

**TRIBAL LAND DISPUTE RESOLUTION
PANELS BILL 2008**

A BILL TO ESTABLISH TRIBAL LAND DISPUTE RESOLUTION PANELS
FOR THE PURPOSE OF HEARING, DETERMINING AND RECORDING THE
RIGHTS HELD IN CUSTOM IN RELATION TO TRIBAL LAND

TRIBAL LAND DISPUTE RESOLUTION PANELS BILL 2008

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TRIBAL LAND DISPUTE RESOLUTION PANELS BILL 2008

PART I PRELIMINARY

Short title and commencement

1. This Bill may be cited as the Tribal Land Dispute Resolution Panels Bill 2008 and shall come into operation on such date the Minister may appoint by notice in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires –

“authorised officer” means a Chief Clerk, Clerk, Police Officer or Government Officer appointed by the National Director;

“Chairperson” means the Chairperson of a Tribal Lands Dispute Resolution Panel;

“custom” means the recognized and accepted behavioural patterns, practices, norms, usages and traditions of a tribal group pertaining to the area where the land is situated at the time when the dispute arises;

“Member” means a person included in the Membership Register established and maintained by the National Director;

“Panel” means a Tribal Lands Dispute Resolution Panel constituted under this Act;

“person under a disability” means a child under the age of 18 years, or a person who does not understand the nature and possible consequences of the proceedings;

“Secretariat” means the National Director and other officers employed to administer the Panels;

“subject land” means the land that is the subject a particular dispute as described and sketched in the Notice of

Resolution;

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“tribal land” has the meaning ascribed to “customary land” under the Land and Titles Act and the Customary Land Records Act;

“tribal land dispute” means a dispute in connection with ownership of, usage of, boundaries or any interest in tribal land or the nature and extent of such ownership or usage;

Object of the Act

3. The object of this Act is to provide for the establishment and operation of Tribal Land Dispute Resolution Panels for the purpose of –
 - (a) providing dispute resolution services, including mediation and encouraging and facilitating agreements between parties, and
 - (b) determining the rights of parties according to custom pertaining to the area at the time the dispute arises, and
 - (c) recording the determined and agreed rights.

PART II

CONSTITUTION OF THE PANELS

Constitution of the Panel system

4. There is constituted by this Act a system of resolving tribal land disputes consisting of Tribal Land Dispute Resolution Panels and a Secretariat, having the functions conferred or imposed on them by or under this Act or any other law.

Establishment of Panels

5. By warrant under his or her hand the National Director may establish in Solomon Islands such Tribal Land Dispute Resolution Panels as are required from time to time to resolve any tribal land disputes that arise.

Jurisdiction of Panels

6. Panels shall hear and determine any tribal land dispute that is referred to them at the request of person, by order of the Court or by the operation of this Act.

Jurisdiction over adjacent reefs

7. The jurisdiction shall extend to any tribal land situated in the Solomon Islands including the outer edge of any reef which lies adjacent to any such tribal land.

*Cases decided by
a court*

8. The Panels do not have jurisdiction to hear or review any tribal land dispute that has been finally determined by a court prior to the commencement of this Act, unless ordered to do so by the court which determined the matter or by the High Court.

PART III

MEMBERSHIP OF PANELS

*Composition of
Panels*

9. Panels shall consist of 3 Members who have been nominated in the prescribed manner, appointed to the Membership Register by the National Director and approved by the Chief Justice.

*Eligibility for
appointment*

10. A person is eligible for appointment to the Membership Register if they lodge a nomination application in the prescribed form and they –
 - (a) have a good knowledge of customary rules applying to land in their area or are custodians of land;
 - (b) have lived within the locality of the land as their principal place of residence for more than 3 continuous years;
 - (c) have not been convicted of any crime of dishonesty, or any criminal offence that carries a possible penalty of imprisonment for more than six months.

