

No. 15 of 1963.

***Land (Tenure Conversion) Act 1963.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 15 of 1963.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Land (Tenure Conversion) Act 1963,***

An Act Relating to the Conversion of the Tenure of Customary Land into Individualized Tenure, and for other purposes.

**Preamble**

WHEREAS it is generally considered that a most efficacious method of promoting the agricultural development of a country and the economic well-being of its people and especially of its agricultural population lies in the provision of a method whereby guaranteed individual titles to land may be given to the owners thereof:

AND WHEREAS it is the fundamental policy of the Government of the Commonwealth of Australia and the Administration of the Territory of Papua and New Guinea that the interests of the native peoples of the Territory in land held in accordance with custom should be guaranteed and protected, and that, subject to that fundamental policy, there should be provision whereby those peoples may acquire such guaranteed individual titles to that land:

AND WHEREAS it is also considered that it is essential that the rights of the peoples of the Territory of Papua and New Guinea to land held in accordance with custom should, subject to the laws of the Territory, continue to be guaranteed to them, save insofar as they freely and in accordance with the law desire to exchange those rights for the benefits of such guaranteed individual titles:

AND WHEREAS it is further considered that such rights to land held in accordance with native custom and the right freely and in accordance with law to exchange such rights for guaranteed individual titles as aforesaid can best be promoted and safeguarded by an independent judicial tribunal charged with the duty of ensuring that those rights are so promoted and safeguarded and that any persons who might otherwise be injuriously affected are given adequate and proper recompense or other compensation:

AND WHEREAS the Legislative Council for the Territory of Papua and New Guinea has, by the *Land Titles Commission Act 1962*, established such an independent

judicial tribunal which can properly be charged, to the benefit of all the peoples of the Territory, with the said duties:

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 1949-1963*, as follows:–

**PART I. – PRELIMINARY.**

**1. SHORT TITLE.**

This Act may be cited as the *Land (Tenure Conversion) Act 1963*.

**2. COMMENCEMENT.**

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

**3. PARTS.**

. . . . .

**4. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“**adjudication area**” means an area declared to be an adjudication area under the *Land Titles Commission Act 1962*;

“**adjudication record**” means an adjudication record prepared under the *Land Titles Commission Act 1962*;

“**business group**” means a business group incorporated under the *Business Groups Incorporation Act 1974*;

“**citizen**” includes–

- (a) a business group; and
- (b) a land group; and
- (c) a customary kinship group; and
- (d) a customary descent group; and
- (e) a customary local group or community;

“**Commission**” means the Land Titles Commission;

“**conversion order**” means a conversion order made under Section 9;

“**conversion plan**” means a conversion plan prepared under Section 8;

“**custom**” means the customs and usages of indigenous inhabitants of the country existing in relation to land or the use of land at the time when and the place in relation to which the matter arises, regardless of whether or not the custom or usage has existed from time immemorial;

**“customary land”** means land that is owned or possessed by an automatic citizen or community of automatic citizens by virtue of rights of a proprietary or possessory kind that belong to that citizen or community and arise from and are regulated by custom;

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

**“Land Board”** means the Land Board established under Section 6 of the *Land Act* (Chapter 185);

**“land group”** means a land group incorporated under the *Land Groups Incorporation Act 1974*;

**“registration”** means registration under Section 11(1)(a) or (b);

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

**PART II. – CONVERSION OF TENURE.**

***Division 1.<sup>1</sup>***

. . . . .

**5 - 6<sup>2</sup>.** [*Repealed.*]

***Division 2.***

***Applications for Registration.***

**7. APPLICATION FOR REGISTRATION.**

<sup>3</sup>Subject to this Act, a citizen may apply to the Commission in the prescribed form for registration in his or its name of any customary land or of an interest in customary land.

