

ROTUMA LANDS BILL 2015
(BILL NO. 7 OF 2015)

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BILL NO. 7 OF 2015**A BILL**

FOR AN ACT TO PROVIDE FOR A LANDS COMMISSION IN ROTUMA, TO PROVIDE FOR THE REGISTRATION OF ROTUMANS, TO REGULATE THE REGISTRATION, DEALING WITH AND TRANSMISSION OF LAND AND RELATED MATTERS

ENACTED by the Parliament of the Republic of Fiji—

PART 1—PRELIMINARY*Short title and commencement*

- 1.—(1) This Act may be cited as the Rotuma Lands Act 2015.
- (2) This Act shall come into force on the date of its publication in the *Gazette*.

Interpretation

2. In this Act, unless the context otherwise requires—
 - “adult” means a person who is 18 years of age or over;
 - “child” means a person who has not reached the age of 18 years;
 - “Commission” means the Rotuma Lands Commission established under section 7;

- “Council” has the meaning given to it under the Rotuma Act 2015;
- “dealing” means any transaction of whatever nature by which land is affected under this Act;
- “district” has the meaning given to it under the Rotuma Act 2015;
- “District Chief” has the meaning given to it under the Rotuma Act 2015;
- “District Officer” has the meaning given to it under the Rotuma Act 2015;
- “*fuag ri*” means house mound or house site registered as such in the PEFR;
- “*hanua ne kainaga*” means land held by a *kainaga*, the members of the *kainaga* holding the land in undivided ownership;
- “*hanua ne ‘on tore*” means land which is vested on intestacy in the first, second and third generations of descendants of a deceased owner of *hanua pau*, as *hanua ne ‘on tore* when there is no single individual Rotuman in whom the land vests as *hanua pau*, such descendants taking life interests in undivided shares in such land, and the last survivor of them taking the land as—
- (a) *hanua pau* immediately prior to the commencement of this Act; or
 - (b) *hanua togi* under this Act;
- “*hanua pau*” means land which is vested in a single individual Rotuman by sale or gift with the intention of creating *hanua pau*;
- “*hanua togi*” means land sold to a purchaser who becomes the owner of the land or land that was initially *hanua ne ‘on tore* under section 28, as the case may be;
- “*kainaga*” means a family community of Rotumans;
- “land” includes land covered with water, any estate or interest in land including any improvement other than a mortgage or charge;
- “lease” includes a sub-lease;
- “lessee” includes a sub-lessee;
- “Minister” means the Minister responsible for Rotuma;
- “*‘on tore*” means descendants;
- “PEFR” means *Puk ne ‘Es on Famör Rotuma*;
- “person” means a natural person;
- “prescribed” means prescribed in Regulations;
- “*pure*” means the acknowledged head of the *kainaga*;
- “Register of Lands” means the register of titles and plans that records the ownership of lands duly surveyed in Rotuma;

“repealed Act” means the Rotuma Lands Act (Cap. 138);

“Rotuman” has the meaning given to it under the Rotuma Act 2015;

“Rotuman Development Fund” means the Rotuman Development Fund continued under section 14 of the Rotuma Act 2015; and

“transmission”, with its grammatical variations, means the passing of land from one person or persons to another or others by inheritance or other operation of law and includes a disposition of *hanua pau* on death, but does not include compulsory acquisition under the State Acquisition of Lands Act (Cap. 135).

Land registered under the Land Transfer Act (Cap. 131) unaffected

3.—(1) Nothing contained in this Act or in the powers granted to the Commission shall affect the title to any land registered under the Land Transfer Act (Cap. 131).

(2) Except as expressly provided in this Act, no land registered under the repealed Act or this Act shall be subject to the provisions of the Land Transfer Act (Cap. 131).

PART 2—REGISTRATION OF ROTUMANS

Puk ne ‘Es on Famör Rotuma

4.—(1) There shall be a register of Rotumans to be known as *Puk ne ‘Es on Famör Rotuma*, and shall be updated, maintained and kept in Rotuma by the Commission in such form as provided for by this Act or as may be prescribed.

(2) The Commission shall deposit a copy of the PEFR, and whenever updated, an updated copy of the PEFR, with the Office of the Registrar of Titles where it shall be kept in safe custody.

(3) A copy of the PEFR or an extract of the PEFR may be obtained from the Commission upon the payment of prescribed fees.

