

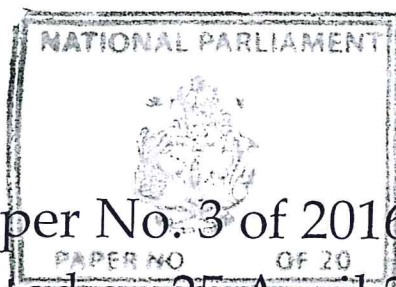


National Parliament of Solomon Islands

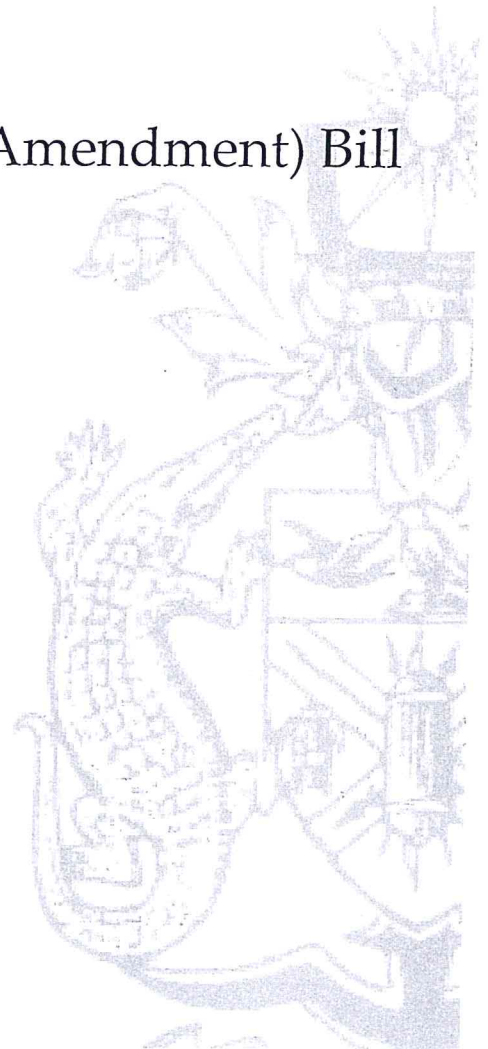
Bills and Legislation Committee

Committee Report

Report on the Land and Titles (Amendment) Bill
2016 (No. 6 of 2016)



NP-Paper No. 3 of 2016
Presented on 25 April 2016
National Parliament Office



COMMITTEE MEMBERS

The current members of the Bills and Legislation Committee (10th Parliament) are:

Hon. Connelly Sandakabatu, MP (Chairman)

Hon. Jeremiah Manele, MP

Hon. Dr Derek Sikua, MP

Hon. Rick Hou, MP

Hon. Matthew Wale, MP

Hon. Dr Culwick Togamana, MP

Hon. Steve Abana, MP

Hon. Commins Aston Mewa, MP

Hon. Peter Tom, MP

Hon. Namson Tran, MP

Secretariat:

Wilson Anii

Wilson Orisi

Jasmine Waleafea

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Contacts

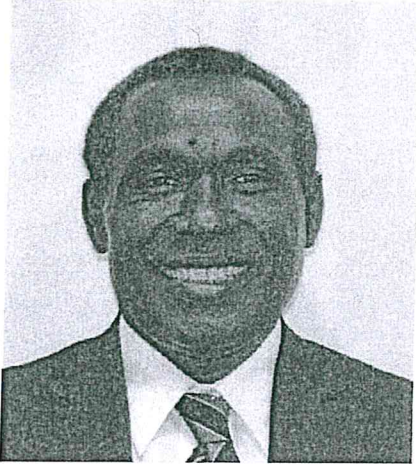
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CHAIR'S FOREWORD



Hon. Connelly Sandakabatu, MP Chairman

REPORT OF THE BILLS AND LEGISLATION COMMITTEE

Mr. Speaker,

Pursuant to Standing Orders No. 71 (g) of the National Parliament of Solomon Islands, it is an honour and pleasure for me Sir, to present the Report of the Bills and Legislation Committee on the Inquiry into the **Land and Titles (Amendment) Bill 2016** for laying before Parliament.

A handwritten signature in black ink, appearing to read 'Connelly', written over a large, stylized circular flourish.