**8. DEALING WITH APPLICATION.**

(1)<sup>4</sup> [*Repealed.*]

(2) When the Commission decides that an application under the last preceding section should be dealt with, the Commission shall–

- (a) prepare a conversion plan of the area in respect of which the application is made; and
- (b) publish notice of the application and of the conversion plan by such means as will in the circumstances ensure reasonable notice to all persons affected or likely to be affected thereby, or as is provided in the rules of the Commission; and
- (c)<sup>5</sup> specify in the notice a period, not being less than 30 days, within which a person may object to the application on the ground that he claims ownership of or an interest in or in relation to the land in respect of which the application is made and is not included under the application as owning or having that interest, or on the ground that he is incorrectly represented in the application as being agreeable to the registration.

(3) A conversion plan shall show the location and boundaries of the land the subject of the plan, and as far as practicable the ownership, or alleged ownership, of that land.

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<sup>1</sup> Division II.1 repealed by *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), s3.  
<sup>2</sup> Division II.1 repealed by *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), s3; Section 5 repealed by *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), s3; Section 6 repealed by *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), s3.  
<sup>3</sup> Section 7 repealed and replaced by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 4.  
<sup>4</sup> Section 8(1) repealed by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), s5(a).  
<sup>5</sup> Section 8(2)(c) amended by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 5(b); amended by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 5(b).



(4) Before proceeding to a hearing of an application or an objection, the Commission shall, at such times as are determined by it, arrange for any parties interested in the application to be shown the boundaries of the land the subject of the application or of the objection, as the case may be, and any boundary marks placed on the land.

## 9. CONVERSION ORDER.

(1) After the expiration of the period specified under Section 8(2)(c), the Commission shall consider the application and any objections thereto and, if satisfied that—

- (a)<sup>6</sup> subject to Subsections (3) and (4), the land the subject of the application is customary land; and
- (b) all persons interested in the land the subject of the application are in agreement with the application; and
- (c)<sup>7</sup> subject to Subsection (5), adequate provision has been made, whether by way of a cash payment or otherwise, for compensation to all persons whose interests by custom in the land would be abolished or reduced by the making of a conversion order; and
- (d) in all the circumstances it is proper that the application be granted,

the Commission shall, subject to Subsection (2) and to Part III, make a conversion order in accordance with this Division.

(2)<sup>8</sup> <sup>9</sup>The Commission shall not make a conversion order over land which should, in order to meet the need for the production of food for their own consumption by some or all of the owners of the land, remain customary land.

(3)<sup>10</sup> <sup>11</sup>Subject to Subsection (4), the Commission may, with the consent of the Minister, include in a conversion area an area of Government land as though it were customary land the subject of an application under this Part.

(4) The Commission may, with the consent of the Custodian for Trust Land, include in a conversion order trust land as though it were customary land the subject of an application under this Part.

(5)<sup>12</sup> <sup>13</sup>Where—

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<sup>6</sup> Section 9(1)(a) repealed and replaced by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 6(a)(i).

<sup>7</sup> Section 9(1)(c) amended by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 6(a)(ii).

<sup>8</sup> Section 9(2) amended by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 6(b).

<sup>9</sup> Section 9(2) amended by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 6(b).

<sup>10</sup> Section 9(3) repealed and replaced by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 6(c).

<sup>11</sup> Section 9(3) repealed and replaced by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 6(c).

<sup>12</sup> Section 9(5) added by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 6(d).

<sup>13</sup> Section 9(5) added by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 6(d).

- (a) the applicant is a business group or a land group and all the members of the group owning the land the subject of the application are members of that business group or land group; or
- (b) the application has been made by not more than six natural persons who are members of the group owning the land the subject of the application and the Commission is satisfied that a substantial number of that group have expressly waived the requirement of adequate provision for compensation,

the Commission does not require to be satisfied that adequate provision for compensation has been made.

## **10. PROCEDURE, ETC.**

(1) For the purposes of Section 9, the Commission may, where it considers it proper so to do, consider a number of applications and objections together, and may—

- (a) adjourn consideration of an application or objection in order to allow inquiries to be made as to any further applications or objections in relation to the same or any other land, or to allow any such applications or objections to be made; and
- (b) deem a person to have made an application or objection under this Part.

(2) In determining, for the purposes of Section 9, the persons interested in land the subject of an application, the Commission shall have regard to—

- (a) any finding by it as to the ownership of land affected by the application; and
- (b) any claim made under this Act to any other interest, in or in relation to land affected by the application.

