

Land Titles Commission Act 1962

No. 5 of 1962.

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Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

Land Titles Commission Act 1962,

An Act to establish a Land Titles Commission and provide for its constitution and jurisdiction, and for other purposes.

Preamble

WHEREAS it is universally recognized that the expeditious and final determination of disputes as to rights in land and the registration of guaranteed rights to land are of basic importance to the well-being and development of all countries and especially of developing countries such as the Territory of Papua and New Guinea:

AND WHEREAS it is also universally recognized that these matters can best be dealt with by judicial authorities independent of control by the Government of the day, doing justice to all parties in accordance with the law:

AND WHEREAS it is proposed to make special provision in the laws of the Territory for the establishment of such an independent judicial tribunal to be known as the Land Titles Commission for the determination and protection of rights to land, and in particular to native land:

BE it therefore ordained by the Legislative Council for the Territory of Papua and New Guinea, in pursuance of the powers conferred by the *Papua and New Guinea Act 1949-1960*, as follows:—

PART I. – PRELIMINARY.

1. SHORT TITLE.

This Act may be cited as the *Land Titles Commission Act 1962*.

2. COMMENCEMENT.

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. PARTS.

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4. DEFINITIONS.

(1) In this Act, unless the contrary intention appears—

“**adjudication area**” means an adjudication area declared under Section 17;

“**Assistant Commissioner**” means an Assistant Commissioner appointed under this Act;

“**the Chief Commissioner**” means the Chief Commissioner appointed under this Act;

“**the Commission**” means the Land Titles Commission established by this Act;

“the Commissioner” means the Chief Commissioner, a Deputy Chief Commissioner, a Senior Commissioner, a Commissioner or an Assistant Commissioner appointed under this Act;

“Demarcation Committee” means a Demarcation Committee appointed under Section 20 and, in relation to an adjudication area, means the Demarcation Committee appointed for that area;

“Deputy Chief Commissioner” means a Deputy Chief Commissioner appointed under this Act;

“land” includes an interest in land, whether arising out of and regulated by custom or otherwise;

“native” includes a customary kinship group, customary descent group and customary local group or community;

“the Registrar of Titles” means the Registrar of Titles appointed under the *Land Registration Act 1981*;

“the Senior Commissioner” means a Senior Commissioner appointed under this Act;

(2) For the purposes of this Act, a person who is partly descended from an aboriginal inhabitant of Papua New Guinea and who, by virtue of that descent, acquires rights by custom to or in respect of customary land shall be deemed to be a native in relation to those rights.

PART II. – ESTABLISHMENT OF THE COMMISSION.

5. CONSTITUTION OF THE COMMISSION.

(1) There shall be a Land Titles Commission for Papua New Guinea.

(2) The Commission shall consist of–

(a) a Chief Commissioner; and

(b) such numbers of Deputy Chief Commissioners, Senior Commissioners, Commissioners and Assistant Commissioners, as are appointed under Section 6.

6. APPOINTMENT AND TENURE OF COMMISSIONERS.

(1) The Chief Commissioner and all Deputy Chief Commissioners, Senior Commissioners and Commissioners–

(a) shall be –

(i) in the case of the Chief Commissioner, appointed, suspended or dismissed in the manner as is specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and

(ii) in the case of all Deputy Chief Commissioners, Senior Commissioners and Commissioners, appointed by the Head of State, acting on advise; and

(b) shall, subject to Paragraphs (c) and (d), retire upon reaching the age of 60 years; and

(c) where the person appointed is or has been a contract officer–shall be appointed for such term (not exceeding seven years) as is specified in the instrument of appointment, and are eligible for re-appointment; and

(d) may be removed from office by the Governor-General on the grounds of proved misbehaviour or incapacity, but shall not otherwise be removed from office; and

(e) hold office on such terms and conditions as the Prime Minister determines.

(2) The Head of State, acting on advice may, by notice in the National Gazette, appoint a person to be an Assistant Commissioner, and where that person is other than an officer he shall hold office on such terms and conditions as are prescribed.

(3) Subject to Subsection (4), the remuneration of a Commissioner other than an Assistant Commissioner shall not be diminished during his term of office.

(4) Subsection (3) is not contravened by provision for an allowance to be paid only in circumstances specified by the Prime Minister, or for the variation, suspension or cessation of an allowance in circumstances so specified.

(5) Where a person who holds an office of Principal Magistrate or Magistrate is appointed a Commissioner, he may, notwithstanding that appointment, continue to hold the office of Principal Magistrate or Magistrate, as the case may be.

7. OATH OF OFFICE, ETC.

A Commissioner shall before proceeding to discharge the duties of his office, take before the Governor-General or a person thereunto authorized by the Governor-General an oath or affirmation in the form in Schedule 1 to this Act.

8. PROTECTION AND IMMUNITIES.

A Commissioner has the same protection, privileges and immunities as a Judge.

9. QUALIFICATION REQUIRED FOR CHIEF COMMISSIONER AND DEPUTY CHIEF COMMISSIONER.

A person shall not be appointed to be—

- (a) the Chief Commissioner; or
- (b) a Deputy Chief Commissioner,

unless he has been fully admitted to practice as a lawyer of the National Court.

9A. POWERS, ETC., OF DEPUTY CHIEF COMMISSIONER.

