

**LAWS OF THE REPUBLIC OF VANUATU
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**CHAPTER 215
LAND ACQUISITION**

*Act 5 of 1992
Act 34 of 2000*



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LAND ACQUISITION

An Act to make the provisions for the acquisition of land and easements in the public interest and to provide for matters connected therewith.

PART 1 – INTERPRETATION

1. Interpretation

In this Act, unless the context otherwise requires –

"acquiring officer" with reference to the land means the Director of Lands or any prescribed officer;

"approved survey plan" means a survey plan made by a land surveyor registered under the Land Surveyors Act [Cap. 175], and approved by the Director of Land Surveys;

"custom owner" means the person who in the absence of a dispute, the Minister is satisfied is the custom owner of land;

"Director of Lands" means the person holding office for the time being as Director of Lands;

"easement" means a right attached to a land which allows the proprietor thereof to either use the land of another in a particular manner or to restrict its use to a particular extent and includes an easement over customary land and unregistered alienated land, but does not include a profit;

"improvements" includes the reclaiming of land from the sea, clearing, leveling or grading of land, drainage or irrigation of land, reclamation of swamps, surveying and making boundaries, erection of fences of any description, landscaping of land, planting of crops, trees or shrubs, laying out and cultivation of nurseries, buildings and structures or descriptions which are in the nature of fixtures, fixed plant and machinery, roads, yards, gates, bridges, culverts, ditches, drains, soakaways, cesspits, septic tanks, water tanks, water, power and other reticulation systems, dips and spray races for livestock;

"interest" in relation to land includes a lease, sublease, mortgage, easement, restrictive agreement, profit, alienator's rights, logging rights, geothermal rights, periodic tenancies and any other unregistrable interest, and "person interested" has a corresponding meaning;

"land" includes any estate, any interest in or benefit to land, all things growing on land, houses, buildings, improvements and all other things on land, land beneath water, the seabed extending to the sea side of any offshore reef but no further and the subsoil thereof;

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"lease" means the grant with or without consideration, by the owner of the land of the right to the exclusive possession of his land, and includes the right so granted and the instrument granting it, and also includes a sublease but does not include an agreement for lease;

"Minister" means the Minister for the time being responsible for matters under this Act or any Minister acting on his behalf;

"mortgage" means an interest in a registered lease given as security for the payment of money or moneys worth and includes a submortgage and a mortgage registered under the Alienated Land Act [Cap. 145], and the instrument creating a mortgage;

"prescribed" means prescribed by regulation made under this Act;

"profit" means the right to go on land comprised in a registered leasehold by another and take a particular substance from that land whether it is the soil or products and includes the taking of wild animals and further includes profits on customary lands and unregistered alienated land;

"public purpose" means the utilization of lands necessary or expedient in the public interest and includes a purpose which under any other written law is deemed to be a public purpose;

"restrictive agreement" means the restrictive agreement referred to in section 68 of the Land Leases Act [Cap. 163];

"Valuer-General" means the Valuer-General appointed under the Valuation of Land Act [Cap. 288].

PART 2 – PRELIMINARY INVESTIGATION AND DECLARATION OF INTENDED ACQUISITION

2. Investigation for selecting land for public purpose

(1) Where the Minister decides that land in any particular area is likely to be needed for any public purpose, he may direct the acquiring officer –

- (a) to cause not less than thirty days' notice in the prescribed form to be given in the prescribed manner to the custom owners and the persons interested in the land in that area; and
- (b) to cause a notice in the prescribed form to be exhibited in the prescribed manner in some conspicuous places in that area.

(2) The notice referred to in subsection (1) shall be in the Bislama, English and French languages and shall state that land in the area specified in that notice is likely to be required for a public purpose and that all acts necessary may be done on any land in that area in order to investigate the suitability of that land for that public purpose.

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(3) After a notice under subsection (1) is given and exhibited in any area, any officer authorized by the acquiring officer may enter any land in that area together with such persons, implements, materials, vehicles and animals as may be necessary, and do all acts necessary to ascertain whether that land is suitable for the public purpose for which it is required:

Provided that no person, in the exercise of the powers conferred on him by this section, shall enter any dwelling house or any enclosed land attached to that dwelling house, unless he has given to the occupant of that house at least seven days' written notice of his intention to do so.