(3) The Commission need not determine the claim of a person other than the applicant to have an interest in or in relation to land affected by an application under this Part if that person agrees to the application.

(4)<sup>14</sup> <sup>15</sup>Before deciding an application or objection or making a conversion order, the Commission shall assure itself that all persons interested understand the effect, or what would be the effect, of the application or objection or of the order, as the case may be, both in relation to the rights by custom which would be abolished and in relation to the rights which would be created.

## **11. FORM AND CONTENTS OF CONVERSION ORDER.**

(1) A conversion order shall direct the Registrar of Titles—

<sup>14</sup> Section 10(4) amended by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 7.

<sup>15</sup> Section 10(4) amended by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 7.

- (a) to register in the Register established under the *Land Registration Act 1981* the applicant or another person as the owner of an estate in fee simple in some or all of the land the subject of the application; and
- (b) to enter upon the relevant title registered under Paragraph (a) any lease, encumbrance or other estate or interest less than an estate in fee simple in favour of the applicant or some other person which in the opinion of the Commission should be so entered; and
- (c)<sup>16</sup> [*Repealed.*]
- (d) to take such further or other action in the premises as to the Commission seems just and proper.

(2) On a title registered under Subsection (1)(a), the Registrar of Titles shall endorse a statement that the title is subject to the conditions and restrictions imposed by this Act.

## **12. AMENDMENT OF CONVERSION PLAN.**

The Commission shall, if necessary, amend a conversion plan to conform with a conversion order.

## **13. PERMANENT MARKING OF BOUNDARIES.**

The Commission shall take such action as will ensure with reasonable certainty that the boundaries of land on a conversion plan are permanently identifiable on the ground.

## **14. NOTICE OF CONVERSION ORDER, ETC.**

The Commission shall publish, in the same manner as that in which a notice under Section 8 of this Act in relation to the application is published, a notice specifying where the conversion order and conversion plan may be inspected.

## **15. CONVERSION ORDER TO BE FORWARDED TO REGISTRAR OF TITLES.**

After the period limited by Part V of the *Land Titles Commission Act 1962* for review of or appeal against the decision of the Commission embodied in a conversion order has expired, and any proceedings on review have been completed and any appeals have been decided, the Commission shall certify the conversion order and conversion plan and forward them 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 carry into effect the conversion order.

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<sup>16</sup> Section 11(1)(c) repealed by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 8.

***Division 3.******Effect of Conversion Order.*****16. EFFECT OF ORDER.**

Upon the making of a conversion order, but subject to any decision on review or appeal under Part V of the *Land Titles Commission Act 1962*—

- (a) the land the subject of the order (other than land referred to in Section 11(1)(c)) ceases to be customary land, and the land and any right to the ownership or possession of the land, and any other right, title, estate or interest in or in relation to the land, cease in all respects to be subject to or regulated by custom; and
- (b) all rights, titles, estates and interests, whether legal or equitable and whether arising from or regulated by custom or otherwise, and whether *in rem* or *in personam*, subsisting before the date of the order, are abolished, other than such rights, titles, estates and interests as are specified in the order; and
- (c) the order has effect in respect of the land the subject of the order (other than land referred to in Section 11(1)(c)) in all respects as though the Registrar has taken the action referred to in Section 11(1)(a), (b) and (d) under the order, whether or not that action has been taken.

**16A. LAND THE SUBJECT OF A CONVERSION ORDER NOT TO BE CONVERTED INTO A SUBSTITUTE LEASE UNDER THE *LAND (OWNERSHIP OF FREEHOLDS) ACT (CHAPTER 359)*.**

<sup>17</sup>Land the subject of a conversion order shall not be converted into a substitute lease under the *Land (Ownership of Freeholds) Act 1976*.

**17. APPLICATION OF *REAL PROPERTY (REGISTRATION OF LEASES) ACT 1962*.**

The provisions of the *Real Property (Registration of Leases) Act 1962*, *mutatis mutandis*, apply to and in relation to a conversion order and a registration or entry made under any such order.

***Division 4.******Procedure, etc.*****18. HEARINGS TO BE PUBLIC.**

All hearings before the Commission under this Act shall be held in public.