Inspection of PEFR

5.—(1) Any person, on payment of the prescribed fee, shall be entitled to inspect the PEFR during official working hours.

(2) A person shall not damage or make any unauthorised amendment or deletion to any part of the PEFR.

(3) Any person who contravenes subsection (2) commits an offence and shall be liable on conviction to a fine not exceeding \$40 or to a term of imprisonment not exceeding 4 months, or to both.

Rectification of PEFR

6. The District Officer shall have the power to rectify the PEFR in the following circumstances—

(a) in the case of an error or omission not materially affecting the interests of any owner;

- (b) in any case at any time with the consent of all persons interested; and
- (c) in any case, other than first registration by the Commission under this Act, if he or she is satisfied that registration has been obtained or made or omitted to be made by omission, fraud or mistake and he or she deems it necessary to rectify the PEFR.

PART 3—ROTUMA LANDS COMMISSION

Rotuma Lands Commission

7.—(1) This section establishes the Rotuma Lands Commission.

(2) The Commission shall consist of a Chairperson and two other persons appointed by the Minister.

(3) The functions of the Commission shall be to—

- (a) ascertain the lands in Rotuma that are the rightful property of Rotuman owners as *hanua ne kainaga*, *hanua pau* or *hanua ne 'on tore*, and the lands that are unowned and to categorise such land accordingly;
- (b) ascertain the lands in Rotuma that are the rightful property of Rotuman owners under other forms of Rotuman customary land tenure and to designate all such land as *hanua ne kainaga*, *hanua pau*, *hanua ne 'on tore* or unowned land as the Commission deems appropriate;
- (c) ascertain the lands in Rotuma that are *hanua togi* and to categorise such land accordingly;
- (d) ascertain the lands in Rotuma that are leased for a term exceeding one year;
- (e) inquire into and ascertain all lands that have been given away under various customary tenures and establish the types of dealings entered into;
- (f) inquire into a situation where the *kainaga* is alleged to have withdrawn its support from the person to whom they had entrusted the position of *pure* as the person is alleged to be unfit in his or her general management of *hanua ne kainaga*;
- (g) consider and determine all disputes arising out of paragraphs (a) to (e) and make orders as the Commission deems appropriate;
- (h) revert to the *kainaga* land for which a term of lease, tenancy or the purpose for which it was granted has elapsed;
- (i) cause the boundaries of all such lands to be demarcated on the ground; and
- (j) cause a register to be prepared in the manner provided for in this Act.

(4) All Rotumans shall, from the commencement of this Act, be registered on both maternal and paternal lineages within the PEFR.

(5) If the Commission, after its inquiry under subsection (1)(e), is satisfied that the *pure* is an unfit person as alleged, the District Officer and the District Chief concerned shall convene a meeting of the *kainaga* and have a new *pure* appointed.

Procedure of operation

8.—(1) The Commission shall sit in every district for the purpose of conducting its inquiries in relation to the ownership of land in that district.

(2) The Commission shall provide a public notice of its intention to conduct an inquiry under subsection (1) at least 3 months prior to commencing the inquiry.

(3) When such a notice has been provided under subsection (2), every person claiming to own land in the district within which an inquiry is held shall, at his or her own expense, mark out and define, in such manner as may be directed by the District Chief, the boundaries of the land of which he or she claims to be the respective owner and to cut away undergrowth, if so required, so as to make such boundaries clearly visible.

(4) It shall also be the duty of such person in subsection (3) to identify such boundaries to the Commission, if so required.

(5) If—

- (a) all conditions as to notice of the inquiry and the claim have been complied with;
- (b) full opportunity of objecting to the ownership claimed has been given to all interested persons;
- (c) there is no dispute as to the ownership of any land marked out and defined under subsection (3); and
- (d) the Commission is satisfied that the claim is genuine,

the Commission shall record the ownership of the land.

(6) If there is any dispute as to the ownership of any land, the Commission shall make inquiries into it and, after hearing evidence of the parties to the dispute and their witnesses, the Commission shall decide and record the ownership of the land.

(7) The decision of the Commission shall prevail.

(8) The Commission shall have the power to approve a compromise, and provided that all the parties to a dispute agree, a dispute may be decided or a compromise approved by the Commission.