Subject to any directions of the Chief Commissioner, a Deputy Chief Commissioner has all the powers and functions of the Chief Commissioner under this Act.

10. ACTING COMMISSIONERS.

(1) The Head of State, acting on advice, may appoint a person to act in the office of a Commissioner—

- (a) while the Commissioner is absent on leave or is for any other reason unable for the time being to discharge the duties of his office; or
- (b) during any vacancy in the office of a Commissioner.

(2) Subject to Subsection (3), a person shall not be appointed to act in the office of a Commissioner unless he is qualified under Section 9 to be appointed to that office.

(3) An acting Commissioner shall hold office on such terms and conditions as the Prime Minister approves.

(3A) An acting Commissioner shall, before proceeding to discharge the duties of his office, take before the Governor-General or a person thereunto authorized by the Governor-General an oath or affirmation in the form in Schedule 1 to this Act.

(4) An acting Commissioner has the jurisdiction, powers, protection and immunities of, and may exercise all the powers which are vested in, or may be exercised by, the Commissioner in whose place he is appointed to act.

(5) The appointment of a person to be an acting Commissioner during the absence, or inability to act, of a Commissioner shall not be determined by the death or resignation of that Commissioner, but shall, unless the Head of State, acting on advice otherwise directs, continue, subject to this section, until a Commissioner is appointed in place of the Commissioner who has died or resigned.

(6) An acting Commissioner who holds office by virtue of Subsection (1)(b), or of Subsection (5), shall not so hold office for a period longer than two years.

10A. [REPEALED.]

10B. COMMISSIONER, ETC., HOLDING OTHER STATUTORY OFFICE, ETC.

A person may be appointed to be a Commissioner or an acting Commissioner notwithstanding that he holds office under some other law of Papua New Guinea.

10C. ASSESSORS.

(1) The Minister may, by notice in the National Gazette, appoint a number of persons who are familiar with custom in relation to land in a particular area to be a panel of assessors for that area.

(2) The Commission may from time to time select such number of persons as it considers desirable from a panel appointed under Subsection (1) to sit with it as assessors in relation to any matter before it arising in the area for which the panel was appointed.

11. SEAL.

(1) There shall be a seal of the Commission for the sealing of all adjudication records and other documents issued out of the Commission and requiring to be sealed.

(2) The Commission shall also, for the purpose of authentication, have a stamp with which documents requiring authentication may be stamped.

12. JUDICIAL NOTICE.

All Courts and persons acting judicially in Papua New Guinea shall take judicial notice of—

- (a) the official signature of a person who holds or has held the office of Chief Commissioner, Deputy Chief Commissioner, Senior Commissioner, Commissioner or Assistant Commissioner; and
- (b) the fact that that person holds or has held that office; and
- (c) the seal and stamp referred to in Section 11,

if the signature, seal or stamp purports to be attached or appended to an adjudication record or other document issued out of the Commission.

PART III. – JURISDICTION AND FUNCTIONS OF THE COMMISSION.

Division 1.

Division 1.-General.

13. FUNCTIONS OF THE CHIEF COMMISSIONER.

(1) In addition to any other powers, duties, functions and jurisdiction conferred by or under this or any other Act, the Chief Commissioner is responsible for the administration of the Commission and the co-ordination of the work of the Commissioners.

(2) The Chief Commissioner may, by instrument in writing under his hand, delegate to a Senior Commissioner all or any of his functions under Subsection (1), so that the delegated functions may be performed by the delegate with respect to the matters or class of matters, or to the whole of Papua New Guinea or part of Papua New Guinea, specified in the instrument of appointment.

(3) A delegation under Subsection (2) is revocable, in writing, at will, and no such delegation prevents the performance of a function by the Chief Commissioner.

13A. TRANSFER OF CASES.

(1) The Chief Commissioner may, of his own motion or on the application of a party, and after consultation with the Commissioner dealing with the matter, transfer a matter, at any time before a decision has been given, from one Commissioner to another Commissioner or to three Commissioners appointed under Section 14A on the ground that–

- (a) the value of the land in dispute;
- (b) the complexity or importance of the issues involved;
- (c) the convenience of the parties and the Commission; or
- (d) any other sufficient cause,

justifies the transfer.

(2) The Commissioner or Commissioners to whom a matter is transferred under Subsection (1) shall proceed to hear and determine the matter as though it had been commenced before him or them.

(3) Where a matter is transferred from a Commissioner under Subsection (1), the evidence already taken before that Commissioner together with the results of any investigations or

inquiries he may have made shall be deemed to be evidence before the Commissioner or Commissioners to whom the matter is referred.

14. GENERAL JURISDICTION, ETC., OF COMMISSION.

(1) The jurisdiction, practice and procedure of the Commission are as provided by or under this or any other Act.

(2) Subject to this and to any other Act in force in Papua New Guinea, the powers, functions and jurisdiction of the Commission may be exercised by a single Commissioner.

(3) Subject to Section 14A, the jurisdiction of the Commission under the *New Guinea Land Titles Restoration Act* 1951 shall be exercised by the Chief Commissioner or a Deputy Chief Commissioner.

(4) [*Repealed.*]

14A. THREE COMMISSIONERS MAY HEAR CASES.

