

LANDS REFEREE

[CAP. 148]

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LAWS OF THE REPUBLIC OF VANUATU

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CHAPTER 148

LANDS REFEREE

Act 15 of 1982
Act 12 of 1984

ARRANGEMENT OF SECTIONS

SECTION

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9. Power of entry upon land
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LANDS REFEREE

LANDS REFEREE

To provide for a Lands Referee.

LANDS REFEREE

1. (1) There shall be a Lands Referee who shall exercise the jurisdiction hereafter mentioned.
- (2) The Referee shall be appointed by the President on the advice of the Judicial Service Commission.
- (3) The person so appointed shall be a qualified valuation surveyor experienced in the management of land.

JURISDICTION OF REFEREE

2. The Referee shall have jurisdiction to determine the following matters-
 - (a) the amount of rent payable for a lease of land whether originally or on periodic reassessment;
 - (b) the value of improvements on or to land;
 - (c) any matter referred to him by any party to a lease of land relating to the interpretation of a provision in a lease;
 - (d) any matter which is by any Act or Order directed to be determined by him.

REFEREE TO ACT AS EXPERT AND NOT AS ARBITRATOR

3. (1) In exercising jurisdiction under sections 2(a) and (b) the Referee shall act as an expert and not as arbitrator. He shall consider any valuation and reasons submitted to him by the parties to an application but shall not be in any way limited or fettered thereby and shall reach his decision in accordance with his own judgment.
- (2) In exercising jurisdiction other than under sections 2(a) and (b), he may act as arbitrator.

DECISION OF REFEREE TO BE FINAL

4. A decision of the Referee shall be final:

Provided that any person aggrieved by the decision as being erroneous in point of law may require the Referee to state a case for the decision of the Supreme Court.

COSTS

5. The Referee may order that the costs of any proceedings before him incurred by any party shall be paid by any other party.

RULES FOR REGULATING PROCEEDINGS BEFORE THE REFEREE

6. Subject to the provisions of this Act, the Judicial Committee established under the Courts Act, Cap. 122 may make rules for regulating proceedings before the Referee and for the fees chargeable in respect of those proceedings.

POWERS OF REFEREE

7. (1) In exercising the jurisdiction hereby conferred a Referee shall have like powers to those of the Supreme Court to summon witnesses, to call for production of books, plans and documents and to examine on oath witnesses and parties concerned.

- (2) Where the Referee considers it desirable he may receive evidence by affidavit or administer interrogatories and require the person to whom the interrogatories are administered to make a full and true reply thereto.

INDEMNITY FOR ACTS AND OMISSIONS

8. No action shall lie and no proceedings shall be taken against the Government or the Lands Referee or other person in respect of anything done or omitted to be done by the Lands Referee or any person acting under his directions in good faith in the performance of his functions under any law.

POWER OF ENTRY UPON LAND

9. The Lands Referee may with or without assistants enter upon and inspect any land for the purpose of the exercise of his functions under any law.

OFFENCES

10. Any person who-
 - (a) obstructs or otherwise unlawfully interferes with the performance by the Lands Referee or any person acting under his directions in good faith in the performance of his functions under any law; or
 - (b) knowingly supplies to the Lands Referee or any person acting under his directions any information for the purposes of this Act which is false in any material particular,

shall be guilty of an offence.

Penalty: a fine of VT100,000 or imprisonment for 6 months or both such fine and imprisonment.

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[Subsidiary]

SUBSIDIARY LEGISLATION

LANDSREFEREE PROCEDURAL RULES

(Published 15/10/84)

ARRANGEMENT OF RULES

RULES

1. Application
2. Applicant to contact respondent
3. Communications
4. Fees
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6. Disputes concerning the interpretation of provisions contained within leases
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8. Number of persons present
9. Rules of evidence
10. Burden of proof
11. Witnesses to be segregated
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15. Costs
16. Notification of decisions
17. Defaulting parties
18. Right of appeal
19. Lands Referee discretion
20. Right to refuse applications

SCHEDULE: Fees

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[Subsidiary]

SUBSIDIARY LEGISLATION

LANDS REFEREE PROCEDURAL RULES

To provide for the procedural rules and prescribe the fees.

APPLICATION

1. All applications to the Lands Referee shall be made on the required form and be accompanied by the appropriate fee.

APPLICANT TO CONTACT RESPONDENT

2. The applicant shall not less than 14 days before making an application inform the respondent of his intention to do so.

COMMUNICATIONS

3. It shall be the responsibility of the applicant to provide the Lands Referee with the appropriate information to ensure that he can communicate with the parties.

FEES

4. The fee shall be payable by the applicant in the amount set out in the Schedule.

DISPUTES CONCERNING RENT OR THE VALUE OF IMPROVEMENTS

5. The Lands Referee shall require the parties to provide a statement of agreed facts as directed. The Lands Referee may-
 - (a) interrogate the parties and receive evidence from them.
 - (b) undertake his own investigations, asking such questions and considering such evidence as in his opinion are relevant.
 - (c) invite the parties to attend a hearing.

DISPUTES CONCERNING THE INTERPRETATION OF PROVISIONS CONTAINED WITHIN LEASES

6. In an arbitration the Lands Referee may-
 - (a) require the parties to provide a statement of agreed facts as directed.
 - (b) require the parties to exchange statements of case and supporting evidence.

The Lands Referee may make his decision without a hearing, provided that any party shall have the right to apply for a hearing which may be held at the discretion of the Lands Referee.

HEARINGS

7. The Lands Referee shall in all cases have the right to call a hearing and such hearings shall take place in private with only the parties and their representatives present.

NUMBER OF PERSONS PRESENT

8. The Lands Referee may summon in advance of a hearing the names of those persons whose presence is required and reserves the right to limit the numbers.