(9) Any Rotuman who is absent from Rotuma when the Commission is sitting may make written submissions to the Commission by any means available and a duly authorised agent in Rotuma may make a claim or objection on behalf of the Rotuman and subsections (3) to (7) shall be interpreted as if references to claimants and parties to a dispute included their duly authorised agents.

(10) The manner of recording the ownership of lands by the Commission shall be as follows—

- (a) the Commission shall cause the owners to mark the boundaries of the land in such manner as the Commission deems best calculated to mark the boundaries as permanently as practicable, or, in the case of land leased for a term exceeding one year, to endure for the remainder of the term of the lease, and may require different methods of marking of different boundaries according to circumstances;
- (b) each plot of land shall be given a distinctive number and its number and name, if any, shall be recorded;
- (c) the names of each of the Rotuman owners and whether the land is *hanua ne kainaga*, *hanua pau* or *hanua ne 'on tore* shall be recorded, or it shall be recorded that such land is unowned; and
- (d) if the land is subject to a lease for a term exceeding one year, the names of the lessor and lessee and the term of the lease shall be recorded, and, if it is a lease of part of the land, sufficient particulars to show clearly the part.

(11) At the conclusion of the proceedings of recording the ownership of any plot of land, the Commission may immediately deliver its decision to the parties concerned or may adjourn to such date as it deems appropriate for the purpose of considering its decision and shall thereafter deliver its decision to the parties concerned.

(12) For the purposes of any inquiry, the Commission shall have the same powers as those vested in magistrates to summon and examine on oath any person to give relevant evidence, and to require the attendance of all claimants to any land, the title of which is being inquired into, and of all persons likely to be interested in the title of such land.

(13) The Commission shall make an adequate record of the evidence in all cases.

Appeals

9.—(1) A person aggrieved by any decision of the Commission may, within 90 days of the delivery of the decision, give notice of that person's intention to appeal which shall—

- (a) be signed by the appellant or the appellant's duly authorised agent, to the District Officer; and
- (b) contain the grounds of appeal.

(2) The District Officer shall forward all such appeals, including his or her written report, to the Commissioner responsible for the Central and Eastern Division, who may, if satisfied that the appeal is not frivolous, recommend to the Minister the appointment of an Appeals Tribunal.

Appeals Tribunal

10.—(1) The Minister may, following a recommendation from the Commissioner responsible for the Central and Eastern Division and consultation with the Deputy Secretary responsible for Rotuma, appoint an Appeals Tribunal which shall consist of—

- (a) a Chairperson; and
- (b) two other members of the Rotuman community who are well versed with the customs of Rotuman land tenure.

(2) The Appeals Tribunal is to hear and determine appeals from the decisions of the Commission and such determination by the Appeals Tribunal shall be final.

(3) For the purpose of determining an appeal, the Appeals Tribunal shall have the powers to hear further evidence, provided that the following conditions are satisfied—

- (a) that the evidence could not have been obtained with reasonable due diligence for use at the inquiry before the Commission; and
- (b) if the evidence under paragraph (a) is such that, if obtained, would be reasonably likely to affect the decision of the Commission.

Register of Lands

11.—(1) This section establishes the Register of Lands.

(2) As soon as practicable after—

- (a) if there is no dispute, the settlement of the boundaries by the Commission;
- (b) if there has been a dispute, the dispute has been determined or a compromise has been approved by the Commission, and where no appeal has been filed; and
- (c) if an appeal has been filed, the determination of the appeal by the Appeals Tribunal,

the Commission shall cause the boundaries of all lands to be surveyed, and a plan for the boundaries of each plot of land to be prepared on the title of the land and recorded in the Register of Lands, and the boundaries of the land and their dimensions, the number given to the land in accordance with section 8(10)(b) and the name of the owner of the land shall also be recorded.

(3) The Commission shall deposit a copy of the Register of Lands, and whenever updated an updated copy of the Register of Lands, with the Office of the Registrar of Titles where it shall be kept in safe custody.

(4) The Register of Lands shall be made available to members of the public for inspection during official working hours.

(5) A copy of the Register of Lands or an extract of the Register of Lands may be obtained from the Commission upon the payment of prescribed fees.

Unowned land

12.—(1) All such lands determined by the Commission to be unowned shall vest in the Council in trust for Rotumans who—

- (a) are registered in the PEFR; and
- (b) habitually reside in the district where such land is situated,

and such land shall not be deemed as land owned by the Council.