(1) The Chief Commissioner may, of his own motion or on the application of a party, appoint three Commissioners (one of whom shall be himself or a Deputy Chief Commissioner) to deal with a matter before the Commission where he is satisfied that—

- (a) the value of the land in dispute;
- (b) the complexity or importance of the issues involved; or
- (c) any other sufficient cause,

justifies such an appointment.

(2) A sitting of the Commission consisting of three Commissioners appointed under Subsection (1) shall be presided over—

- (a) where the Chief Commissioner is one of the three Commissioners so appointed—by the Chief Commissioner; or
- (b) in any other case—by a Deputy Chief Commissioner appointed by the Chief Commissioner for the purpose.

(3) If, in any matter in which the jurisdiction of the Commission is exercised by three Commissioners under Subsection (1), the opinion of the Commissioners are divided in such a way that there is no majority opinion, the opinion of the Commissioner presiding shall be deemed to be the opinion of the Commission.

15. DETERMINATION OF DISPUTES.

(1) The Commission has, subject to this Act, exclusive jurisdiction to hear and determine all disputes concerning and claims to the ownership by custom of, or the right by custom to use, any land, water or reef, including a dispute as to whether any land is or is not customary land and may make all such preliminary inquiries and investigations as it deems necessary for the purpose of hearing and determining the disputes and claims.

(2) After the period limited by Part V for review of or appeal against a decision of the Commission has expired, and any proceedings on review have been completed and any appeals have been decided—

(a) a determination of the Commission under this or any other Act is, subject to Section 16, for all purposes and as against all persons conclusive evidence of the ownership as at the date of the decision, of the land the subject of the decision and of rights, titles, estates and interests in the land as set out in the decision; and

(b) the Commission shall forward a copy of its decision to the Registrar of Titles, who shall make such entries in Registers kept by him and issue such documents as are necessary, or as are directed by the Commission, to give effect to the decision of the Commission.

15A. LOCAL LAND COURT MAY MAKE ORDER.

(1) Notwithstanding anything in this Act contained, a Local Land Court having jurisdiction over an area in which is situated any land, water or reef which is the subject of a dispute as to ownership by custom or to the right to its use by custom, may, on the application of a party to the dispute, make an order authorizing the use or occupation of the land, water or reef by one of the parties to the dispute and restraining the other party to the dispute or other persons from interfering with the use or occupation of the land, water or reef by the party authorized by the order.

(2) A person who does not comply with an order issued under Subsection (1) shall be guilty of an offence.

Penalty: K100.00.

Default penalty: K2.00.

(3) The Local Land Court making an order under this section has jurisdiction over an offence referred to in Subsection (2).

(4) Subject to the provisions of this section, an appeal shall not lie from a Local Land Court in respect of an order made under this section.

(5) Where an order is made under Subsection (1), the Local Land Court shall forthwith transmit to the Commission the true copy of the record, the depositions and any other documentary evidence relating to the dispute and thereupon the Commission shall forthwith hear and determine the matter as if the party in whose favour the order was made had made application to have the dispute heard and determined by the Commission in accordance with Section 15.

(6) Upon a determination in accordance with Subsection (5) being made, any order extant in respect of the subject matter of that determination shall absolutely cease and determine.

15AA. EXAMINATION OF DECISIONS OF ASSISTANT COMMISSIONER.

A determination of an Assistant Commissioner under this Act shall be examined by the Chief Commissioner, a Deputy Chief Commissioner, a Senior Commissioner, or a Commissioner who may—

- (a) confirm the determination;
- (b) quash the determination; or
- (c) order a re-hearing or a further hearing,

and the decision on such an examination shall be deemed to be a decision of the Commission constituted by the Chief Commissioner, Deputy Chief Commissioner, Senior Commissioner, or Commissioner, as the case may be, given at first instance, but until that decision is made the determination shall not be deemed to be a decision of the Commission.

16. CONFLICT WITH REGISTERED TITLES.

Subject to this section, where a decision of the Commission is in conflict with a title previously registered under the *Land Registration Act 1981*, that registered title shall, to the extent of the conflict, prevail.

Division 2.

Adjudication Areas.

17. DECLARATION OF ADJUDICATION AREAS.

(1) The Chief Commissioner may, by notice in the National Gazette, declare an area to be an adjudication area for the purposes of this Act.

(2) A notice under Subsection (1) shall be published in such manner as the Chief Commissioner considers will ensure reasonable notice to persons affected or likely to be affected by the declaration.

18. FORM OF NOTICE.

A notice under Section 17 shall—

(a) specify as clearly as possible the situation and limits of the adjudication area and, where appropriate, the name or names by which the land is known; and

(b) declare that all customary land within the adjudication area will be ascertained and registered, in accordance with this Act; and

(c) declare that no claim is required under this Act to or in respect of a right or interest in customary land within the adjudication area which is the subject of a claim before the Commission under this or any other Act; and

(d) specify a period within which, subject to Paragraph (c) and to Section 19, a person claiming any estate, right, title or interest in customary land within the adjudication area is required to present his claim thereto to the Commission.

19. VARIATION OF ADJUDICATION AREA.

(1) If it appears to the Chief Commissioner that an adjudication area includes part only of a piece of customary land owned by a person or a group of persons, the Chief Commissioner may, by notice in the National Gazette published in the same manner as the notice declaring that adjudication area, vary the limits of the adjudication area so as to include or exclude all that land.