*Ineligibility
criteria*

11. A person is ineligible for appointment to the Membership Register, and a current member shall be removed from the Membership Register, if they –
 - (a) hold any elected office in the National Parliament, a Provincial Government or Local Government;
 - (b) are convicted of any crime of dishonesty or any other criminal offence carrying a maximum possible penalty of more than six months imprisonment;
 - (c) lack legal capacity.

*Number of
members*

12. There is no limit to the number of members who may be appointed and there may be one or more members for any area or locality.

*National and
Provincial
Registers*

13. There shall be one National Membership Register listing all appointed members according to their locality. In addition, there shall be a Provincial Register for each province listing all members on the National Membership Register that reside in the province.

*Inspection of
Register*

14. The National and Provincial Registers shall be available for inspection by the public on request at the places and times prescribed in the regulations.

PART IV

ADMINISTRATION

*Appointment of
National Director*

15. The Judicial and Legal Services Commission shall appoint a legal practitioner as the National Director of the Tribal Land Dispute Resolution Panels.

*Responsibilities of
National Director*

16. The National Director, in addition to any other functions conferred under this or any other Act, has the following responsibilities –

- (a) to provide effective administrative control and direction of the Secretariat;
- (b) to establish and maintain the National Membership Register;
- (c) to annually update, print and distribute the National and Provincial Registers;
- (d) to conduct a comprehensive review of the National register every five years;
- (e) to introduce an effective case management system that ensures timely determination of disputes;
- (f) to ensure that the procedures in the Act are applied in a consistent and uniform manner by all staff and Panel members;
- (g) to establish and maintain a Register of Panel Meetings and determinations;
- (h) to provide appropriate training for members and staff;
- (i) to maintain financial control, and administer and disburse the finances and funding;
- (j) to maintain accurate financial records of the Secretariat and all Panels;

- (k) to develop and issue guidelines setting out the procedures and practices for effective operation of the system;
- (l) to provide an annual report to the Chief Justice on the operation of the Panels, caseloads, statistics, financial records and any other matters directed by the Chief Justice to facilitate and improve the operation of the system.

*Delegation by
National Director*

17. The National Director may delegate, by regulation or guidelines, the exercise of any function or responsibility under this Act, except the power of delegation, to-

- (a) a Chief Clerk;
- (b) any officer or other employee of the Secretariat;
- (c) any person authorized by regulations.

*Employment of
officers and staff*

18. Chief Clerks, Clerks and such other officers as may be necessary to enable the Panels to exercise their functions may be employed by the Public Service Commission.

*Responsibilities of
Chief Clerk*

19. The Chief Clerk, in addition to any other functions conferred under this or any other Act, or functions delegated by the National Director has the following responsibilities –

- (a) to maintain the Provincial Membership Register;
- (b) to assist the National Director with the administration and operation of the system in the provinces;
- (c) to assist the National Director to develop and implement appropriate training for members and staff;
- (d) to provide regular reports as requested by the National Director on the operation of the Panels within the province;
- (e) to record, process and disburse the funding and payments associated with the Panels' operations;
- (f) to perform the duties of a Clerk in the absence of a Clerk.

*Responsibilities of
Clerk*

20. A Clerk, in addition to any other functions conferred under this or any other Act, or functions delegated by the National Director or the Chief Clerk, has the following responsibilities –

- (a) receiving and processing requests for resolving disputes;
- (b) maintaining accurate records of proceedings, determinations and reasons;
- (c) administering the financial operation of the Panels including collection of prescribed fees, disbursement of allowances;
- (d) to provide regular reports as requested by the National Director or Chief Clerk on the operation of the Panels within the locality.

Qualifications for Secretariat appointments

21. The qualifications for appointment as the National Director, Chief Clerks, Clerks and other staff and Members may be prescribed by regulation.

Tribal Lands Dispute Resolution Panels Fund

22. For the purpose of this Act, there shall be established a fund called the Tribal Lands Dispute Resolution Panels Fund which shall be a Special Fund established under section 100(2) of the Constitution.