(2) If unowned land is claimed at a later date by an individual or a *kainaga*, such claim must be—

- (a) supported by evidence of lineal connection to the *fuag ri* that owns that particular plot of land; and
- (b) submitted to the District Officer who shall inform the Council of the existence of the claim.

(3) The individual or *kainaga* must accompany their claim with evidence showing or outlining their family tree which has been agreed upon and signed by the individual or *pure* of the *kainaga*.

(4) The District Officer shall refer the claim to the Commission to inquire and ascertain whether or not the claim has merit and is made in good faith.

(5) The Commission shall deliver its decision to the parties concerned and the decision of the Commission may be appealed against and the appeal shall be processed in accordance with section 9.

(6) The decision of the Appeals Tribunal shall be final.

(7) All monies derived from such unowned land shall be paid into the Rotuman Development Fund to be used for the purposes of that Fund.

Estate or interest conferred by registration

13.—(1) Registration of any land in the Register of Lands as *hanua ne kainaga*, *hanua pau*, *hanua ne 'on tore*, *hanua togi* or unowned land shall vest in the persons registered as owners of such land (or in the case of unowned land, in the Council as the trustee under section 12(1)), including such rights, privileges, powers and obligations in relation to such land as are in this Act specifically referred to or as are incidental to Rotuman customs in so far as customs are not inconsistent with the provisions of this Act.

(2) Registration of a lease in the Register of Lands shall vest in the lessee the land comprised in the lease for all the interests described therein together with expressed rights and privileges attached thereto and subject to all expressed liabilities therein, and together with and subject to all rights, liabilities and limitations as laid down in relation to leases by the Land Transfer Act (Cap. 131).

Rights conferred by registration

14. The rights of landowners under this Act shall be rights not liable to be defeated, except as provided under section 32, and shall be held by such landowners free from all other interests and claims whatsoever, but subject to—

- (a) leases registered on the Register of Lands; and
- (b) the following rights and interests which are not registrable under this Act—
 - (i) rights of way, rights to water and other easements;
 - (ii) leases for a term not exceeding one year;
 - (iii) rights of occupation by virtue of subdivision under Rotuman customs, as provided for in section 21(1)(b);
 - (iv) rights enabling a person to take part of the soil or produce of the land owned by another subsisting at the commencement of this Act.

PART 4—DEALINGS

Registered land only to be dealt with in accordance with this Act

15. Subject to the provisions of the State Acquisition of Lands Act (Cap. 135), the Forest Decree 1992, the Petroleum (Exploration and Exploitation) Act (Cap. 148) and the Mining Act (Cap. 146), no land registered under this Act shall be capable of being dealt with except in accordance with the provisions of this Act, and every attempt to deal with such land except in accordance with the provisions of this Act shall be ineffective to create, extinguish, transfer, vary or affect any estate or interest in land.

Written consent of District Officer

16.—(1) Subject to the provisions of this Act, no person shall sell, lease, exchange, partition, subdivide or in any way dispose of or deal with land registered under this Act without the consent of the District Officer in writing, and any such disposition purported to be effected without such consent shall be deemed null and void.

(2) The District Officer prior to granting consent to the other forms of dealings on *hanua ne kainaga* must be satisfied that the consensus of the *pure* and majority of the *kainaga* residing in Rotuma has been obtained.

District Officer may examine witnesses on oath

17. For the purpose of satisfying himself or herself that any such disposition as aforesaid is in accordance with the basis of land tenure amongst Rotumans as specified in this Act, it shall be lawful for the District Officer by summons under his or her hand to require the attendance of any person whose evidence may appear to him or her to be material to the issue and to examine such person on oath respecting the right, title or interest of any person or persons in the land in question or otherwise, and for so doing, the District Officer shall have all the powers of a Magistrate under the Magistrates' Courts Act (Cap. 14).

Restrictions on dealing with land

18.—(1) Land registered as *hanua ne 'on tore* or *hanua ne kainaga* under this Act shall not be alienated whether by sale, grant, transfer or exchange, provided that nothing shall prevent such land from being alienated to the State or compulsorily acquired by the State under the State Acquisition of Lands Act (Cap. 135).