(2) A notice under Subsection (1) shall—

(a) specify as clearly as possible the situation and limits of the land added to or excluded from the adjudication area and, where appropriate, the name or names by which that land is known; and

(b) in the case of a notice adding land to an adjudication area, specify a period within which, subject to Section 18(c), a person claiming any estate, right, title or interest in the land so added to the adjudication area is required to present his claim thereto to the Commission.

20. APPOINTMENT OF DEMARCATION COMMITTEE.

(1) By the notice declaring the adjudication area or by another notice in the National Gazette, the Chief Commissioner may appoint a Demarcation Committee for an adjudication area.

(2) A Demarcation Committee shall consist of a Chairman and not less than two other members, and a majority of the members shall be natives.

(3) The Chief Commissioner may, with the approval of the Head of State, acting on advice, determine the fees, allowances and expenses to be paid to the Chairman and the other members of Demarcation Committees, or to any of them, either generally or in a particular case.

21. FUNCTIONS OF DEMARCATION COMMITTEE.

(1) Subject to any general or particular directions issued by the Commission, the Demarcation Committee shall, as soon as practicable after the expiration of the period specified under Section 18(d), or under Section 19(2)(b), prepare a plan of the adjudication area, to be called the demarcation plan, showing—

(a) the boundaries of all land which has been the subject of a finding under this Act or the *Native Land Registration Act 1952*;

(b) the boundaries of all customary land the subject of a claim before the Commission under this or any other Act which has not been the subject of a finding by the Commission; and

(c) the situation of all public roads, public rights of way or water and areas reserved for public purposes in or over customary land within the adjudication area.

(2) The Demarcation Committee shall see that such marks are placed on the land as are needed to enable the demarcation plan and any adjudication record to be prepared and to enable the boundaries shown or to be shown on the plan or record to be located on the ground.

(3) If the circumstances require it, any of the duties of the Demarcation Committee may be carried out by the Commission.

22. FINDINGS BY COMMISSION.

(1) When a demarcation plan has been prepared under Section 21, the Commission shall inquire into the plan, and in respect of land shown on the plan shall—

(a) determine all claims to customary land before the Commission, under this or any other Act; and

(b) declare what are the public roads, public rights of way or water and areas reserved for public purposes in or over customary land within the adjudication area.

(2) The Commission shall set out its findings in the form of an adjudication record showing what land in the adjudication area is customary land and the ownership of each piece of that land.

(3) The Commission may set out its findings for an adjudication area progressively by preparing separate adjudication records for parts of the adjudication area.

23. AMENDMENT OF DEMARCATION PLAN.

When the Commission has prepared an adjudication record, the Demarcation Committee shall if necessary see that boundary marks are altered on the ground and amend the demarcation plan, so that the boundary marks and plan conform to the findings of the Commission.

24. NOTICE OF ADJUDICATION RECORD.

The Commission shall publish, in the same manner as the notice published under Section 17 in relation to the adjudication area, a notice specifying where the adjudication record and the demarcation plan may be inspected.

25. ADJUDICATION RECORD TO BE FORWARDED TO REGISTRAR OF TITLES.

After the period limited by Part V for review of or appeal against a decision of the Commission under this Division has expired and any proceedings on review have been completed and any appeals have been decided, the Commission shall certify the adjudication record and demarcation plan and forward them to the Registrar of Titles, who shall, subject to any other law in force in Papua New Guinea, make such entries in Registers kept by him and issue such documents as are necessary, or as are directed by the Commission, to give effect to the decision of the Commission and to register the land in the names of the persons specified in the adjudication record as the owners of the land.

PART IV. – PROCEDURE AND EVIDENCE.

25A. POWER TO MEDIATE.

(1) At any stage of a hearing before the Commission under this or any other Act, the Commission may mediate between the parties in order to effect a settlement of any matter in dispute.

(2) The Commission may adjourn the hearing if it appears that by doing so a settlement may be arrived at by the parties.

26. POWER TO SUMMON WITNESSES.

(1) If the Commission is of opinion that a person is able to give material evidence and will not voluntarily appear for the purpose of being examined as a witness at any hearing or proceedings held by or before the Commission, the Commission shall issue a summons directed to that person, requiring him to be and appear before the Commission at a time and

place specified in the summons, to testify what he knows concerning the matter the subject of the hearing or proceedings.

(2) A summons issued under Subsection (1) shall be served, and proof of service given, in such manner and subject to such conditions as are prescribed by the *Land Titles Commission Rules* 1968 or as otherwise prescribed.

(3) A summons under this section may be oral or in writing and in the case of an oral summons may be served by being communicated to the person concerned by the Commission or by a person thereunto authorized by the Commission.

27. EXAMINATION TO BE ON OATH.

(1) Subject to the provisions of the *Oaths, Affirmations and Statutory Declarations Act* 1962, a person appearing to give evidence before the Commission shall be examined on oath.

(2) The Commission may administer or cause to be administered to a person appearing to give evidence before it an oath or affirmation as a witness.

28. POWER TO ORDER WITNESSES OUT OF HEARING.

The Commission may, if it thinks fit, at any time during any hearing or proceedings, order that all witnesses (other than the parties and the witnesses under examination) go and remain outside and beyond the hearing of the Commission until required to give evidence.

28A. TRANSCRIPT OF EVIDENCE, ETC.

(1) A record of the evidence given in a matter before the Commission shall be taken and subscribed by the Commission.