3. Compensation for damages done during investigations carried out on any land

(1) Where any officer empowered by subsection (3) of section 2 to enter any land causes any damage to that land or to anything on that land by doing on that land any act under that subsection, he shall assess the value of the damage, the amount of compensation for that damage and shall determine the apportionment of the amount of compensation among the custom owner or owners and the persons interested in that land. That officer shall give the custom owner or owners and the persons interested in that land written notice of the amount of compensation assessed by him and of any such apportionment of that amount as may have been determined by him.

(2) If any person who is entitled to receive the whole or a portion of the amount of compensation assessed in respect of any land under subsection (1) and specified in the notice under that subsection, is dissatisfied with that amount or with the apportionment of that amount, he may within thirty days of the date of that notice, make a written appeal to the Valuer-General against the assessment or apportionment of compensation referred to in that notice.

(3) Where the Valuer-General having received an appeal under subsection (2) allows that appeal, he shall assess the compensation and make a determination which shall be final.

(4) The officer who issues a notice under subsection (1) shall –

(a) where no appeal is made within thirty days after the period specified in that subsection or, where such appeal is made and the Valuer-General disallows the appeal, within thirty days from the date of decision of the Valuer-General, pay to each person who is entitled to compensation according to that notice the amount of compensation allowed to him by such notice; or

(b) where an appeal is so made and the Valuer-General allows the appeal within thirty days from the date of determination of the Valuer-General, pay to each person who is entitled to compensation according to that determination the amount of compensation awarded to him by that determination.

(5) Where the person to whom any sum is payable as compensation under this section is under the age of eighteen or is incapable of managing his own affairs that sum shall be paid for his benefit to any other person who is having care or custody of him or authority to act for him.

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4. Notice of the intended acquisition and objections to such acquisition

(1) Where the Minister decides that a particular land is suitable for a public purpose, or that a particular easement over a particular land should be acquired for a public purpose he shall direct the acquiring officer –

- (a) to cause a notice in the prescribed form to be given in the prescribed manner to the custom owners and the persons interested in the land in that area; and
- (b) to cause a notice in the prescribed form to be exhibited in the prescribed manner, in some conspicuous places on or near that land:

Provided however that it shall not be necessary to give such notice to any person whose name and address cannot be found or ascertained.

(2) The notice referred to in subsection (1) shall be in writing and shall –

- (a) be in the Bislama, English and French languages;
- (b) describe the land or easement which is intended to be acquired, and be accompanied by a sketch plan;
- (c) state that the Government intends to acquire that land or easement for a public purpose and specify that public purpose and state that written objections to the intended acquisition may be made to the acquiring officer by the custom owners and persons interested in the land;
- (d) specify a period within such objections must be made, such period being not less than thirty days from the date on which such notice is given.

(3) Where objections to the intended acquisition are made to the acquiring officer under subsection (2), the acquiring officer shall consider such objections. When such objections are considered any objectors shall be given an opportunity of being heard in support of such objections and after the consideration of the objections, the acquiring officer shall make his recommendations on the objections to the Minister.

(4) Where the time allowed by a notice under this section for making objections to the intended acquisition of the land or easement referred to in the notice has expired and where any such objections have been made within such time, after the Minister has considered the acquiring officer's recommendations on those objections, the Minister shall decide whether that land or easement should or should not be acquired under this Act.

5. Provision to nullify disposal and prevent damage to land intended to be acquired

(1) Where a notice has been issued or exhibited in respect of any land or easement under section 4, no custom owner or person interested in that land shall, during the period of 12 months after the date of the issue or exhibition of such notice –

- (a) lease or otherwise dispose of that land or easement; or

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(b) do any act which directly or indirectly depreciates or appreciates the value of the land as at the date of such issue or exhibition.

(2) Notwithstanding the provisions of the Land Leases Act [Cap. 163], any lease or other disposal of land or interest in contravention of the provisions of subsection (1) of this section shall be null and void.

(3) Where a notice has been issued or exhibited in respect of any land or easement under section 4, notwithstanding the provisions of the Land Lease Act [Cap. 163], the rent reserved under any lease of that land or easement shall not be reviewed during the period of twelve months after the date of the issue or exhibition of that notice.

