

Lands, Surveys and Environment Act 1989

LAWS OF WESTERN SAMOA

LANDS, SURVEYS and ENVIRONMENT

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THE LANDS, SURVEYS & ENVIRONMENT ACT 1989

1989,

No. 33

AN ACT to consolidate The Land Ordinance 1959 and its amendments and also to make provision for the conservation and protection of the environment and the establishment of National Parks and other forms of protected areas and to enlarge the functions of a Department of State and for matters incidental thereto.

(5 March 1990)

1. Short title and commencement - (1) This Act may be cited as the Lands, Surveys and Environment Act 1989.

(2) This Act shall come into force on such date as shall be specified by the Head of State by Order, and different parts and different Divisions may be brought into force at different times.

2. Interpretation - In this Act, unless the context otherwise requires:

"**Alienation**" includes a limited disposal by lease as well as an absolute disposal by sale or otherwise, and "to alienate" has a corresponding meaning.

"**Animal**" means any member, alive or dead of the animal kingdom (other than man), and includes:

- (a) Fish of any kind, including, but without limiting the generality of the term, shellfish, crustaceans and turtles;
- (b) Eggs or parts of egg; and
- (c) The skin, feathers, horn, shell, or any other part of an animal.

"**Board**" for the purposes of Part VIII of this Act means the Environment Board established under section 97 of this Act;

"**Coastal Zone**" means all those areas comprising coastal waters and the foreshore.

"**Coastal water**" means all that area having as its inner boundary the mean low water mark, and as its outer boundary, the outer limit of the territorial sea, and includes every lagoon and the bed of such sea or lagoon.

"**Conservation Officer**" means Conservation Officer appointed under section 106 of this Act.

"**Court**" means the Department of Lands, Survey and Environment.

"**Cultivation**" includes drainage, the felling of bush, or the clearing of land or planting, or the clearing and ploughing of land for planting, and the planting of land.

"**Department**" means the Department of Lands, Surveys and Environment.

"**Department of State**" means an incorporated Department of instrument of the Executive Government of Western Samoa.

"**Director**" means the Director of Lands, Surveys and Environment appointed under this Act, and in his absence the person lawfully acting in the place of the Director.

"**Discharge**" includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying or dumping.

"**Division**" means a Division of a Part of this Act.

"**Ecosystem**" means any system of inter-acting terrestrial or aquatic organisms within their natural and physical environment.

"**Environment**" means the physical features of the surroundings of human beings, including the land, water, atmosphere, climate, sound, odours, tastes, the biological features of animals and plants, and the social features of aesthetics.

"**Environment pollutant**" means:

(a) Any substance whether liquid, solid, gaseous, or radioactive, or any form of electromagnetic or thermal energy which, when discharged, emitted or deposited into the environment, causes or may cause, by reason of its properties, characteristics, the volume, amount and weight, and point of its discharge or other circumstances, a present or future alteration of the environment so as to affect adversely its beneficial use; and

(b) Any substance, material or matter prescribed to be an environment pollutant or a hazardous environment pollutant.

"**Foreshore**" means:

(a) All that area between the mean low water mark and a line connecting those points landward and measured at right angles to a distance of 50 metres from the mean low water mark; and

(b) Every stream river and lake together with the bed of any stream, river and lake and includes that area extending landward and measured at right angles to a distance of 5 metres from the bank of any such stream, river and lake.

"**Forfeiture**" or "**forfeited**" means forfeiture or forfeited to the Government;

"**Freehold Land**" has the meaning given to it by Article 101 of the Constitution of the Independent State of Western Samoa.

"**Government land**" means public land which is not for the time being set aside for any public purpose; and includes land which has become the property of the Government as bona vacantia.

"**Improvements**" means substantial improvements of a permanent character, and includes reclamation from swamps; clearing of bush, or scrub; cultivation; planting with trees or live hedges, the laying-out and cultivating of gardens; fencing; draining; roading;

bridging; sinking wells or bores, or constructing water tanks, water supplies, and irrigation works, making embankments or protective works of any kind; in any way improving the character or fertility of the soil; the erection of any building; and the installation of any telephone or of any electric-lighting or electric-power plant.

"**Land Board**" or (except for the purposes of Part VIII of this Act) "Board" means the Land Board established under this Act.

"**Lease**" means a lease granted under this Act and "lessee" has a corresponding meaning.

"**Litter**" includes any bottle, tin, carton, package, paper, grass, or other refuse, rubbish or unwanted thing or any abandoned vehicle or part thereof.