(2) Land registered as *hanua ne 'on tore* or *hanua ne kainaga* under this Act shall not be leased to non-Rotumans, other than the State, and any such lease shall be for a term not exceeding 21 years.

(3) Land registered as *hanua ne 'on tore* or *hanua ne kainaga* under this Act shall not be mortgaged or charged, and, except as permitted under this Act, shall not be otherwise encumbered, whether by Rotuman or non-Rotuman owners.

(4) Any instrument purporting to deal with land contrary to this section shall be null and void.

Dealings to be effected in the prescribed forms and presented for registration

19.—(1) Land registered under this Act may be dealt with by a document in the prescribed form, or in default of prescription in such form as the District Officer shall require.

(2) The dealing shall be presented to the District Officer for registration and the registration shall be completed by registering the transferee as owner of the land transferred and filing the document appropriately, provided that a subdivision of *hanua ne kainaga* or *hanua ne 'on tore* among the members of the family community owning such land, under section 21(1)(b) shall not require it to be registered.

(3) No part of the land comprised in any title shall be transferred unless such land shall first have been subdivided and new titles shall have been opened in the Register of Lands in respect of each subdivision.

Survey on subdivision

20. No dealing which effects a subdivision of any land registered under this Act shall be registered unless such survey and demarcation of boundaries have been carried out in relation to such land as may be prescribed, or in default of prescription as may be ordered by the District Officer.

Power and method of dealing with hanua ne kainaga and hanua ne 'on tore

21.—(1) It shall be lawful for the owners of *hanua ne kainaga* to deal with *hanua ne kainaga* in any of the following ways—

- (a) by leasing in the manner provided in this Act;
- (b) by subdivision among the members of the *kainaga* in accordance with Rotuman customs provided that no such subdivision shall confer upon any individual Rotuman any interest greater than a life interest therein and that no such interest shall be alienable as such; or
- (c) by granting easements.

(2) It shall be lawful for the owners of *hanua ne 'on tore* to deal with *hanua ne 'on tore* by granting easements.

(3) No such dealing shall be carried out without the written consent of the *pure* or *'on tore* as the case may be, and of the majority of the adult members of the *kainaga* or *'on tore* resident in Rotuma.

(4) The instrument affecting the dealing shall be signed by the *pure* or *'on tore*, as the case may be.

Power and method of dealing with hanua togi

22.—(1) Subject to subsection (2), it shall be lawful for the owner of *hanua togi* to deal with the land in any of the following ways—

- (a) by sale or gift of such land as *hanua togi*;
- (b) by disposition as *hanua togi* intended to take effect on his or her death, as provided under section 29(1);
- (c) by leasing in the manner provided for in this Act; or
- (d) by granting easements.

(2) Where a dealing constitutes the permissible sale of land, the owner shall first offer the land for sale to the original landowning *kainaga* and subsequently to another purchaser only if the original landowning *kainaga* refuses the offer to purchase the relevant land.

(3) The instrument affecting the dealing shall be signed by the owner of *hanua togi* and witnessed by an independent adult who shall add his or her name and address.

Power to deal with unowned land

23.—(1) The Council may authorise the District Officer in writing to deal with land on the Council's behalf in any of the following ways, where land is determined by the Commission to be or which subsequently becomes unowned land—

- (a) by leasing it in the manner provided in this Act;
- (b) by granting easements; or
- (c) after consultation with the Council, by giving it as *hanua pau* or *hanua ne kainaga* to any Rotuman or *kainaga* who the Council is satisfied is in need of land.

(2) Subject to subsection (1), the instrument affecting the dealing of land shall be signed by the District Officer.

Creation of leases

24.—(1) Subject to section 18(2), land registered under this Act may be leased to any person for any term subject to the conditions of the lease.

(2) A lease for a term exceeding one year shall be in the prescribed form and shall be completed by registration of the lease as an encumbrance on the title of the lessor.

Termination of leases

25.—(1) The District Officer, upon proof to his or her satisfaction of the termination of a registered lease, shall cancel the registration thereof.

(2) A lease shall be surrendered by—

- (a) stamping the word “SURRENDERED” with the date of surrender on the original lease document; and
- (b) the signature thereunder of the person authorised under this Act to execute the lease and of the lessee.

(3) The registration of a lease surrendered under subsection (2) shall, following its surrender, be cancelled and thereupon the interest of the lessee shall cease.