(4) Any person who contravenes the provisions of subsections (2) and (3) of this section shall be guilty of an offence punishable with a fine not exceeding VT 100,000.

6. Declaration that a land or an easement is required for a public purpose

(1) Where the Minister decides under section 4 that a particular land or easement should be acquired under this Act, he shall make a written declaration that such land or easement is needed for a public purpose and will be acquired under this Act, and direct the acquiring officer to cause such declaration in the Bislama, English and French languages to be published in the Gazette.

(2) A declaration made under subsection (1) shall state the description of the land or easement which is to be acquired and shall be supported by an approved survey plan.

(3) A declaration made under subsection (1) in respect of any land or easement shall be conclusive evidence that such land or easement is needed for a public purpose.

(4) The publication of a declaration under subsection (1) in the Gazette shall be conclusive evidence of the fact that such declaration was duly made.

7. Notice to custom owner and persons interested

(1) Where a declaration is made under section 6, the acquiring officer shall as soon as convenient –

(a) cause a notice in the prescribed form in the Bislama, English and French languages to be given in the prescribed manner to the custom owners and the persons interested in the land or easement; and

(b) cause a notice in the prescribed form in the Bislama, English and French languages to be published in the prescribed manner.

(2) The notice referred to in subsection (1) shall –

(a) be accompanied by a copy of the declaration made under section 6 and an approved survey plan, of the land;

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- (b) contain a description of the land or easement which is intended to be acquired;
- (c) state that it is intended to acquire such land or easement under this Act and specify the public purpose for which it is intended to be acquired;
- (d) state that claims for compensation for the acquisition of that land or easement may be made to the acquiring officer.
- (e) *(repealed)*

(3) Where the acquiring officer is satisfied that the custom owner or any person interested in the land or easement is under the age of eighteen years or is incapable of managing his own affairs and has no person having care or custody or authority to act for him he may authorize a fit and proper person to act for that person.

PART 3 – INQUIRY INTO CLAIMS, REFERENCE TO VALUER-GENERAL

8. *(Repealed)*

9. Matters to be considered in determining compensation

(1) In determining the amount of compensation to be awarded for any land or easement acquired under the provisions of this Act, the acquiring officer or the Valuer-General under this Act shall take into consideration –

- (a) the market value of the land or easement at the date of the notice of intention to acquire such land or easement;
- (b) the value of damage sustained during investigations carried out under section 2;
- (c) the value of damage sustained by the owner or any person interested by loss of any growing crops or trees which may be on the land at the time of notice of intention of acquisition of the land;
- (d) the value of damage sustained by the custom owner or any person interested at the time of notice of intention of acquisition of the land by reason of severing such land from his other land;
- (e) where a part of any land is acquired, the value of damage if any sustained by the custom owner or any person interested, at the time of notice of intention of acquisition of the land by reason of the acquisition injuriously affecting remaining part of his land and interest and any subsequent injurious affection by virtue of the use to which the acquired land or interest is put;
- (f) if, in consequence of the acquisition of the land, the custom owner or the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change;

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(g) if, in consequence of the acquisition of the land and the easement therein, the adjoining land and easement therein are enhanced, the value of that enhancement which shall be deducted from the amount payable in compensation;

(h) if, in consequence of the acquisition of the land and the easement the person interested is compelled to surrender, vary or re-register any registrable interest, the costs of such change.

(2) A determination must be in writing and a copy of it must be given to the custom owner or owners of the land, and any other person interested in the land.

10. Compensation for loss of rents, etc.

Compensation shall be awarded to the custom owner of the land and the persons interested therein for loss of rents and loss of any financial gains for the period from the date of the notice of intention of acquisition till compensation awarded under section 9 is paid in full.

11. *(Repealed)*

12. Appeals

(1) Any custom owner or owners of the land or any other person interested in the land who is dissatisfied with a determination under section 9 may appeal to the Supreme Court within 30 days after the date on which the determination is made.

(2) If a determination is made under section 9 and no appeal is made under subsection (1), the decision of the acquiring officer is final.

