

SAMOA

Arrangement of Provisions

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2005, No.19**AN ACT to amend the Taking of Land Act 1964.***[28th June 2005]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Taking of Land Amendment Act 2005 and shall be read with and form part of the Taking of Land Act 1964 (the Principal Act).

(2) This Act shall commence on the 1st January 2000 and for this purpose shall have retrospective effect.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Application of Act – For the purpose of removal of doubt this Act applies to all:

- (a) Compulsory acquisitions of land taken under the provisions of the Principal Act from the date of commencement of this Act; and
- (b) Claims and legal proceedings concerning compulsory acquisitions referred to in paragraph (a) where such claims or legal proceedings are not completed or finalized as at the date of commencement of this Act.

3. Revocation of Proclamation taking land-(1) Section 21(1) of the Principal Act is amended by deleting the words “the payment or award of any” and substituting the words “the complete payment or final award of”.

(2) Section 21(4) of the Principal Act is amended by deleting all words after the words “damage in accordance with” and substituting the expression “sections 57A and 57B of this Act”.

4. Assessment of compensation for the temporary taking of land – The Principal Act is amended by inserting the following after section 57:

“57A. Assessment of compensation for the temporary taking of land-(1) Sections 57A and 57B apply despite any other law, including but not limited to the other provisions of this Act.

(2) Wherever a conflict arises between the provisions of sections 57A and 57B and any other law, including but not limited to the other provisions of this Act, the provisions of sections 57A and 57B shall prevail.

(3) Where a Proclamation taking land is revoked under the provisions of section 21 of this Act, any person who has any estate or interest in the land and who has in respect of that estate or interest suffered any loss or damage by reason of the Proclamation taking the land shall, subject to the limitation period provided in section 21(4) of the Act, be entitled to compensation in accordance with the provisions of section 57B.

57B. Principles of assessment for temporary taking of land-(1) Compensation for the taking of land, where the Proclamation taking the land is revoked under section 21 of this Act, shall be agreed to or assessed in accordance with the provisions of this section.

(2) Subject to subsections (3) and (4), compensation shall be agreed to or assessed and payable only under the following heads of compensation:

- (a) Compensation (if any) for any actual loss of income from the use of the land during the period of compulsory acquisition;
- (b) Compensation (if any) for any actual costs incurred in purchasing or leasing other land, where such purchase or lease is for the sole purpose of providing substitute land to be used for the same purpose for which the land compulsorily acquired was used immediately prior to its compulsory acquisition;
- (c) Compensation (if any) for any damage caused to the land by the Government during the period of compulsory acquisition; and
- (d) Compensation (if any) for any other actual loss which the claimant has suffered during the period of compulsory acquisition, where such loss is directly attributable to the compulsory acquisition of the land.

(3) Where other land is purchased in accordance with subsection (2)(b), the amount of compensation (if any) agreed to or assessed and payable under subsection (2)(b) shall be reduced by the value of such other land as at the date compensation is agreed to or assessed under this section.

(4) In determining the amount of compensation payable under this section, the Government or the Supreme Court, as the case may require, shall deduct and/or offset from any compensation agreed to or assessed and payable under subsection (2):

- (a) Any increase in the value of the land compulsorily acquired where such increase is caused by or results from the Government's compulsory

acquisition or use of the land during the period of compulsory acquisition; and

- (b) Any payment of compensation already made in respect of the land compulsorily acquired.
- (5) Subject to subsections (3), (4), (6), (7), (9), (10) and (11), the Government shall pay to the person being compensated the amount of any compensation agreed to or assessed under this section.
- (6) Subject to subsections (10) and (11), where any payment of compensation already made is less than the amount of compensation agreed to or assessed under this section, the Government shall pay to the person being compensated the difference between the amount of compensation agreed to or assessed under this section and the payment of compensation already made.
- (7) Subject to subsections (9) and (10), where any payment of compensation already made exceeds the amount of compensation agreed to or assessed under this section, the person to whom such payment has been made shall repay to the Government the difference between the payment of compensation already made and the amount of compensation agreed to or assessed under this section.
- (8) Subject to subsections (9) and (10), if a Proclamation taking land is revoked in accordance with the provisions of section 21 of this Act, the Minister shall comply with the provisions of section 26 of this Act.
- (9) Prior to the Minister entering into any agreement under this section and prior to the Supreme Court assessing and determining an entitlement to compensation under subsection (14), where there is any doubt or concern as to who is eligible to be compensated:
- (a) In the case of freehold land, the Minister or other interested persons may apply to the Supreme Court to determine who (if any person) is eligible for compensation under this section; and
 - (b) In the case of customary land, the Minister or other interested persons may apply to the Land and Titles Court to determine who (if any person) is eligible for compensation under this section.

(10) Prior to the Minister entering into any agreement under this section and prior to the Supreme Court assessing and determining an entitlement to compensation under subsection (14), in the case of customary land held by one or more persons under customary law and usage, the Minister or other interested persons may apply to the Land and Titles Court to determine who (if any person) is eligible under customary law and usage:

- (a) To enter into any legally binding agreement with the Minister under section 26 for and on behalf of the persons claiming an estate or interest in such land; and
- (b) To whom compensation is to be paid for and on behalf of such persons.

(11) For all purposes, any determination by the Supreme Court and the Land and Titles Court under subsections (9) and (10) shall be final and binding on the Supreme Court, the Land and Titles Court, the Court of Appeal, the Minister and all parties and persons subject to or affected by the determination.

(12) For the purposes of removal of doubt, any agreement made by the Minister and interested persons in accordance with the provisions of this section shall be binding on:

- (a) The parties to the agreement;
- (b) All persons subject to or affected by a determination made pursuant to subsections (9) or (10); and
- (c) All other persons claiming an interest in the land.

(13) Despite any other law, no party to or person subject to or affected by an agreement under this section and no party to or person subject to or affected by a determination under subsection (10) shall be entitled to bring or maintain any application to or any other proceedings before the Supreme Court for or concerning compensation under this section where an agreement as to compensation has been entered into in accordance with the provisions of this section.

(14) Subject to this section and the limitation period provided in section 21(4) of this Act, if compensation is not agreed to under this section, any person claiming an entitlement to compensation under this section may apply to the Supreme Court to assess and determine what compensation (if any) the person is eligible for.

(15) In determining who is eligible for compensation and the level or amount of compensation under this section, the Supreme Court and the Court of Appeal shall:

- (a) Comply with the provisions of this section; and
- (b) Assess or otherwise determine compensation only in accordance with the provisions of this section.”

**The Taking of Land Amendment Act 2005 is administered in the
Ministry of Natural Resources and Environment**