Hon. Connelly Sandakabatu

Chairman

Bills and Legislation Committee

25 April, 2016

COMMITTEE FUNCTIONS

The Committee is established under *Standing Order* 71; an Order made pursuant to the *Constitution*¹ and has the functions, together with the necessary powers to discharge such, to:

- (a) examine such matters as may be referred to it by Parliament or the Government;
- (b) review all draft legislation prepared for introduction into Parliament;
- (c) examine all subsidiary legislation made under any Act so as to ensure compliance with the Acts under which they are made;
- (d) monitor all motions adopted by Parliament which require legislative action;
- (e) review current or proposed legislative measures to the extent it deems necessary;
- (f) examine such other matters in relation to legislation that, in the opinion of the Committee require examination; and
- (g) make a written report to each Meeting of Parliament containing the observations and recommendations arising from the Committee's deliberations.

¹Section 62, *Constitution of Solomon Islands* 1978.

EXECUTIVE SUMMARY

The Land and Titles (Amendment) Bill 2016 allows the Land Board to resume for public purposes all or part of a fixed term estate automatically created under Section 100 of the Act. The Committee in conducting the inquiry looks at the power of resumption of the commissioner of lands, compensations for resumptions, reasonable notice period for the FTE holder, and Forfeiture of fix term estates.

The Committee welcomes this reform since it seeks to improve the land administration system by granting the power to the Commissioner of Lands to resume land for government interest for public purpose. However, the Committee is greatly concerned that other aspects of our land administration system are equally in dire need of reform.

This Bill is a step forward in improving the land administration system. The Committee recommends it to the House.

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1.0 INTRODUCTION

This Report contains the findings and recommendations of the Bills and Legislation Committee ('the Committee') after having reviewed the Land and Titles (Amendment) Bill 2016 ('the Bill') as required under the Standing Orders of the National Parliament of Solomon Islands ('the Standing Orders').

The Bill was submitted on 30th March 2016 to the Speaker through the Clerk to Parliament as required under the *Standing Orders*². The Committee deliberated on 4th April and resolved to conduct an inquiry into the Bill and invited relevant stakeholders³ to appear before the Committee and make presentations on the contents, policy matters, and intentions of the Bill.

Hearings into the Bill were held on the 12th of April 2016 at the National Parliament Building. The List of witnesses that appeared before the Committee and minutes of these proceedings are contained in Appendix 1 and 2 respectively.

² *Standing Order 44 (1)*

³See Appendix 1

2.0 BACKGROUND INFORMATION

The Land and Titles (Amendment) Bill 2016 (the "Bill") seeks to amend the *Land and Titles Act* [Cap.133] (the "Act") to provide a right to resume certain fixed term estate for public interests. The Land and Titles Act (Cap.133) was enacted in 1968, to amend and consolidate the law relating to land tenure, land acquisition, the registration of interests in land and related matters concerning land and title to land.

The overall objective of the Bill is to extend the Commissioner's right of resumption to fixed term estates or parts of fixed term estates that were automatically created under section 100, where there was no actual grant. This amendment is very important in that it will assist the Land Board to deal with specific land for public interest and to open up land for development. The Act also provided for the overriding interests in registered land, including the right of resumption.

2.1 Current practice of land allocation

The Commissioner of Lands (the "Commissioner"), assisted by a Deputy Commissioner, a Registrar of Titles, Assistant Registrars, Surveyors, Title Examiners, and other officers administers the Act. The power to hold and deal with interests in land for and on behalf of the government is vested on the Commissioner, subject to directions by the Minister responsible for land matters. It is the duty of the Commissioner to advise the Minister on matters concerning land policies.

The Commissioner also has the power under the Act to grant or transfer estates to any person, and impose conditions on such grants or transfers. The Commissioner also has the power to forfeit an estate, if the owner fails to pay rent or fails to perform any obligation incidental to the estate.

2.2 Proposed changes to the Act

The Bill seeks to allow the Land Board in the Ministry to resume for public purpose all or part of fixed term estate automatically created under section 100 of the Lands and Titles Act.

Under the current Act it was not possible for government to resume land for government interest because the Commissioner has no power under the Act to resume land for public purpose.

Furthermore, the other factors that restrain the Commissioner's power to resume land under Section 100 is the Court of Appeal ruling in 1977 where the Court held that the Commissioner has

no power to resume any portion of land that has no grant of formal document granted at the time of independence.