13. Notification of final determination by acquiring officer

The acquiring officer shall within thirty days of the final determination of compensation payable under the provisions of this Act, notify in writing –

(a) persons who are entitled to compensation in respect of the land or easement which is to be acquired;

(b) the nature of the interests of those persons in the land which is to be acquired or over which an easement is to be acquired; and

(c) the amount of the compensation finally determined which in his opinion should be allowed for acquisition.

PART 4 – PAYMENT

14. Payment of compensation

A compensation payment determined under section 9 is to be made to the custom owner or owners of the land, and any other person interested in the land, as soon as practicable after the

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appeal period under section 12 expires.

15. Compensation to persons under the age of 18

Where any sum which is due as compensation for the acquiring of a land or easement under this Act is due to a person who is under the age of eighteen or is incapable of managing his own affairs that sum shall be paid for his benefit to any person who is having care or custody of him or authority to act for him.

PART 5 – POSSESSION, DISPOSAL AND OCCUPATION

16. Order for taking possession and entering into occupation of land or acquiring an easement over a land

(1) At any time after notification is made and payment of compensation is made under section 14, the Minister may by order published in the Gazette –

(a) where the notification relates to the acquisition of any land, direct the acquiring officer or any other officer authorized in that behalf by the acquiring officer to take possession of that land for and on behalf of the Government; or

(b) where the notification relates to the acquisition of any easement, declare that the land over which that is to be acquired shall be subject to that easement.

(2) Any officer directed by an order made under subsection (1) to take possession of any land shall, on or after the date of publication of that order in the Gazette, take possession of that land for and on behalf of the Government or declare that the land over which that easement is to be acquired shall be subject to that easement:

17. Effect of order under section 16

When an order of the Minister under section 16 is published in the Gazette, then –

(a) where that order is in regard to the taking possession of a particular land, the land shall vest absolutely in the Government, free from all encumbrances, with effect from the date on which that order is so published;

(b) when that order is in regard to an easement over a particular land, that land shall be subject to that easement and that easement may be utilized for the public purpose for which it was acquired on and after that date.

18. Revocation of order made under section 16

(1) Notwithstanding that by an order under section 16 any land has vested absolutely in the Government, the Minister may, whether or not the possession of the land has actually been taken for and on behalf of the Government, by a subsequent order revoke that order.

(2) When an order is made under this section, the land to which it relates shall be deemed never to have vested in the Government and the custom owner or the person interested in the

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land, as the case may be, at the time that order was published in the Gazette shall forthwith be restored to possession of the said land.

19. Disallowance of further claims for compensation

Where compensation for the acquisition of any land or easement has been paid in accordance with the provisions of this Act, no further claim against the Government for compensation for such acquisition shall be allowed.

20. Offences

Any person who –

- (a) obstructs or otherwise unlawfully interferes with the performance by the acquiring officer or any person acting under his authority in good faith in the performance of his functions under this Act; or
- (b) fails to comply with any notice or submissions issued to him under this Act or any regulations made thereunder unless his failure to comply with such notice was due to his illness or to any other cause beyond his control; or
- (c) knowingly supplies to the acquiring officer or any person acting under his directions any information for the purposes of this Act which is false in any material particular,

shall be guilty of an offence.

Penalty: fine of VT 100,000 or imprisonment for 12 months or to both such fine and imprisonment.

21. Indemnity for acts and omissions

No action and no proceeding shall be taken against the Government or the acquiring officer or other person in respect of anything done or omitted to be done by the acquiring officer or any person acting under his directions in good faith, in the performance of his functions under this Act.

22. Regulations

(1) The Minister may make regulations for the purpose of carrying out or giving effect to the principle and provisions of this Act.

(2) In particular and without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of all of any of the following matters –

- (a) all matters stated or required by this Act to be prescribed;
- (b) the form of any order, notice, certificate or declaration issued or made under

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this Act;

(c) the basis of assessing the market value of any land or the compensation for any injurious affection caused by the acquisition of any land under this Act, in so far as such basis is not specified in this Act.

Table of Amendments

1, 3, 9 Reference to Lands Referee changed to Valuer-General, per Act 22 of 2002

7(2) (e) Repealed by Act 34 of 2000

8 Repealed by Act 34 of 2000

9(2) Inserted by Act 34 of 2000

11 Repealed by Act 34 of 2000

12 Substituted by Act 34 of 2000

14 Substituted by Act 34 of 2000