<sup>17</sup> Section 16A inserted by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 10.

**19. HEARINGS TO BE AS CLOSE TO THE LAND AS PRACTICABLE.**

Except with the consent of the parties appearing before, or represented before, the Commission, all hearings before the Commission shall be held as close to the land concerned as is reasonably practicable.

**20. MINUTES OF EVIDENCE TO BE KEPT.**

Minutes of any evidence given at a hearing before the Commission shall be taken, and shall be subscribed by the Commissioner hearing the matter.

**21. REASONS FOR DECISION TO BE GIVEN.**

The Commission shall, if so required by an applicant or an objector, state its reasons, in writing, for any decision.

**22. LAND TITLES COMMISSION ACT NOT AFFECTED.**

Nothing in this Part contained shall be deemed to derogate the provisions of Part IV of the *Land Titles Commission Act 1962*.

**PART III. – AVOIDANCE OF FRAGMENTATION AND REGULATION OF DEALINGS.**

**23. APPLICATION OF PART III.**

The provisions of this Part do not apply to land registered, or to be registered, in the Register of Communally Owned Land.

*Note* The legislation governing registration in this Register (the *Lands Registration (Communally Owned Land) Act 1962* (No. 10 of 1963)) was suspended by the *Lands Registration (Communally Owned Land) Suspension Act 1969* (No. 11 of 1970), without any land having been registered in the Register.

**24. LIMITATIONS ON REGISTRATION.**

(1) The Commission shall not direct the registration of, and the Registrar of Titles shall not register, in pursuance of this Act, interests in a piece of land which is less in either area or frontage than the standard prescribed in relation to the purpose for which the land is likely to be used, or, if there is no standard prescribed, which is less than the Minister considers to be the minimum area or frontage adequate for that purpose.

(2) The Commission shall not direct the registration of, and the Registrar of Titles shall not register, in pursuance of this Act, more persons than six as joint tenants or tenants in common of any interest in land.

**25. FRAGMENTATION BY TRANSACTIONS.**

(1) The Minister shall not approve under Part XVII or XVIII of the *Land Act 1996* a dealing in land registered in pursuance of this Act where the dealing would result–

(a) in a piece of land which is less in either area or frontage than the standard prescribed for the purpose for which the land is likely to be used, or, if there is no such standard prescribed, unless he considers the area and frontage of all parcels resulting from the subdivision are not less than the minimum area and frontage adequate for that purpose; or

(b)<sup>18</sup> subject to Subsection (2), in an interest in land being owned by more persons than six as joint tenants or tenants in common.

(2)<sup>19</sup> <sup>20</sup>Subsection (1)(b) does not apply where the land is being owned by a business group or a land group.

**26. REGULATION OF DEALINGS.**

<sup>21</sup>In respect of land registered under this Act–

<sup>18</sup> Section 25(1)(b) amended by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 11(a).

<sup>19</sup> Section 25(2) added by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 11(b).

<sup>20</sup> Section 25(2) added by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 11(b).

- (a) subject to this section, the registered proprietor is competent to transfer or otherwise deal with the land in the same way, and to the same extent, as any other registered proprietor; and
- (b) the Registrar of Titles shall register against the proprietorship a limitation that—
  - (i) the land may be transferred or leased for a longer period than 25 years only with the consent of the Land Board; and
  - (ii) the land may be mortgaged or charged but, notwithstanding any law in force to the contrary, the mortgagee or chargee is not entitled—
    - (A) to remain in possession for more than 25 years; or
    - (B) to lease that land to a third party for more than 25 years; or
    - (C) to foreclose the right of the mortgagor or chargor to redeem the mortgaged or charged land; and
  - (iii) the land shall not be taken under a writ of execution or under or in consequence of a bankruptcy or insolvency, or in any similar or analogous manner; and
- (c) subject to Section 26A, the Minister shall not approve under Part XVII or XVIII of the *Land Act 1996* and the Registrar of Titles shall not register, a transfer or dealing contrary to a limitation registered under Paragraph (b).