This amendment aims to extend the Commissioner's right of resumption to fixed-term estates or parts of fixed-term estates that were automatically created under section 100 of the principle Act, where there was no actual grant. Amongst others is to enable other lands locked up by current legislations for development.

3.0 ISSUES DISCUSSED

The following are the Committee's observations regarding the Bill.

3.1 Power for Resumption

The Committee noted that the Commissioner of Lands was mandated under the Act to hold Perpetual Estate (PE) and Fixed Term Estate (FTE) title on behalf of the Government of Solomon Islands. This was expressed clearly by the Commissioner of Lands during the hearing.⁴ Furthermore, as described in sections that followed the Commissioner also has the authority under the Act to forfeit land.

The Committee was also informed during the hearing that the PE or freehold interest in land held beneficially by non-Solomon Islanders were automatically converted to a FTE⁵, and that the PE for such land were held by the Commissioner of Lands on behalf of the Government of Solomon Islands.⁶

Resumption

The Committee noted that the resumption of Land is only for public purpose. This is if the government needs the land for resumption for public purposes such as for school or clinic, and road that would be compensated payable.⁷ Although this would allow undeveloped land to be developed for public interest, the Committee is concern that government policies behind the government interest to resume land for public purpose must be well assessed to avoid confusion afterwards.

The Commissioner of Lands in response to the above concern pointed out that the purpose of this amendment is to create avenue where locked up land under the existing law can be made available for government to take back and be used for public purposes.⁸

⁴ Nelson Naoapu, Commissioner of Lands, MLHS, Oral Evidence, 12th April 2016.

⁵ Section 100, Land and Titles Act [Cap.133]

⁶ *Objectives and Reasons*, Land and Titles (Amendment) Bill 2016

⁷ Above.n15.P.3

⁸Above.n6, P.3

Resumption of PE title by individual owner

The Committee was concerned that the PE that returns to the individual and are not covered under Section 100 may have a negative implication on this amendment because the Commissioner of Lands does not have the right and power over such land under the Act.

In response the Commissioner of Lands explained that a lot of lands which were held by non-Solomon Islanders, especially companies such as Leavers and others that are affected by section 100, the PE which they have will be automatically converted. This means that they will have the FTE and then the Commissioner on behalf of the Government will have the PE.⁹

Reasonable Notice Period

It was highlighted during the hearing that six months' notice for resumption is reasonable and gives ample time for the FTE holder to be cleared from a portion of land resumed for public purpose.

In evidence, the Commissioner of lands highlighted that although the Commissioner of Lands has the power to forfeiture land, it is important that a notice before forfeiture to person who fails to develop his or her land must be given by the Ministry.

The Committee understands that when notice is given for the forfeiture, the FTE holder has the right to appeal the forfeit notice.

The Committee is concerned that this amendment may give the Commissioner of Lands the power to resume land for government interest; however, the politics behind government interest must be well assessed.

3.2 Fix Term Estates and Land Acquisitions

Alienated Land by Virtues of Section 100

Clause 3 (c) of the Bill provides for the payments of compensations for Fix Term Estates and Alienated Land under resumptions. This provision will assume that FTE and Alienated Land automatically created by the virtues of Section 100 of the current Lands and Title (Amendment) Act 2012; which are in custodian of Non- Solomon Islanders may subject to resumptions when required.

⁹ Nelson Naoapu, Commissioner of Lands, MLHS, Oral Evidence, 12th April 2016.

Unlike other FTE awarded after July 7th 1978, the Commissioner of Land nor the Land Board are grantees to this mentioned alienated land. This has set limitation for the Commissioner of Lands and the Land Board to resume specific identified land for public interest.

The Committee was informed that resumption will be determined only on the basis of its necessity to have access to the land for public purposes. These resumptions of land for public purpose may include availing a land deemed idle and not being developed over a certain period of time, for the purposes of relocations or redistributions to other developers.

A six months' notice for resumption will be forwarded to the current title Holder of the said FTE before a reasonable compensation is to be paid to him or her.

Payments of Compensations

The Committee has also heard that compensations would be awarded according to certain terms and conditions set by the Land Board. The valuing of the land will not base purely on the land size and location but other factors as well.

Other factors include the condition of the land at the time of resumption. The "condition of the land" is defined both as the appreciation and deterioration status of the said land.

By appreciation it takes into account the developments on site at the time of resumption. This may include physical infrastructures and plantations for commercial purposes; such with the Lungga Land and Yandina on Russell Islands.