(2) The Commission shall keep a record of any inquiries or investigations made by it under Section 15(1), or under Section 36(4).

28B. REASONS FOR JUDGMENT.

The reasons for the decision of the Commission in a matter before it shall be recorded by the Commission in writing.

29. TECHNICAL RULES OF EVIDENCE NOT TO APPLY.

(1) In the investigation, hearing and determination of any matter before the Commission, the Commission is not bound to observe strict legal procedure or apply technical rules of evidence, but shall admit and consider such information as is available.

(2) The Commission may accept evidence by statutory declaration in the case of a person whose attendance before it the Commission considers unnecessary, or whose attendance the Commission considers would occasion undue hardship.

29A. DUTY TO INSPECT THE LAND.

(1) Subject to Subsection (2), the Commission shall inspect the relevant land during the hearing of a matter at first instance.

(2) The duty imposed by Subsection (1) may be discharged by assessors selected under Section 10C(2) inspecting the land and reporting to the Commission on the inspection.

30. EVIDENCE OF DEDICATION OF ROADS, ETC.

Evidence of five years' undisputed and continuous use of land as a road, track or right of way by the public may be accepted by the Commission as conclusive evidence that that land has been dedicated to the public as a road, track or right of way, as the case may be, and is the property of the State.

30A. POWER TO AWARD COMPENSATION.

(1) If the Commission finds that a person (other than the State) is in occupation of any customary land in respect of which the Commission determines that ownership rights are held by another person, where in the opinion of the Commission—

(a) the recognition of that ownership might cause undue hardship to the person in occupation of the land; or

(b) it would otherwise be just to order the making of compensation to the person in occupation of the land,

the Commission may order that compensation be made to that person by the person whom the Commission has determined holds the ownership rights.

(2) Compensation under Subsection (1) shall be such as in the opinion of the Commission is fair and reasonable, having regard to all the circumstances of the case.

(3) In Subsection (2) “the circumstances of the case” include—

(a) the difference between the value of the improvements to the land in question which existed at the date of the determination of the ownership rights in that land and the value of the improvements to that land (if any) at the time when the person in occupation of the land at the date of the determination commenced that occupation; and

(b) the degree to which the owner had already been effectively deprived of his right of user at the time when that deprivation occurred or should be taken to have occurred.

(4) An order for compensation under this section may be enforced—

(a) where the amount or value of the compensation, as assessed by the Commission, does not exceed K2,000—as if it were an order of a District Court; and

(b) where the amount or value of the compensation, as assessed by the Commission, exceeds K2,000—as if it were an order of the National Court.

31. COMMISSION TO MAKE INQUIRIES AND HOLD HEARING.

The Commission shall, within Papua New Guinea and (to the extent prescribed by regulations under the Act) within the Commonwealth of Australia and a Territory of or under the authority of the Commonwealth of Australia, make or cause to be made such inquiries and

hold such hearings as it considers necessary or convenient for the purposes of the Commission.

31A. COSTS.

(1) The Commission may order that the costs, or part of the costs, of and incidental to any proceedings before it incurred by any party, be paid by any other party, and may tax the amount of the costs to be paid or specify the manner in which they are to be taxed.

(2) Costs directed by the Commission to be paid to a party may be recovered by that party as a debt.

PART IVA. – REMOVAL OF CERTAIN MATTERS TO NATIONAL COURT.

31B. DISPUTE AS TO CUSTOMARY LAND, ETC.

(1) Where a matter before the Commission involves a dispute as to whether any land is or is not customary land, the National Court may, at any time before a decision has been given and on the application of any party to the proceedings before the Commission, order that the matter be removed into the National Court.

(2) Where a matter is removed into the National Court under Subsection (1)–

(a) the proceedings in the matter and the records specified in Section 28A (if any) shall be transmitted to the Registrar of the National Court;

(b) the Court shall proceed in the matter as if it had commenced in that Court; and

(c) the Court may direct that all evidence already taken before the Commission shall be evidence before the Court.

31C. TAKING OF EVIDENCE FOR NATIONAL COURT.

(1) Where a matter is removed into the National Court under Section 31B the Court may direct that evidence in the matter be taken before the Chief Commissioner, a Deputy Chief Commissioner or a Senior Commissioner.

(2) On the taking of evidence under Subsection (1)–

(a) the practice and procedure of the Commission applies; and

(b) the Commissioner has and may exercise, for the purpose of taking evidence, all the powers, protection and immunities of the Commission as if he were hearing a matter under Section 15.

(3) Evidence taken under Subsection (1) is evidence in the proceedings in the National Court under Section 31B.

PART V. – APPEALS, ETC.

Division 1.

References to National Court.

32. CASE STATED TO NATIONAL COURT.

(1) In the course of an inquiry into or the hearing of a matter, the Commission may, and upon the order of a Judge shall, temporarily refrain from making a decision and state a case on a question (other than a question of fact only) for determination by the National Court.

(2) Subject to the *National Court Rules* 1983 the proceedings in or in connection with a case stated under this section shall be as directed by the National Court.

(3) The Commission shall incorporate in its decision such declarations and directions as are necessary to give effect to the determination made by the National Court under this section.

Division 2.

Reviews by Commission.