Money placed in the Fund

23. The funds of the Tribal Lands Dispute Resolution Panels shall comprise of –

(Cap.120)

- (a) all moneys placed at the Panel's disposition for the purposes of this Act by Parliament;
- (b) all money received from other sources in accordance with section 21(1) of the Public Finance and Audit Act;
- (c) all moneys collected by way of fees or contributions; and
- (d) All other moneys and other property which may in any manner become payable to, or vested in the Panels in respect of any matter incidental to its functions

Management of the Fund

24. The Tribal Lands Dispute Resolution Fund shall be controlled and managed by the Permanent Secretary of the Department administering this Act.

Directions for administration of the Fund

(Cap.120)

25. The Minister responsible for administering the Public Finance and Audit Act shall give directions to the Permanent Secretary of the Department administering this Act. The Permanent Secretary shall comply with the

Minister's directions.

*Accounts and
Auditing of the
Fund
(Cap.120)*

26. (1) Sections 5(3) and 21(1) and (3) of the Public Finance and Audit Act apply, and have effect, to and in relation to the Tribal Lands Dispute Resolution Panels Fund as if the references in those provisions to Special Funds include a reference to the Tribal Lands Dispute Resolution Panels Fund.

(Cap.120)

(2) Section 38(1)(a)(v) and 2(a) of the Public Finance and Audit Act applies, and has effect, to require that signed statements of account be prepared and transmitted to the Auditor-General in respect of the Tribal Lands Dispute Resolution Panels Fund.

PART V

PROCEDURES FOR CALLING MEETINGS

*Parties making
a Request*

27. A Request for Resolution of a tribal land dispute by a Panel may be made by a person with an interest in the land.

Form of Request

28. A person may make a request by lodging the completed prescribed form, accompanied by the prescribed fee, with the Clerk of the Secretariat to the Panels in the area where the subject land is located.

Fee for Request

29. Where no fee is prescribed, the fee to be paid is the same as would be payable for commencing and conducting a case in a Local Court.

*Selection of
Panel Members*

30. On receipt of a request, the Clerk shall select at least 7 suitable persons, including at least one female person, if one is available, from the Provincial Membership Register to constitute a Panel.

*Availability of
panel members*

31. The Clerk shall contact each selected member to determine-

- (a) whether they agree to be available to attend the meeting on the date proposed; and
- (b) whether they may have an interest, or conflict of interest in the subject land.

Disclosure of

32. Any selected Panel Member who has any interest in the

interest

subject land, or is ineligible or is no longer eligible for appointment to the Membership Register, shall disclose that interest or ineligibility to the Clerk as soon as practicable after selection.

Offence for non-disclosure

33. Any selected Panel Member who knowingly fails to disclose to the Clerk –
- (a) any interest in the subject land;
 - (b) any change of circumstances which may affect their eligibility for appointment pursuant to section 10; or
 - (c) any circumstances which may make them ineligible for appointment pursuant to section 11
- shall be guilty of a misdemeanour and shall be liable to imprisonment for six months or to a fine of two hundred dollars.

Procedure after disclosure

34. If a disclosure is made to the Clerk pursuant to section 27 the Clerk shall -
- (a) remove any ineligible member from the panel and replace them with another eligible member; and
 - (b) remove a person with an interest in the subject land from the panel; or
 - (c) or allow the person with an interest in the subject land to remain on the panel and notify the parties of the person's disclosed interest.

Locality of Panel Members

35. Panel members shall be selected from the locality where the land in dispute is situated. However, if there are insufficient members for a particular area, members from the next nearest localities may be selected.

Allowances for Members

36. Panel members may be paid, sitting, sustenance and travel allowances at the rate prescribed. If no rate is prescribed, members may be paid at the rate prescribed for Local Court members. Allowances are not to be paid during adjournment periods.

Notice of Meeting

37. Upon receipt of the Request for Resolution, the Clerk shall provide the National Director, the applicant and other persons listed in the Request form with the prescribed Notice of Meeting containing the names of 7 proposed members.