PART 5—TRANSMISSION ON BIRTH OR DEATH

Transmission of hanua ne kainaga

26.—(1) The *hanua ne kainaga* shall be transmitted through both the paternal and maternal lineages in the following ways—

- (a) in the case of paternal lineage, as to legal rights; and
- (b) in the case of maternal lineage, as to the consent of majority of the male members in the *kainaga*.

(2) Upon the death of a member of a land-holding *kainaga* or on the birth of a child to a male member thereof, the nearest relative of the deceased member or of the child, as the case may be, shall—

- (a) inform the District Officer of such event and of the name of *hanua ne kainaga* concerned; and
- (b) furnish him or her with such proof and particulars as shall be prescribed or in default of prescription as the District Officer shall require.

(3) The District Officer, if satisfied that such death or birth has occurred, and, in the case of a birth, that the child is entitled under this Act to be registered in respect of such *hanua ne kainaga*, shall delete or add the name of such person from or to the Register, as the case may be.

(4) On the birth of a child, the father or other person shall register, where applicable, both the paternal and maternal lineage of the child’s *kainaga* with the Commission and shall inform the District Officer in writing of this registration.

Transmission of hanua ne kainaga to Council on failure of owners

27. Where the Commission has determined that there are no remaining members of *kainaga* upon whom land shall vest, the land shall become unowned land and shall vest in the Council in trust.

Transmission of hanua ne ‘on tore

28.—(1) *Hanua ne ‘on tore* shall be transmitted through both the paternal and maternal lineages.

(2) Upon the death of a member of a land-holding *'on tore* or upon the birth of a child to a member thereof, the nearest relative of the deceased member or of the child, as the case may be, shall—

- (a) inform the District Officer of such event and of the name of the *hanua ne 'on tore* concerned; and
- (b) provide him or her with such proof and particulars as shall be prescribed or in default of prescription as the District Officer shall require.

(3) The District Officer shall, if satisfied that such death or birth has occurred and in the case of a birth, that the child is entitled under this Act to be registered in respect of such *hanua ne 'on tore*, delete or add the name of such person from or to the Register of Lands.

(4) *Hanua ne 'on tore* coming into existence after the commencement of this Act shall vest as *hanua togi* in the last survivor of the first three generations of members of the *'on tore*, if it has not previously vested in one person as *hanua togi* under subsection (5).

(5) Notwithstanding subsection (4), if the membership of any *hanua ne 'on tore* is at any time reduced to one person, the land shall vest in that person as *hanua togi*.

(6) The District Officer shall make all amendments to the Register of Lands to give effect to subsections (4) and (5).

Transmission of hanua togi

29.—(1) An owner of *hanua togi* who wishes to dispose of the whole or any part thereof on his or her death as *hanua togi* shall personally deposit with the District Officer a document effecting such disposition and the District Officer shall make an entry to the effect that such a document has been deposited and the land it disposes of, but shall not enter any other part of the contents of such document on the Register of Lands or disclose the same to any member of the public during the life-time of the depositor.

(2) If the owner of such *hanua togi* disposes of the whole or any part thereof during his or her lifetime, the District Officer shall cancel or amend the entry made under subsection (1) accordingly.

(3) Upon the death of the owner of *hanua togi*, the nearest relative of the deceased person shall inform the District Officer thereof and shall furnish him or her with such proof and particulars as shall be prescribed or in default of prescription as the District Officer shall require, and the District Officer, if satisfied that such death has occurred shall treat the *hanua togi* of which he or she was the registered owner at the time of the person's death as follows—

- (a) if a document has been deposited under this section and such document names one individual Rotuman living at the death of the deceased, the person shall register the land referred to in the deposited document in the name of such person as *hanua togi*; and

- (b) in respect of any *hanua togi* of which a transmission cannot be effected under paragraph (a), the person shall ascertain whether—
- (i) the deceased has left any descendant or descendants;
 - (ii) if the deceased has left one descendant, he or she shall register such land as *hanua togi* in the name of such person;
 - (iii) if the deceased has left more than one descendant, he or she shall register such land as *hanua ne 'on tore* in the name of such persons; or
 - (iv) if the deceased has left no descendants, he or she shall register such land in the name of the Council as unowned land held in trust.