RULES OF EVIDENCE

9. The Lands Referee is not bound by the rules of evidence.

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BURDEN OF PROOF

10. The burden of proof of an assertion in the Lands Referee proceedings shall be upon the party making the assertion.

WITNESSES TO BE SEGREGATED

11. Witnesses who are to give evidence at a hearing shall be kept separate from the proceedings so that no witnesses hears the evidence of others before he is called to give his evidence.

EXPERT WITNESSES

12. Where it is the intention of any party to call an expert witness, this must be notified to the Lands Referee on application. A written proof of the expert's evidence shall be supplied to the Lands Referee in advance of any hearing.

CROSS-EXAMINATION

13. The Lands Referee may direct that cross-examination be undertaken either-
 - (a) only through the officials of the Lands Referee Office; or
 - (b) directly between the parties or their representatives.

AUTHORITY TO INSPECT LAND

14. The Lands Referee may inspect any land in connection with any dispute. He may inspect the land before or after receiving evidence and may make arrangements with the parties with a view to carrying out an inspection.

COSTS

15. The Lands Referee may invite applications for costs to be submitted to him within 14 days of the notification. Costs may be awarded either in full or in part at the Lands Referee's discretion, and may be referred by him to the Supreme Court for taxation.

NOTIFICATION OF DECISIONS

16. Decisions of the Lands Referee will be notified to the parties in writing. Alternatively, at the discretion of the Lands Referee, they may be read out at a time, date and place notified to the parties.

DEFAULTING PARTIES

17. The Lands Referee may treat any dispute ex-party where-
 - (a) there is no response from the respondent within 28 days from the date of the Lands Referee's notification;
 - (b) a party fails to attend a hearing or in the opinion of the Lands Referee does not supply a satisfactory excuse for his absence.

RIGHT OF APPEAL

18. There is no right of appeal against the decisions of the Lands Referee except where an aggrieved person claims that it is erroneous in point of law. Such appeal shall be made to the Supreme Court within 30 days of the notification by the Lands Referee of his decision to the appellant. A defaulting party has no right of appeal whatsoever.

LANDS REFEREE DISCRETION

19. The Lands Referee may change the order of proceedings, contact the parties in such manner, and make such directions as in his opinion are appropriate in the circumstances.

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RIGHT TO REFUSE APPLICATIONS

20. The Lands Referee shall refuse any application if it concerns a matter outside his jurisdiction, and may refuse any application which has been submitted to him incorrectly or if the subject matter in the dispute is in his opinion trivial.

SCHEDULE

(rule 4)

FEES

On application on a dispute relating to the rent of land within an urban area, the fee shall be assessed as 2 per cent of that figure representing the rent based on the longest unexpired term to which possession may extend as at the date of valuation. Where an interest is not registered then the figure is to be estimated by the Lands Referee. VT20,000 (minimum).

2. On application on a dispute relating to the rent of land in a rural area the fee shall be based on VT100 per hectare. The minimum fee shall be VT20,000.
3. On application on a dispute relating to the value of improvements made on or to land the fee shall be calculated as 2 per cent of the value of the improvements contended for by the party making the application. The minimum fee shall be VT20,000.
4. On application on a dispute concerning the terms contained within a lease, VT15,000.
An additional fee of VT5,000 will be included in the Lands Referee's award of costs, for each day (or part thereof) of any subsequent hearing.
5. On application by an applicant for registration for a valuation required by the Director of Land Records, VT6,000.
6. On application under section 43(2)(b) of the Land Leases Act, Cap. 163 for the enforcement of the right to the forfeiture of a lease, VT15,000.
7. On application under section 46(1) of the Land Leases Act, Cap. 163 for the lessee's relief from forfeiture of a lease, VT15,000.
8. On application under section 46(2) of the Land Leases Act, Cap. 163 for an order vesting the leased land in either the mortgagee or the sublessee, VT15,000.
9. On application on a dispute arising from the failure to agree the terms of compensation following the utilisation of public land in the rural areas, VT5,000.
On application for the Lands Referee to state a case for the decision of the Supreme Court, VT3,000.
11. On application for a copy of a decision of the Lands Referee, VT200 (per page).

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12. (a) Where a dispute relates to rent on part of the land and to the value of improvements on another part of the land, the fee will be taken as the higher of either-
 - (i) that as calculated for the rent on the whole; or
 - (ii) that as calculated for improvements on the whole.
- (b) Where a property crosses a boundary between an urban and a rural area, then the fee will be calculated on the rural scale.
- (c) Where an application relates to a dispute arising from the failure to agree the terms of compensation following the utilisation of public land in an urban area, the fee will be charged at the discretion of the Lands Referee, having regard to the nature of the dispute and the extent of the land in question.
- (d) Where the Minister refers a matter to the Lands Referee for a decision the application fee will normally be considered to have been borne by the Government. However, where a matter is referred by the Minister under section 22, of the Alienated Land Act, Cap. 145, where delay has been caused by either or both parties, the fee will be payable by the party deemed by the Referee to have been the principal cause of any delay. Where all parties are responsible for the delay then the cost of the fee will be shared equally. In such cases where the value of improvements is disputed, the fee will be based upon the median point of the amounts in dispute.
- (e) No fee shall be payable in excess of VT100,000 excepting where in the opinion of the Lands Referee special circumstances justify fees at a higher rate.
- (f) Fees will be payable in cash or by cheque, and will be officially receipted.
- (g) The Lands Referee may at his discretion remit in whole or in part any fee.
- (h) An urban area referred to in this schedule relates to the land falling within the physical planning boundaries of the towns of Port Vila and Luganville.