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Tuvalu

FORESHORE AND LAND RECLAMATION ACT

2008 Revised Edition

CAP. 46.10



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FORESHORE AND LAND RECLAMATION ACT

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Tuvalu

FORESHORE AND LAND RECLAMATION ACT

AN ACT DECLARATORY OF THE OWNERSHIP OF THE FORESHORE AND REGULATING CERTAIN RECLAMATION PROJECTS¹

Commencement [10th June 1969]

1 Short title

This Act may be cited as the Foreshore and Land Reclamation Act.

2 Interpretation

In this Act unless the context otherwise requires —

“**foreshore**” means the shore of the sea or of channels or creeks that is alternately covered and uncovered by the sea at the highest and lowest tides;

“**reclamation of land**” or “**reclamation**” includes the construction of causeways, bridges, viaducts, piers, docks, quays, wharves, embankments, sea-walls, landing-places and other structures;

“**sea-bed**” means the bed of all territorial and inland tidal waters.

3 Declaration of ownership of foreshore and sea-bed

(1) Subject to the public rights of —

- (a) navigation and fishing; and
- (b) passing over the foreshore, and

to any private rights that may exist in or over the foreshore or the sea-bed, the ownership of the foreshore and sea-bed vests in the Crown.

(2) No person shall remove from the foreshore of any part of Tuvalu any sand, gravel, reef mud, coral or other like substance without having first obtained

from the Kaupule in whose area of authority such foreshore lies a licence for that purpose.

- (3) A licence required by subsection (2) may be issued subject to such conditions as the Kaupule thinks fit.
- (4) A person who contravenes subsection (2) or a condition subject to which a licence required by that subsection was issued shall be liable to a fine of \$1,000.²

4 Minister may authorise undertaking

- (1) Subject to section 11(1) the Minister may, in accordance with this section, authorise the reclamation of land over and upon the foreshore or the sea-bed irrespective of the ownership of land bordering on or of whether any land borders on such foreshore or sea-bed.
- (2) Notification of the proposed reclamation shall be published —
 - (a) in two successive issues of a government publication;
 - (b) by being broadcast on two successive days over the Tuvalu radio; and
 - (c) by posting at each police station on the island where the land is to be reclaimed.
- (3) A notification under subsection (2) shall —
 - (a) describe the proposed reclamation and give the approximate area to be occupied in connection therewith; and
 - (b) call upon all persons having objections to the reclamation or any claims of private right in respect thereof to submit to the Lands Officer before the expiration of such period, being not less than 6 weeks, as may be specified in such notification, such objections or claims in writing specifying the nature thereof and giving an estimate of any loss which it is alleged would be incurred by reason of the extinguishment of any private right.
- (4)
 - (a) Whenever claims or objections are submitted pursuant to subsection (3)(b) and the Minister considers it expedient so to do, he may appoint one or more persons to hold an inquiry on such matters as he may set out in the terms of reference.
 - (b) Such person or persons shall keep or cause to be kept a record of any evidence taken at the inquiry and shall transmit the same together with a report of their findings to the Minister.
- (5) The Minister may, after considering the proposed reclamation together with all objections and claims submitted and, where an inquiry has been held, the evidence taken by, and the report of the person or persons holding the inquiry, authorise such reclamation with or without modifications.

- (6) A notification of such authorisation together with a description of the proposed reclamation shall be published at the Public Office of the Government.

5 Not applicable to causeways and landing places constructed by a public body

Nothing in section 4 shall apply to the construction of causeways and of landing-places by, or on behalf of, the Government or by local government councils.

6 Extinguishment of rights

Upon publication of the authorisation of a proposed reclamation or upon the construction of a causeway or landing-place, all public and private rights of navigation or fishing and rights ancillary thereto, all public and private rights of access or user, and all other public or private rights (if any) in, upon or over the foreshore or sea-bed occupied by the proposed reclamation or by the causeway or landing-place shall be extinguished and cease to exist.

7 Limitation of claims

- (1) Save as provided by this Act, no claim shall at any time be made, action brought or continued in respect of the extinguishment under section 6 in whole or in part of any public or private right, or in respect of the injurious affection, resulting from the reclamation, of any public right.
- (2) Any person who submitted a claim of private right in accordance with section 4(4) may, within 3 months of the notification under section 4(6), submit a claim in respect of the extinguishment of such private right.
- (3) Any person whose private right may have been extinguished by the construction of a causeway or landing-place may within 3 months of the completion of such causeway or landing-place, submit a claim for compensation in respect of the extinguishment of such private right to the public body responsible for the construction of the causeway or landing-place.

8 Jurisdiction over and determination of claims

- (1) The Senior Magistrate's Court where the value of the claim is not more than \$1,000, or in other cases, the High Court, shall hear and determine any claim for compensation under section 7 in the same manner as any civil action instituted in such court:

Provided that where a claim made under section 7 rests upon a title liable to registration by the Lands Court under the Native Lands Act, the claim shall not be entertained unless the title upon which it rests had been registered prior

to the notification of authorisation under section 4(6) or prior to the construction of the causeway or landing-place, as the case may be.

- (2) Notwithstanding subsection (1) the Minister or the local government council, as the case may be, may enter into an agreement with any claimant for the compromise or settlement of his claim.

9 Vesting of reclaimed land

- (1) Subject to subsection (2) any land reclaimed otherwise than under section 11(1) shall vest in the Crown.
- (2) Causeways and landing-places constructed by a Kaupule shall, subject to the right of the Minister to call for their surrender to the Crown at any time, vest in that council.

10 Agreements relating to reclaimed land

The Minister may enter into an agreement with any person either before or after the completion of an undertaking for the sale, lease or the granting of any other rights over the reclaimed land or other works.

11 Landowner's liberty to fill foreshore not to constitute a right

- (1) Without prejudice to any public or private rights that may be affected thereby, this Act shall not apply to the filling by a landowner of the whole or any portion of the foreshore that borders on his land.
- (2) Nothing in subsection (1) shall be deemed to recognise or create any right or claim, or any greater right or claim than but for that subsection would exist and be recognised and enforceable by action in court.

12 Savings

- (1) Nothing in this Act shall be deemed to be in derogation of any of the powers, rights and prerogatives of the Crown.
- (2) Nothing in this Act shall affect section 28 of the Harbours Act³ (which provides, *inter alia*, for the grant of a licence for the erection of boat-sheds, wharves or landing-places in harbours), or any harbour works that may be constructed under that Act.

13 Regulations

The Minister may make regulations —

- (a) prescribing the form of licence required by section 3(3) and the fees to be paid therefor;
- (b) further to control the removal from the foreshore of any substance referred to in section 3(3).

ENDNOTES

¹ 1990 Revised Edition, Cap. 26 - Acts 5 of 1969, 3 of 1972, 2 of 1974, 7 of 1978

Amended by Act 4 of 2009, commencement 6 July 2009

² Amended by Act 4 of 2009

³ Cap 48.08