Display of

38. The Notice of Meeting shall be displayed and published in

- Notice* the manner set out in the regulations.
- Joining parties* 39. Any person with an interest in the subject land may apply to join the meeting as a party by making an application in writing to the Clerk within three months of the date of the Notice of Meeting.
- Notwithstanding the above, the Panel may join, as a party, any person, at any stage of the proceedings, who, in the opinion of the Panel, should be a party to proceedings whether because the person has an interest in the subject land or for any other reason.
- Objection to a Panel Member* 40. Persons with an interest in the subject land may object to a proposed Panel Member by lodging the prescribed Objection form with the Clerk within 6 weeks of the display and publication of the Notice.
- New Members following objection* 41. Upon receipt of the Objection, the Clerk shall remove the subject member from the Panel, provided that if there are less than three remaining members, the Clerk shall select a suitable number of new members for the Panel and repeat the Notice procedure set out in section 33.
- Further objections* 42. If further objections are received, and less than 3 members remain, the Chief Clerk in consultation with the Chief Justice, shall determine the composition of the Panel.
- Determination by ineligible Member may be quashed* 43. If a person who is not eligible for appointment as a Member sits on a Panel, any party may apply to the Magistrates' Court for an order –
- (a) to discontinue the proceedings; or
 - (b) to quash any determination or agreement; and
 - (c) to have the matter determined by a new Panel.

PART VI

PROCEDURES AT MEETINGS

- Clerk must be present* 44. The Clerk to the Panel must be present at all times during the Panel meeting. Any proceedings conducted in the absence of the Clerk are null and void.

- Clerk to record proceedings* 45. The Clerk shall make full and contemporaneous notes of all Panel meetings and record all decisions and the reasons for the decisions.
- Meeting place* 46. The Panel shall meet at the time and place specified in the Notice.
- Meetings open to the public* 47. Meetings before the Panel shall be open to the public unless the Panel, in any particular case, determines that the meeting shall be conducted wholly or partly in the absence of the public.
- Selection of Chairperson and taking the oath of office* 48. Prior to the opening of the public meeting, the Panel shall –
 (a) select one Member to act as Chairperson; and
 (b) the Chairperson and all Panel Members shall take and subscribe before the Clerk the oath of office set out in the Schedule.
- Affirmation* 49. Any person who is required by the Act to take and subscribe an oath may, if he or she wishes, make and subscribe an affirmation instead, and in any such case, to enable him to do so, the form of the oath concerned shall be varied by substituting “solemnly affirm” for “swear” and by omitting “So help me God.
- Consequences of omission to take oath* 50. The failure of any Chairman or Panel member to take and subscribe an oath which is required by this Act before entering upon the functions of office does not render invalid any function exercised or performed by the person in purported execution of that office, but a person who refuses or neglects to take and subscribe any such oath shall be removed from the Membership Register.
- Procedure determined by the Panel* 51. Subject to this Act and any regulations, the procedure for the conduct of proceedings is to be as determined by the Panel.
- Order of witnesses* 52. The Chairperson may determine the order for the hearing of witnesses and may call such witnesses and consider any supporting material or items that he or she considers may be relevant in assisting the Panel to reach a fair and just decision.
- Witnesses may* 53. Witnesses shall be given an adequate opportunity to present

*be questioned by
Panel*

their story and materials and they may be questioned by Panel Members. Parties may put questions to the Panel in relation to the stories or supporting material but may not question a witness directly.

*No legal
representation*

54. Parties are not permitted to have legal representation. However, if a person is under a disability, the Chairman may appoint a litigation guardian to assist the person.

*Panel to visit
land*

55. The Panel shall visit and inspect the subject land and, if there is a dispute in relation to a boundary, the Panel shall inspect the boundary. However, the Panel may dispense with an inspection if they unanimously agree that a site inspection is not required to resolve the dispute.

