading of each item of claim previously detailed, and the amount claimed in respect of each such item separately].

Total claim \$ _____
Given under my hand this _____ day of _____ 20 ____ .
Claimant: [Name in full]
Address:[Address in full]

**TABLE A
DESCRIPTION OF LANDS TAKEN**

[Here describe the area and situation of lands taken as in Proclamation.]

**TABLE B
NATURE OF INTEREST IN LANDS TAKEN**

[Here state in full the nature of the interest – as owner in fee simple, mortgagee, lessee, or occupier; and if the lands are leased or encumbered, or subject to any easement, give particulars of such lease or encumbrance, etc.]

**TABLE C
DESCRIPTION OF LANDS INJURIOUSLY AFFECTED**

[Here describe fully the area and situation of the lands injuriously affected.]

**TABLE D
NATURE OF INTEREST IN LANDS INJURIOUSLY AFFECTED**

[Here state in full the nature of the interest – as owner in fee simple, mortgagee, lessee, or occupier; and if the lands are leased or encumbered, or subject to any easement, give particulars of such lease or encumbrance, etc.]

FORM B
**FOR CASES WHERE LANDS ARE INJURIOUSLY
AFFECTED BUT WHERE NO LANDS ARE TAKEN**

Claim to Compensation Under the Taking of Land Act 1964

To the Minister of Lands

WHEREAS the public purpose or work mentioned in Table A hereunder has been [or is about to be] executed by your authority, by which the lands described in Table B hereunder, in which I have an interest as described in Table C hereunder, have been [or will be] injuriously affected by the said purpose or work by reason that [Here state items of claim, with a reference number to each, and give in each case full particulars of the nature and extent of each such item].

This is to give notice that I claim the sum of \$ _____ as compensation for all loss arising out of the construction of the said public purpose or work, which sum is made up as follows:

\$

[Here state reference number and short heading of each item of claim previously detailed, and the amount claimed in respect of each such item separately].

Total claim \$

Given under my hand this _____ day of _____ 20 .
Claimant: [Name in full]
Address:[Address in full]

TABLE A

NATURE OF THE WORKS

[Here describe the public purpose or work constructed or proposed which has caused the claim.]

TABLE B**DESCRIPTION OF THE LANDS AFFECTED**

[Here describe fully the area and situation of the lands affected.]

TABLE C**NATURE OF INTEREST IN LANDS INJURIOUSLY
AFFECTED**

[Here state in full the nature of the interest – as owner in fee simple, mortgagee, lessee, or occupier; and if the lands are leased or encumbered, or subject to any easement, give particulars of such lease or encumbrance, etc.]

**SECOND SCHEDULE
(Sections 34 and 35)****NOTICE REQUIRING CLAIM TO BE HEARD
IN THE SUPREME COURT**

(Under the Taking of Land Act 1964)

To the Registrar [or Deputy Registrar] of the Supreme Court at:

WHEREAS a certain claim for compensation for the amount of [Name the sum] in respect of certain lands taken [or in respect of certain lands injuriously affected] in which I have an interest, a copy of which claim is attached hereto, was made by me on the day of20.., upon, and was duly served as by the said Act required upon, the Minister of Lands, and the said Minister has refused to admit the said claim [or has made me an offer of (Name the sum) in lieu of the said claim, which I do not accept].

This is to give notice that I hereby require the said claim to be heard by the Supreme Court, as by the said Act provided.

Given under my hand , this day of 20
A.B., Claimant

Enclosure:

1. Copy of claim, on one of the forms in the First Schedule to the Act.

**THIRD SCHEDULE
(Section 19)****APIA TOWN AREA**

All that area of land bounded as follows:

"Commencing at a point on the Coast at the boundary between Court Grant 185 and Parcel 378 Flur XI, Upolu and continuing in a generally south westerly direction on a bearing of 212 degrees 09' for a distance of 19.30 metres to the southern boundary of the Main West Coast Road; thence in a generally south easterly direction by the southern boundary of that Road to the boundary between Parcel 89 Flur XI, Upolu, and Court Grant 185; thence in a generally south westerly direction along the eastern boundaries of the said Court Grant 185 to its intersection with the northern boundary of Parcel 114 Flur XI, Upolu; thence along the eastern boundary of the said Parcel 114 to Talimatau Road; thence across that Road to its southern boundary to a point in line with the eastern boundary of Parcel 114 Flur XI, Upolu; thence generally in a south easterly direction along the southern boundaries of Talimatau Road to the centre of the Fuluasou River; thence generally in a southerly direction along the centre of that River to the most southern corner of Parcel 111 Flur XI, Upolu; thence generally along the south western boundaries of Parcels 111 and 113 Flur IX, Upolu to the junction of Si'usega Road and Falelauniu Road; thence in a southerly direction by a right line to the junction of Tapatapao Road and Falelauniu Road; thence in a westerly direction for a distance of 11.19 metres to the eastern side of Tapatapao Road; thence in a south westerly direction along the eastern side of Tapatapao Road to the most western corner of Parcel 3 Flur X, Upolu; thence easterly along the south eastern boundary of that Parcel for a distance of 817.29 metres; thence southerly along the south western boundary of the said Parcel for a distance of 177.29 metres; thence easterly along the south easterly boundary of the same Parcel for a distance of 406.33 metres to the centre of Fuluasou Stream; thence generally in a southerly direction along the centre of that Stream to its junction with the south eastern boundary of Parcel 8 Flur IX, Upolu; thence generally in a southerly direction along the south eastern boundaries of Parcels 8, 11, 12, 37 and 36 Flur IX, Upolu, to the north western corner of Parcel 26 Flur IX, Upolu; thence generally in an easterly direction along the north eastern boundaries of Parcels 26, 25, 24, 20, 19, 18, 17 and 14, then continuing in the same direction across the public road to the north western corner of Parcel 13 Flur IX, Upolu; thence along the north eastern boundaries of Parcels 13, 10, 9 and 2 then continuing in the same direction across Falealili Street to the north