On deterioration, it weighs on activities that cause degradation to the land. An example would be the Hell's Point at Lungga. The land has been contaminated from the on-going exercises of bomb disposal.

Another factor that is taken into account as an attribute to the "condition of the land" is the remaining period for the FTE lease to the current Title Holder. The remaining period is also converted into monetary value to form part of the Compensation.

Compensations made for Resumption is to be paid only through the Ministry of Lands, Housing and Survey on behalf of the Solomon Islands Government and its Ministries.

Reasonableness of Compensation

The amount paid in Compensation for resumption must be reasonable. A valuation process will be conducted by the Office of the Valuer. The Valuer General then authorises the proceeding for the payments of the compensation.

In cases where the party affected does not agree to the terms of the compensation, he or she has the right to engage a private Valuer to make valuations.

The office of the Valuer General will consider both Valuation Reports and make negotiations with the affected party to reach an agreement.

3.3 Conditions for forfeiting of Titles

The Powers of the Commissioner of Lands

With this amendment, the Commissioner of Lands may exercise his or her power to forfeit a FTE or a PE award. This action may happen if a land is not developed within three years of the award. In such a case the Commissioner of Lands may forfeit the land or uses his or her power for resumption.

The affected party may appeal the cause for the act of forfeiting by the Commissioner of Lands; thus the objectives of this Bill to bring certainty to the loopholes in the current Act.

However, in the case of a forfeited awarded Title FTE or PE, no compensations will be paid to the affected party.

The Committee welcomes this aspect of the reform. However, this provision should be extended so that an estate may also be forfeited in the event the owner of the estate is convicted of an offence relating to the possession, manufacture, and sale of dangerous and illicit drugs.

4.0 RECOMMENDATIONS

At the conclusion of the hearing and based on the evidences collected at the hearing, the Committee makes the following recommendation –

Recommendation

The Committee agrees to the amendment proposed by the Land and Titles (Amendment) Bill 2016 and recommends that the House do consider and pass it.

END OF REPORT

5.0 APPENDICES

Appendix 1: Witnesses

Date	Name	Position & Organisation
Tue 4 April 2016	Stanley Wale	Permanent Secretary, Ministry of Lands, Housing & Survey
	Nelson Naoapu	Commissioner of Lands, Ministry of Lands, Housing & Survey
10.55 am	Alan McNeil	Chief Technical Adviser, SPC, Ministry of Lands, Housing & Survey
	Mary Tegavota	Chief Legal Officer, Ministry of Lands, Housing & Survey
	Catriona Steele	Crown Counsel, Attorney Generals Chamber

Appendix 2: Minutes of Proceedings



NATIONAL PARLIAMENT OF SOLOMON ISLANDS

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BILLS AND LEGISLATION COMMITTEE

Minutes of Proceedings

Inquiry into the Lands and Titles (Amendment) Bill 2016

Date: Tuesday 12th April, 2016

Venue: Parliament Conference Room 2

Time: 10:55am – 11:17am

1. Members Present

Hon. Connelly Sandakabatu (Chairman)

Hon. Jeremiah Manele

Hon. Rick Houenipwela

Hon. Matthew Wale

Hon. Dr CulwickTogamana

Hon. ComminsMewa Aston

Secretariat

Mr Wilson Anii, Committee Secretary

2. Welcome and Opening Prayer

The Chairman made opening remarks and welcomes the Permanent Secretary (PS) and other officials from the Ministry of Lands, Housing and Survey (MLHS), and the Attorney Generals Chamber. He then invites the PS to introduce his group and made his presentation.

3. Committee hearing into the Land and Titles (Amendment) Bill 2016

The Hearing proper commenced and the following witnesses were admitted:

Hearing Witnesses

Stanley Wale – Permanent Secretary, MLHS

Nelson Naoapu – Commissioner of Lands, MLHS

Alan McNeil – Chief Technical Adviser, SPC, MLHS

Mary Tegavota – Chief Legal Officer, MLHS

Catriona Steele - Legal Draftsman, Attorney General's Chamber

The PS made presentation before the committee.

The Committee questioned the PS, other MLHS officials and the Legal Draftsman on the contents of the Bill.

The PS and his officials answered, made clarification and commented on the Bill.

Evidence concluded and the Chair thanked the witnesses for their attendance and contribution on the Bill.

4. Adjournment

The Chair made closing remarks.

Hearing ended at 11:17am