## **26A. REMOVAL OF RESTRICTIONS UPON DEALINGS.**

<sup>22</sup>(1) Where—

- (a) the registered proprietor of land, the subject of a limitation under Section 26(b), desires to deal with that land in a manner contrary to that limitation or in a manner or with an intent rendered wholly or partially ineffective by reason of that limitation; and
- (b) the Minister is satisfied after due inquiry that the proposed dealing will not adversely affect the interests of the registered proprietor (and where the interests of a business group, land group, customary kinship group, customary descent group or customary local group or community are, or are likely to be, affected, the interests of that group or community),

the Minister may direct the Registrar of Titles to cancel the registration of the limitation and the Registrar shall act accordingly.

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<sup>21</sup> Section 26 repealed and replaced by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 12.

<sup>22</sup> Section 26A repealed and replaced by the *Land (Tenure Conversion) (Amendment) Act 1987* (No. 38 of 1987), Section 13.

(2) The provisions of Subsection (1) apply to and in respect of land registered under this Act whether before or after the date of commencement of the *Land (Tenure Conversion) Act 1967* (8 August 1968).

## **27. FRAGMENTATION BY DEVOLUTION.**

(1) If, under any law in force in Papua New Guinea, or any part of Papua New Guinea, relating to succession to property upon death, any land registered in pursuance of this Act devolves upon more than six persons, the Registrar of Titles shall so inform the Commission.

(2) Nothing in Subsection (1) prevents the Commission from taking, of its own motion, action under Subsection (3).

(3) In default of agreement between the beneficiaries to transfers of interests between themselves which would have the effect of reducing the number of proprietors to six or less, or to a sale of the land to not more than six persons, the Commission shall—

- (a) select by ballot not more than six of the beneficiaries and order that those beneficiaries—
  - (i) make such payment to the remaining beneficiaries as the Commission considers equitable; and
  - (ii) upon making that payment, be registered as proprietors of the land; or
- (b) order that the land be sold to not more than six persons by the legal personal representative of the deceased proprietor and the proceeds distributed in the same proportions as those in which the beneficiaries would otherwise be entitled to share in the land,

whichever it considers just and equitable.

(4) For the purposes only of Division V.3 of the *Land Titles Commission Act 1962*, an order under the last preceding subsection shall be deemed to be a decision of the Commission.



**PART IV. – CERTAIN FEES, ETC.**

**28. REGISTRATION FEES, ETC.**

The fees and contributions payable under the *Land Registration Act 1981* in respect of the registration in pursuance of this Act of any land which before registration was customary land, are one fourth of the fees and contributions which but for this section would be payable.

**29. FEES, ETC., ON DEALINGS.**

Fees, duty and contributions payable under an Act in force in Papua New Guinea or a part of Papua New Guinea, in respect of dealings subsequent to registration in land against which there is registered a limitation under Section 26 of this Act, are one fourth of the fees, duty and contributions which but for this section would be payable.

**PART V. – MISCELLANEOUS.**

**30. MARKING OF CLAIMS, ETC.**

The Commission may direct a person claiming or found to have an interest in land the subject of proceedings under this Act to mark the boundaries of the land in such manner as the Commission directs.

**31. MAINTENANCE OF MARKS, ETC.**

(1) A person registered for an estate in fee simple in any land in pursuance of this Act shall maintain in good order on its boundaries the boundary marks established by or by order of the Commission.

(2) The Commission may at any time by order in writing specify which of adjoining proprietors shall be responsible for the care and maintenance of boundary marks referred to in Subsection (1).

(3) A person responsible under this section for the care and maintenance of a boundary mark shall not allow it to fall into disrepair or to be destroyed or removed.

Penalty: K100.00.

(4) A person shall not deface, remove, injure or otherwise impair a boundary mark established by or by order of the Commission unless duly authorized by or by direction of the Commission so to do.

Penalty: K100.00.

(5) A person convicted of an offence against Subsection (4), whether or not a penalty is imposed upon him for that offence, is liable to pay the cost of repairing the boundary mark, and that cost may be recovered as a civil debt recoverable summarily by any person responsible under this section for the maintenance of the boundary mark.

**32. REGULATIONS.**

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.