33. APPLICATION OF THIS DIVISION.

The provisions of this Division do not apply to a decision of the Commission constituted by the Chief Commissioner or a Deputy Chief Commissioner or by three Commissioners.

34. APPLICATION FOR REVIEW.

(1) A person aggrieved by a decision of the Commission may, within 90 days after the decision, apply to the Chief Commissioner for a review of the decision, unless action had already been taken under Division 3 of this Part in relation to the decision.

(2) An application for a review shall specify the grounds on which the application is made.

35. REVIEW ON MOTION OF CHIEF COMMISSIONER.

Within the period referred to in Section 34, the Chief Commissioner shall consider the records relating to a decision of the Commission, and may refer the decision for review under this Division.

36. REVIEW OF DECISIONS.

(1) Upon receipt of an application for review or the making of a reference under Section 35, the decision shall be reviewed by the Commission constituted by the Chief Commissioner or a Deputy Chief Commissioner, or by three Commissioners appointed by the Chief Commissioner for the purpose one of whom shall be the Chief Commissioner or a Deputy Chief Commissioner.

(2) The Commissioner who made the decision to be reviewed shall not sit on the review.

(3) The Commission in dealing with the review shall consider the records relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it considers necessary, and may—

- (a) affirm or quash the decision; or
- (b) if the justice of the case so requires, substitute for the decision any decision that might have been given.

(4) Where the Commission consisting of three Commissioners appointed under Subsection (1) is reviewing a decision—

- (a) the sitting of the Commission shall be presided over—
 - (i) where the Chief Commissioner is one of the three Commissioners—by the Chief Commissioner; or
 - (ii) in any other case—by a Deputy Chief Commissioner appointed by the Chief Commissioner for the purpose;
- (b) the Commission may act on evidence and inquiries taken or made, as the case may be, by one of those Commissioners, if that Commissioner is so authorized by the other two Commissioners; and
- (c) the opinion of the Commission shall be—
 - (i) where there is a majority opinion—that opinion; or
 - (ii) in any other case—the opinion of the Commissioner presiding.

37. PROCEDURE.

The provisions of Part IV, *mutatis mutandis*, apply to and in relation to a review of a decision under this Division.

Division 3.

Appeals to National Court.

38. RIGHT OF APPEAL.

(1) A person aggrieved by a decision of the Commission, whether after review under Division 2 of this Part or otherwise, may appeal to the National Court within 90 days after the decision or the review of the decision.

(1A) For the purposes of Subsection (1), in relation to a final order under the *New Guinea Land Titles Restoration Act 1951* the period for appeal runs from the date on which the written final order is issued by the Commission.

(1AA) Notwithstanding anything in Subsection (1) or (1A), a Judge may, where he thinks it desirable in the interests of justice to do so, extend the time for appeal, but no such extension shall be granted after the Registrar of Titles has, in pursuance of the decision of the Commission, made any entry in a Register kept by him or issued any documents of title.

(1AB) The power to extend the time for appeal given under Subsection (1AA) applies whether or not, in any particular case, the time for appeal had expired at the date of commencement of the *Land Titles Commission (Appeals) Act 1970* or has expired at the time when application is made to a Judge to extend the time for appeal under that subsection.

(2) An appeal under Subsection (1) may be made only on the ground that—

- (a) the Commission has exceeded its jurisdiction;
- (aa) the decision was against the weight of the evidence;
- (b) the hearings of the Commission were conducted in a manner contrary to natural justice; or
- (c) the Commission was wrong in law.

(2A) In Subsection (2)(aa), “evidence” means all information, facts, matters and things (including hearsay evidence, expressions of opinion and the results of any inquiries or investigations made by the Commission under Section 15(1), or Section 36(4), in relation to the decision appealed against) that were properly before or present to the mind of the Commission and which the Commission ought properly to have taken into account in arriving at the decision appealed against, together with all inferences proper to be drawn therefrom.

(3) In this or any other Act in force in Papua New Guinea, a reference to a decision of the Commission shall be read as a reference to a decision of the Commission as affected by the decision on an appeal under this section.

38A. POWERS OF NATIONAL COURT ON APPEAL.

(1) On an appeal under Section 38 against a decision of the Commission, the National Court may require the Commission to furnish to it–

- (a) the record of the evidence taken by the Commission;
- (b) copies of all documents before the Commission;
- (c) the record of any inquiries or investigations made by the Commission under Section 15(1), or Section 36(4), in relation to the matter of the decision; and
- (d) the reasons for the decision,

certified as correct by the Commission.

(2) Upon the hearing of the appeal, the National Court shall inquire into the matter and may–

- (a) adjourn the hearing from time to time;
- (aa) receive fresh evidence if in the opinion of the Court that evidence is relevant and the party seeking to rely on it was not negligent in failing to adduce it before the Commission;
- (b) [*Repealed.*]
- (c) if the justice of the case so requires, substitute for the decision any decision that might have been given by the Commission; or
- (d) remit the case in whole or in part for hearing or for further hearing before the Commission.

(3) Where the records which may be required to be furnished under Subsection (1) in relation to an appeal are in the opinion of the National Court not adequate to allow the Court to come to a proper decision on the appeal, the Court shall–

- (a) require the Commission to furnish to it any further information, matter or thing relating to the decision; or
- (b) remit the case in whole or in part for hearing or further hearing under Subsection (2)(d).

38AA. DEPOSIT ON APPEAL.