Creation of new hanua pau prohibited

30. At the commencement of this Act, the creation of any form of new *hanua pau* is prohibited.

Adopted children

31. For the avoidance of doubt, a legally adopted child shall be deemed to not be a child of his or her adopter.

PART 6—MISCELLANEOUS

Appeals to Commissioner responsible for Central and Eastern Division

32.—(1) In any case of a dealing in or transmission of land, or in any case wherein the District Officer has refused to approve a dealing in land or has granted or refused to grant unowned land to Rotumans under section 21(1)(c), or has rectified or refused to rectify the PEFR, any party concerned who is dissatisfied with the decision of the District Officer may notify the District Officer in writing within 30 days of the decision or such longer term as the District Officer may for good cause allow, that he or she intends to appeal, stating his or her grounds of appeal.

(2) The District Officer shall submit a report of the facts of the case together with his or her observations thereon and any notes of evidence and documents relating thereto, to the Commissioner responsible for the Central and Eastern Division who shall consider the matter and if satisfied that there is a case to answer shall recommend to the Minister the appointment of a Tribunal in accordance with section 9.

(3) The decision of the Tribunal shall be final and shall be carried into effect by the District Officer.

Maintenance of boundary marks

33.—(1) Every owner of land shall maintain in good order on its boundaries all boundary marks which are prescribed or which are ordered to be set up by the Commission or the District Officer under the provisions of this Act.

(2) The District Officer may, at any time, order which of adjoining owners shall be responsible for the care and maintenance of any such boundary marks.

Offences

34.—(1) Any person who—

- (a) claiming to own lands, fails to mark out the boundaries thereof, or to cut away undergrowth if so required, or to point out the boundaries to the Commission or to a Commissioner if so required, contrary to section 8(3);
- (b) fails to comply with any direction by the Commission or a Commissioner or the District Officer to mark out the boundaries of land, contrary to section 8(10)(a);
- (c) being responsible for the care and maintenance of a boundary mark, allows it to fall into disrepair or to be destroyed or removed, contrary to section 33(1); or
- (d) defaces, tampers with, destroys, injures or removes any boundary mark or counterfeits any boundary mark,

commits an offence, and shall be liable in the case of an offence under paragraph (a), (b) or (c) to a fine not exceeding \$100 or to a term of imprisonment not exceeding 2 months or to both, and in the case of an offence under paragraph (d) to a fine not exceeding \$200 or to a term of imprisonment not exceeding one year or to both.

(2) Any person convicted of an offence under this section, whether or not any penalty is imposed on him or her, shall be liable to pay any costs incurred in the rectification of his or her act or omission.

(3) Any person who willfully interferes with the Commission or a member of the Commission while engaged in taking evidence for the purpose of an inquiry held under section 8 or who interrupts the proceedings or otherwise misbehaves himself or herself during the holding of any such inquiry commits an offence and shall be liable to a fine not exceeding \$200 or to a term of imprisonment not exceeding 2 months or to both.

Rights of State preserved

35. Nothing in this Act shall be held to affect any right, title or interest of the State in, upon or over any land in Rotuma.

Regulations

36. The Minister may make Regulations to give effect to the provisions of this Act, including the following—

- (a) prescribing the manner in which the PEFR and the Register of Lands are to be kept and the form and manner in which dealings in land are to be effected;
- (b) prescribing any other form required for the purpose of carrying out the provisions of this Act;

- (c) prescribing the requirements for survey and the demarcation of boundaries in connection with dealings with land, and different requirements may be prescribed for different kinds of dealing;
- (d) prescribing fees to be paid for any matter or thing done under this Act;
- (e) prescribing any other matter which it is required or permitted to prescribe or which is necessary or convenient to prescribe under this Act.

Repeal

37. The Rotuma Lands Act (Cap. 138) is repealed.

ROTUMA LANDS BILL 2015

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

1.1 The Rotuma Lands Bill 2015 (**‘Bill’**) seeks to repeal the Rotuma Lands Act (Cap. 138) (**‘existing Act’**).

1.2 The views of Rotumans freely expressed during public consultations can be summarised into four main categories—

- (i) that some weighing be given to customs and tradition as the unifying influence that safeguards the identity of the indigenous people of Rotuma;
- (ii) that the chiefs of Rotuma be bestowed with the responsibility of being the repository of customs and tradition;
- (iii) that in the process of land registration, Rotumans are to be registered on both maternal and paternal lineages; and
- (iv) that communal land (*hanua ne kainaga*) be given the necessary protection from further fragmentation and that any unowned land found be vested in the Council of Rotuma in trust.