western corner of Parcel 58/1 Flur IX, Upolu; thence along the northern boundary of the said Parcel 58/1 to the centre of the western Branch of the Vaisigano River; thence generally in a northerly direction along the centre of that River to its junction with the centre of the middle Branch of the Vaisigano River; thence generally in a northerly direction along the centre of the Vaisigano River proper to its intersection with the northern boundary of land called 'Leno'; thence easterly along the said northern boundary of land called 'Leno' to its intersection with the southern boundary of Parcel 187/45 Flur XII, Upolu; thence generally in an easterly direction along the southern boundaries of the said Parcel 187/45 to the Vaivase Stream; thence northerly along the Vaivase Stream to its intersection with the northern boundary of the said Parcel 187/45; thence westerly along the northern boundary of the said Parcel 187/45 to the most southern corner of Parcel 328/45 Flur XII, Upolu; thence generally in a northerly direction along the eastern boundaries of Parcels 328/45, 329/45, 330/45, 331/45, 332/45, 333/45, 334/45 and Parcels 340/45, 341/45, 342/45, 343/45, 344/45 and 345/45 Flur XII, Upolu; thence northerly along the south eastern boundary of Parcel 346/45 Flur XII, Upolu, at a bearing of 28 degrees 29' 30" and distance of 65.67 metres; thence generally in a northerly direction along the eastern boundaries of Part Parcel 283/45 Flur XII, Upolu (Plan 27 U/XII L) 59 degrees 54', 70.70 metres and 3 degrees 34', 34.09 metres to the centre of Vaivase Stream; thence generally in a northerly direction along the centre of that Stream to its intersection with the northern boundary of the said Part Parcel 283/45; thence in a westerly direction by a right line to the south eastern corner of Parcel 261/45 Flur XII, Upolu; thence generally in a northerly direction along the eastern boundaries of the said Parcel 261/45 and across Plantation Road to the south western corner of Parcel 259/44 Flur XII, Upolu; thence generally in an easterly direction along the southern boundaries of the said Parcel 259/44 and Parcel 203/44 Flur XII, Upolu, to their intersection with the eastern boundary of the said Parcel 203/44; thence generally in a northerly direction along the eastern boundaries of Parcels 203/44, 181/44, 180/44 to the most eastern corner of the said Parcel 180/44; thence westerly along the northern boundary of the said Parcel 180/44 to the centre of the Vaivase Stream; thence generally in a northerly direction along the centre of that Stream to its junction with the eastern boundary of Parcel 76 Flur XII, Upolu; thence continuing in a northerly direction along the eastern boundaries of the said Parcel 76 to its most eastern corner; thence in a northerly direction along the centre of the Vaivase Stream to a point on the mean high water mark on the coast; thence generally in a westerly direction along the mean high water mark to the point of commencement."

REVISION NOTES 2008 – 2015

This is the official version of this Act as at 31 December 2015.

This Act has been revised by the Legislative Drafting Division from 2008 – 2015 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Insertion of the commencement date
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” changed to “a/an”
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are”
 - “shall be deemed” changed to “is/are taken”
 - “shall have” changed to “has”
 - “hereby” and “from time to time” removed
 - (iii) Use of plain language
 - “notwithstanding” changed to “despite”
 - “in pursuance of the provisions of” or “in accordance with the provisions of” changed to “under”
 - “where” changed to “if”
 - “for the purposes of” changed to “in”
 - “in the case of” changed to “for”
 - (iv) Numbers in words changed to figures
 - (v) Removal of superfluous terms such as
 - “the generality of”
 - “it is hereby declared that”
 - “in this section”, “of this Act”
 - “the provisions of”
 - “hereto/hereof”
 - “the term” and “the words”
 - “said”
 - (vi) Removal of “and” from “and/or”
 - (vii) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate.
 - (viii) “the foregoing provisions of this section”, “the preceding subsection” and similar wording changed to the actual section/subsections
 - (ix) Sections 32 and 38(4) re-paragraphed.
 - (x) Section 37(3) divided into subsections (3A) to (3C).

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- (xi) Divisions have been inserted for Part II for subheadings of that Part.
- (xii) Arrangement of provision made consistent with the text.
- (xiii) Reference to “Land Ordinance 1959” changed to “Land, Surveys and Environment Act 1989”. Definitions in section 22(1)(b) revised to transpose into that section the actual definitions in the repealed Telephone Ordinance 1953 and the Post Office Act 1972.
- (xiv) Section 15A revised to refer to the Land and Titles Act 1981 which replaces the Samoan Land and Titles Protection Ordinance 1932.

The following amendments have been made to specific sections of the Act to incorporate amendments made by an Act of Parliament passed since the publication of the *Consolidated and Revised Statutes of Samoa 2007*–

By the *Taking of Land Amendment Act 2009, No. 15* (Commenced on 1 September 2009 with retrospective effect)

- Section 8** - Subsection (1) was renumbered and a new subsection (2) was inserted.
- Section 34(1A)** - A new section 34(1A) was inserted after section 34(1).

*This Act is administered by the
Ministry of Natural Resources and Environment.*