(1) In addition to any filing fees, a party lodging an appeal shall pay a deposit in the prescribed amount or according to the prescribed amount or according to the prescribed scale.

(2) The National Court—

(a) shall, if the appellant gains an order in his favour; and

(b) may, in any other case,

order the return of the deposit in whole or in part to the appellant.

PART VA. – SETTLEMENT OF DISPUTES, ETC.

38B. AGREEMENTS FOR SETTLEMENT.

(1) At any stage of any hearing or proceedings before the Commission or the National Court under this Act or the *New Guinea Land Titles Restoration Act 1951*, the parties may agree upon an amicable settlement of the matter, upon such terms and conditions as are agreed upon.

(2) The agreement for settlement may include a waiver of any rights or alleged rights by any party, including—

(a) the Custodian for Trust Land in any capacity, in defeasance of the rights of any person holding under or through him; and

(b) the owners or alleged owners of any customary land not only on behalf of themselves but also on behalf of all other persons who would otherwise have subsequently become entitled to the land by custom, and in defeasance of the customary rights of those persons.

(3) An agreement for settlement shall be made or incorporated into the decision of the Commission on the matter in question or the decision of the National Court on appeal, as the case may be, unless the Commission or the Court is satisfied that it would be improper so to do.

(3A) Where an agreement for settlement provides for payment of compensation, that provision may be enforced—

(a) where the amount or value of the compensation, as agreed, does not exceed K2000—as if it were an order of a District Court; and

(b) where the amount or value of the compensation, as agreed, exceeds K2000—as if it were an order of the National Court.

(4) For the purposes of any appeal to or from the National Court, a refusal to make or incorporate an agreement for settlement into a decision of the Commission or the National Court shall be deemed to be a decision or order of the Commission or the Court, as the case may be.

39. [REPEALED.]

PART VI. – REGULATIONS AS TO PRACTICE, PROCEDURE, ETC.

40. REGULATIONS TO PROVIDE FOR CERTAIN MATTERS.

(1) The Regulations may make provision for regulating and prescribing the practice and procedure to be followed in matters before the Commission, and for regulating and prescribing all matters incidental to or relating to any such practice and procedure or which are necessary or convenient to be prescribed for the conduct of any business of the Commission.

(2) Where a matter of practice or procedure is not provided for in the Regulations, the Commission may deal with the matter in its discretion as the justice and convenience of the case requires.

PART VII. – COMPENSATION FOR DEPRIVATION OF INTERESTS.

41. DEPRIVATION OF INTERESTS UNDER DECISIONS, ETC.

(1) Where, in the opinion of the National Court, by a decision of the Commission, or by any registration, entry in a Register, document or thing made, issued or done in pursuance of any such decision, a person (other than a party to the proceedings or matter) is deprived of any land, and compensation or damages for that deprivation has or have not been recovered and is or are not recoverable under any law in force in Papua New Guinea, the National Court may make an order for the payment to that person of such sum as the Court thinks just as compensation for the land of which he has been deprived.

(2) A sum ordered to be paid under Subsection (1) shall be paid by the State out of moneys appropriated for the purpose or, if the National Court so orders, out of the Assurance Fund established by the *Land Registration Act 1981*.

(3) . . .

PART VIII. – MISCELLANEOUS.

42. OWNERSHIP OF CUSTOMARY LAND FOR CERTAIN PURPOSES.

(1) Subject to the Subsection 2, for the purposes of the Commission, in relation to the ownership of customary land–

(a) no account shall be taken of, or reference made to, persons other than persons living at the relevant date;

(b) living persons who, under custom, are regarded as owners of customary land shall be treated as the beneficial owners of that land by custom; and

(c) without otherwise limiting the discretion of the Commission to inquire into and determine the existence of custom relating to land, where a native exercises a customary right to exclude others from land and that right is recognized and not disputed by other natives, that fact is *prima facie* evidence that the land is customary land owned by that first-named native.

(2) Nothing in Subsection (1) shall operate or be taken to operate so as to defeat any customary rights which exist or may come into existence in favour of any person.

43. INFANT NATIVES.

For the purposes of the Commission and notwithstanding anything to the contrary in any other law in force in Papua New Guinea, the Commission may, if it considers it equitable so to do, agree to any matter or thing on behalf of a native who is an infant.

44. FINDINGS OF NATIVE LAND COMMISSION.

For the purposes of this Act, the Commission shall accept findings of the Native Land Commission under the *Native Land Registration Act 1952*, subject to any appeal under that Act.

45. REFUSAL OF WITNESSES TO ATTEND.

A person who has been duly summoned as a witness before the Commission, and to whom reasonable expenses of conveyance and attendance have been tendered, shall not, without reasonable excuse (proof of which lies upon him)–

- (a) refuse or fail to attend in obedience to the summons; or
- (b) refuse to take an oath or make an affirmation as a witness when so required by the Commission.

Penalty: K100.00.

46. PROTECTION OF OFFICERS.

(1) A Commissioner or other person appointed or employed for the purposes of the Commission is not personally liable for anything done or omitted to be done by him in good faith in the exercise of his powers or the performance of his duties.

(2) An action taken by a person in respect of the marking of boundaries and the preparation of plans for the purposes of the Commission shall be deemed not to contravene any law in force in Papua New Guinea relating to surveys, but nothing in this Act contained shall be deemed to authorize a person to obliterate, remove or deface a distinguishing mark or land mark or beacon erected or placed on land under any such law.