*Rules of
evidence do not
apply*

56. The rules of evidence do not apply to Panel meetings the Panel may inform itself on any matter in such manner as it thinks fit.

*Meetings to be
informal*

57. Meetings before the Panel shall be conducted with as little formality and technicality as the circumstances of the proceedings permits.

*Frivolous or
vexatious
proceedings*

58. If, before or during proceedings before it, the Panel is satisfied that the proceedings are frivolous or vexatious, it may dismiss the proceedings.

*Misconduct
during meetings*

59. Any person who, in proceedings before the Panel –

- (a) willfully insults the Panel or the Clerk;
- (b) willfully misbehaves during the proceedings;
- (c) fails to leave the place where the proceedings are being conducted when ordered to do so by the Panel;
- (d) willfully and without lawful excuse interrupts proceedings before the Panel; or
- (e) without lawful excuse disobeys a direction or order of the Panel during proceedings,

shall be guilty of a misdemeanour and shall be liable to a maximum penalty of imprisonment for one year or to a fine of \$400.

PART VII

DECISIONS OF THE PANELS

*Disputes
resolved
according to
custom*

60. The Panel shall resolve the tribal land dispute by determining the rights of the parties according to custom so far as custom is not inconsistent with the Constitution or any other Act.

*Panel to
encourage
agreement*

61. The Panel shall encourage and facilitate the parties to come to an agreement at any time before or during the meeting, and may adjourn the meeting for a maximum period of 10 days to allow a settlement to occur.

*Agreement
becomes final
determination*

62. If an agreement is reached by the parties, the Clerk shall record the agreement and the parties shall sign the record. The agreement of the parties is final and has the same effect as a determination by the Panel.

*Adjournment
after meeting*

63. When all the witnesses have finished, the Chairperson may adjourn the meeting for a maximum of seven days to enable the Panel to make and deliver their determination.

*Determination
within 7 days*

64. The Chairperson of the Panel must deliver the Panel's determination to the parties within seven days of the conclusion of the meeting, in public and at the place where the meeting was held.

*Contents of
determination*

65. Determinations by the Panel shall –

- (a) address all the issue in dispute;
- (b) provide full reasons for the decision
- (c) be by consensus of all members, provided that where no consensus can be reached, determinations shall be by majority vote.

*Orders made by
Panel*

66. The Panel may make such orders as it considers necessary for the fair and just resolution of the dispute. Without limiting the above, the Panel may make orders in relation to-

- (a) exclusive rights or interests;
- (b) the nature and extent of any rights or interests of any person within the area of land subject to dispute;
- (c) rights of occupation or usage;
- (d) payments of compensation in custom for use, damage or injury caused to land, property or persons in relation

to the tribal land dispute; and
(e) fines of up to \$200 for misconduct at Panel meetings.

Panel determinations are final

67. The determinations and orders of the Panels are final and binding on all parties who are affected by them, whether they were parties to the dispute or not. Orders of the Panel cannot be appealed against, set aside, reviewed or altered by any court or other body except as otherwise provided for in this Act.

Determinations enforceable in Magistrates' Court

68. Determinations and orders made by the Panels are enforceable in the Magistrates' Court as if the order was an order made by that court.

Determinations to be made public

69. Determinations and orders of the Panel are to be distributed and publicly displayed in the same manner as the Notice of Meeting set out in the regulations.

Recording of determination

70. The Clerk shall record the determination and orders of the Panel and the Chairperson shall sign that record. The Clerk shall send the original record forthwith to the National Director for keeping in safe custody and recording in a public Register. A copy of the determination and orders shall also be sent forthwith to the Chief Clerk for the province.

PART VIII

APPEALS

Limited appeal to High Court

71. A person may, by leave of the High Court, appeal to the High Court against a decision of a Panel within twelve months of a determination only on the grounds of –

- (a) denial of natural justice; or
- (b) lack of jurisdiction.