2.0 CLAUSES

2.1 Clauses 1, 2 and 3 provide for the short title, commencement and interpretation provisions and the protection of earlier land dealings done under the Lands Transfer Act (Cap. 131).

2.2 Under the existing Act, the land tenure system in Rotuma provides for the following types of land and the ownership and possessive rights in the land—

- “*hanua ne kainaga*” means land held by a *kainaga* (or a family community of Rotumans), the members of each *kainaga* holding the land in undivided ownership;

- “*hanua pau*” means land which is vested in a single individual Rotuman by sale or gift with the intention of creating *hanua pau*;
- “*hanua ne ‘on tore*” means land which is vested on intestacy in the first, second and third generations of descendants of a deceased owner of *hanua pau*, as *hanua ne ‘on tore* when there is no single individual Rotuman in whom the land vests as *hanua pau*, such descendants taking life interests in undivided shares in such land, and the last survivor of them taking the land as—
 - (a) *hanua pau* immediately prior to the commencement of the new Act; or
 - (b) *hanua togi* under the new Act;
- “*hanua togi*” means land sold to a purchaser who becomes the owner of the land or land that was initially *hanua ne ‘on tore*, as the case may be.

2.3 Clauses 4, 5 and 6 provide for the establishment of a register, the equivalent of the *Vola ni Kawa Bula*, called *Puk ne `Es `on Famör Rotuma* (**‘PEFR’**) and the Register of Lands. The protection, care and maintenance of the register are also provided for.

2.4 The PEFR records the details of Rotumans and shall be updated, maintained and kept in Rotuma by the Rotuma Lands Commission (**‘Commission’**). Also, Rotumans shall be registered on both maternal and paternal lineages.

2.5 Clauses 7 to 14 deal with the establishment of the Commission, its composition and functions, and also an appeals mechanism.

2.6 The Bill provides for the registration, dealing and transmission of land.

2.7 The Commission has the following functions—

- (a) ascertain the lands in Rotuma that are the rightful property of Rotuman owners as *hanua ne kainaga*, *hanua pau* and *hanua ne ‘on tore*, and the lands that are unowned and to categorise such land accordingly;
- (b) ascertain the lands in Rotuma that are the rightful property of Rotuman owners under other forms of Rotuman customary land tenure and to designate all such land as *hanua ne kainaga*, *hanua pau*, *hanua ne ‘on tore* or unowned land as the Commission deems appropriate;
- (c) ascertain the lands in Rotuma that are *hanua togi* and to categorise such land accordingly;

- (d) ascertain the lands in Rotuma that are leased for a term exceeding one year;
 - (e) inquire into and ascertain all lands that have been given away under various customary tenures and establish the types of dealings entered into;
 - (f) inquire into a situation where the *kainaga* is alleged to have withdrawn its support from the person to whom they had entrusted the position of *pure* as the person is alleged to be unfit in his or her general management of *hanua ne kainaga*;
 - (g) consider and determine all disputes arising out of paragraphs (a) to (e) and make orders as the Commission deems appropriate;
 - (h) revert to the *kainaga* land for which a term of lease, tenancy or the purpose for which it was granted has elapsed;
 - (i) cause the boundaries of all such lands to be demarcated on the ground; and
 - (j) cause a register to be prepared in the manner provided for in this Bill.
- 2.8 The Commission shall cause the boundaries of all lands to be surveyed, and a plan for the boundaries of each plot of land to be prepared on the title of the land and recorded in the Register of Lands, and the boundaries of the land and their dimensions, the number given to the land and the name of the owner of the land shall also be recorded.
- 2.9 The decisions of the Commission are appealed to the Appeals Tribunal (**'Tribunal'**) appointed by the Minister responsible for Rotuma following consultation with the Commissioner responsible for the Central and Eastern Division and the Deputy Secretary responsible for Rotuma.
- 2.10 The decisions of the Tribunal are final.
- 2.11 Clauses 15 to 33 outline the process of land dealings, the administration of unowned land, transmission of land ownership and the prohibition of creating any new form of permanent land holding arrangements. The protection and maintenance of land boundary marks are also provided for.

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