46A. MARKING OF LAND BY COMMISSION.

The Commission or a Commissioner may place such marks on any land, or cause such marks to be placed on any land, the subject of a proceeding before the Commission or of a decision of the Commission or within an adjudication area as it or he considers necessary or desirable.

47. LEGAL REPRESENTATION.

Subject to Section 50, a person who is entitled to be heard at any hearing or proceedings before the Commission may be represented at that hearing or those proceedings by a lawyer, an officer of the Public Service or other person who has first obtained the leave of the Commission.

48. CONTEMPT OF COMMISSION.

(1) A person shall not–

(a) during any hearing or proceedings held before the Commission—
(i) wilfully interrupt the hearing or proceedings;
(ii) conduct himself disrespectfully towards the Commission or a Commissioner; or
(iii) assault or wilfully obstruct a person in attendance at that hearing or those proceedings; or
(b) refuse or fail to comply with an order or direction lawfully made or given by the Commission.

Penalty: K100.00 or imprisonment for three months.

(2) Notwithstanding anything in Subsection (1), the Commission has the same power to punish contempts as is possessed by the National Court.

(3) The provisions of Subsection (2) do not apply to or in relation to an Assistant Commissioner exercising jurisdiction under Section 15(4).

49. OBSTRUCTION OF COMMISSION OR DEMARCATION COMMITTEE.

A person shall not in any way hinder or obstruct a Commissioner or a member of a Demarcation Committee in the exercise or performance of any of his powers, functions or duties under this or any other Act.

Penalty: K100.00 or imprisonment for 3 months.

49A. MOVING, ETC., OF LAND MARKS.

A person shall not, unless authorized by or under this Act or by the Commission, a Commissioner or the Chairman of a Demarcation Committee (the burden of proof of which lies upon him), wilfully or negligently remove, obliterate or deface a mark placed on any land by a Demarcation Committee acting or purporting to act under Section 21(2) or Section 23, or by the Commission or a Commissioner acting or purporting to act under Section 21 or Section 46A.

Penalty: K200.00 or imprisonment for 6 months.

50. DUTY OF CUSTODIAN FOR TRUST LAND.

In connection with any proceedings, matter or thing before the Commission, it is the duty of the Custodian for Trust Land to take such action (including arranging for legal or other representation) as to him seems necessary or desirable to establish, further and protect the interests of natives in or in relation to customary land.

51. SERVICE ON NATIVES.

(1) Where, in connection with any proceedings, matter or thing before the Commission, a notice or thing is to be given to or served on natives as the owners or alleged or purported owners of customary land, it may, whether or not it has been given to or served on those natives, be given to or served on the Custodian for Trust Land, which giving or service shall, subject to any order to the contrary by the Commission, be deemed to be good service on those natives.

(2) Where a notice or thing is given to or served on the Custodian for Trust Land under Subsection (1), he shall, unless he is satisfied that the notice or thing has in fact been given to or served on the natives whom it affects—

(a) take all practicable steps to give the notice or thing to, or serve it on those natives;

(b) post a copy of the notice or thing on a conspicuous place on the land to which it relates; and

(c) notify details of the notice or thing in the area in which the land is situated by any method by which it is customary to transmit orders or news within that area.

(3) Where the Custodian for Trust Land has taken action in accordance with Subsection (2) and is not satisfied that the natives whom the notice or thing affects either have been given or served with the notice or thing or have had reasonable opportunity of obtaining details of the notice or thing, he may apply to the Commission for an order as to the sufficiency or otherwise of service, and the Commission may make such order in the premises as to it seems just.

52. STATE TO ASSIST IN RELATION TO CUSTOMARY RIGHTS.

The State shall, in all proceedings before the Commission, assist the Commission in its investigation and determination, and, in particular, shall make available to it all documents and information relating thereto and available to the State.

53. COPIES OF FINDINGS TO BE SENT TO DISTRICT OFFICES.

A certified copy of a decision of the Commission shall be forwarded to and held in the District Office of the District in the Province in which the land the subject of the decision is situated.

53A. FEES.

(1) There shall be paid such fees in respect of proceedings under this Act as are prescribed.

(2) The fees prescribed under this Act may vary from area to area in Papua New Guinea.

54. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Without limiting in any way the operation of Subsection (1), the Regulations may provide for—

(a) the appointment of a Registrar, Deputy Registrar and other officers of the Commission; and

(b) the establishment of a Central Registry of the Commission and regional registries of the Commission.

PART IX. –

SCHEDULE 1

Sec. 7.

Oath.

“I, A.B., do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to Law, that I will well and truly serve Her in the office of the Chief Commissioner (*or Deputy Chief Commissioner or Senior Commissioner or Commissioner, Assistant Commissioner or acting Commissioner, as the case may be*) under the *Land Titles Commission Act 1962* and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!”

Affirmation.

“I, A.B., do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of Chief Commissioner *or Deputy Chief Commissioner (or Senior Commissioner or Commissioner, Assistant Commissioner or acting Commissioner, as the case may be)* under the *Land Titles Commission Act 1962* and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.”

Office of Legislative Counsel, PNG

^[1] Section 6 Subsection (1) amended by No. 97 of 2006, Sched. 1.