High Court to remit case back to a Panel

72. If the High Court grants the appeal, the tribal land dispute matter shall be remitted back to a Panel for a fresh determination.

No appeal from High Court decision

73. There shall be no appeal from any decision of the High Court in relation to any proceedings taken under this Part.

PART IX

MISCELLANEOUS

*Transfer of
pending Local
Court cases*

74. From the date of commencement of this Act, tribal land disputes pending in the Local Court or in the Customary Lands Appeals Court shall be transferred to the Tribal Land Dispute Resolution Panels and shall be dealt with according to the procedures set out in this Act.

*Transfer of
pending High
Court cases*

75. From the date of commencement of this Act, proceedings pending before the High Court may be transferred to, or recommenced before the Tribal Lands Dispute Panels –

- (a) with the agreement of the parties, or
- (b) at the direction of the Court

*Resolution
outside this Act*

76. Nothing in this Act shall prevent any person from resolving a tribal land dispute in accordance with rules of custom or in any other lawful manner.

*Immunity for
Members and
employees*

77. No proceedings lie against a member of a Panel or an employee or officer of the Secretariat for or on account of any act or omission done by the person and purporting to be done or omitted for the purpose of carrying out the provisions of this or any other Act, if the member, employee or officer has acted in good faith.

*Use of
interpreter*

78. A party or a witness who is unable to communicate in a language used by the Panel member or other witnesses is entitled to be assisted, when appearing before the Panel in relation to the dispute, by a competent interpreter.

Regulations

79. The regulations may make provision for and with respect to the following matters –

- (a) the manner and form of recording proceedings, determinations and orders;
- (b) procedures for the conduct of meetings, the recording of proceedings and determinations;
- (c) forms and documents;
- (d) methods of service and notification;

- (e) fees and allowances for Members;
- (f) qualifications for Members and staff; and
- (g) any administrative procedures required by the Act.

*Amendments to
the Interpretation
and General
Provisions Act
Cap 85*

80. The Interpretation and General Provisions Act is hereby amended by deleting from section 16(1) the words “customary land appeal court means a customary land appeal court established under section 255 of the Land and Titles Act;”.

*Amendments to
the Local Court
Act
Cap 19*

81. The Local Courts Act is hereby amended by –

- (a) deleting sections 11, 12, 13 and 14; and
- (b) deleting Form 1 and Form 2 of the Schedule.

*Amendments to
the Land and
Titles Act
Cap 133*

82. The Land and Titles Act is hereby amended by –

- (a) deleting sections 254, 255 and 256; and
- (b) deleting in section 257 the words “other than a local court exercising its jurisdiction under section 254”.

*Amendments to
the Forest
Resources and
Timber Utilisation
Act
Cap 40*

83. The Forest Resources and Timber Utilisation Act is hereby amended by –

- (a) deleting from section 10 and section 11 the words “customary land appeal court” ; and
- (b) inserting in section 10(1) after the words “appeal to the” the words “Tribal Lands Dispute Panels”;
- (c) inserting in section 10(2) after the words “or decision of a” the words “Tribal Lands Dispute Resolution Panel”.

*Amendments to
the Customary
Lands Records Act
Cap 132*

84. The Customary Lands Records Act is hereby amended by –

- (a) inserting in section 13(5) after the words “Court of Appeal” the words “or Tribal Lands Dispute Resolution Panel”;
- (b) inserting in section 11(2) after the words “subject of a court” the words “ or Tribal Lands Dispute Resolution Panel”;
- (c) inserting in section 11(2) after the words “decision of the court” the words “or Tribal Lands Dispute Resolution Panel”.

SCHEDULE

OATH OF OFFICE

I,.....do swear (or solemnly affirm) that I will well and truly serve Her Majesty Queen Elizabeth II, Her Heirs and Successors, in the office of Panel Member (or Chairman) of this Tribal Lands Dispute Resolution Panel and will do right by all manner of people after the laws and usages of Solomon Islands, without fear or favour, affection or ill will. (So help me God)