"**Mean low water mark**" means the line of medium low tide and the spring and neap tide.

"**Minerals**" includes all minerals, metals, clay, stone, gravel, sand, limestone, and other valuable materials existing on or below the surface of the land.

"**Minister**" means the Minister of Lands, Surveys and Environment.

"**National Park**" means a national park established under the National Parks and Reserves Act 1974.

"**Part**" means a Part of this Act.

"**Plant**" includes any plant, tree, shrub, herb, flower, nursery stock, culture, vegetable, or other vegetation; and also includes any fruit, seed, spore, and portion or product of any plant.

"**Police Officer**" means an officer of the Police Service of Western Samoa.

"**Private Land**" for the purposes of Part VIII of this Act means any land which is not Public land.

"**Public Land**" has the meaning given to it by Article 101 of the Constitution of the Independent State of Western Samoa.

"**Renewable lease**" means a lease containing one or more rights of renewal.

"**Rental value**" means the value of Government land on which the yearly rent, payable under a renewable lease is calculated in accordance with this Act.

"**Reserve**" means a reserve established under the National Parks and Reserves Act 1974.

"**Residence**" in relation to a lease of any Government land, means the home of the lessee or, with the consent of the Board, the home of the family of the lessee, being in every case a habitable house; and "to reside" has a corresponding meaning.

"**Socio-cultural**" in relation to the environment means the traditional social and cultural use of the environment from which the Samoan way of life has developed.

"**Surveyor**" has the same meaning as in the Survey Ordinance 1961.

"**Value of Improvements**" means the added value which at the time of valuation those improvements give to the land.

"**Vessel**" means every description of watercraft or other artificial contrivance used or capable of being used as a means of transportation on or under water.

"**Water**" includes any sea, river, stream, watercourse, reservoir, well, bore, tank, dam, channel, lake, lagoon, swamp, open, drain, coastal or underground water.

"**Wildlife**" means:

(a) Animals and plants that are indigenous to Western Samoa or to Western Samoan waters;

(b) Migratory animals that periodically or occasionally visit Western Samoa or Western Samoan waters; and

(c) Any animals and plants described by regulation under this Act.

PART I GENERAL ADMINISTRATION

3. Minister of Lands, Surveys and Environment- (1) There shall be a Minister of Lands, Surveys and Environment who shall be charged with the administration of this Act.

(2) The Minister may from time to time, by writing under his hand, either generally or particularly, delegate to the Director all or any of the powers which are conferred on him as Minister for the Environment and Conservation by any enactment, including powers delegated to him under any enactment, but except as provided for in subsection (7) of this section not including power to delegate under this section or the power to consent to a delegation.

(3) Subject to any general or special directions given or conditions attached by the Minister, the Director may exercise any powers delegated to him as aforesaid in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(4) Where the Director purports to act pursuant to any delegation under this section he shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) A delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister.

(6) Unless and until such delegation is revoked it shall continue in force according to its tenor. In the event of the Minister by whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made by the person for the time being holding office as Minister and, in the event of the Director to whom such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding office as Director or, if there is no Director in office or if the Director is absent from duty, to the person for the time being lawfully directed to act in the place of the Director.

(7) Notwithstanding the provisions of subsection (2) of this section the power of delegation conferred upon the Director by this section shall include the power to delegate to the Principal Environmental Officer appointed under section 93 of this Act any power delegated to the Director by the Minister which relates to any matter for which the Principal Environmental Officer is responsible to the Director under Part VIII of this Act.

4. Department of Lands, Surveys and Environment- (1) There shall be a Department of State to be called the Department of Lands, Surveys and Environment, which shall be

the same Department as that existing under the name of the Department of Lands and Survey at the commencement of this Act.

(2) The Department shall consist of:

- (a) The Minister of Lands, Surveys and Environment.
- (b) The Director of Lands, Surveys and Environment.
- (c) The Deputy Director of Lands, Surveys and Environment.
- (d) The Principal Environmental Officer.
- (e) Such surveyors, draughtsmen, ecologists, field officers, clerks, and other officers, and other employees as may be necessary.

5. Director of Lands, Surveys and Environment- (1) There shall from time to time be appointed as an officer of the Public Service a fit person to be the Director of Natural Resources and Environment, who shall be the Administrative Head of the Department.

(2) The Director may from time to time, by writing under his hand, either generally or particularly, delegate to such officer or officers or employees of the Department as he thinks fit all or any of the powers exercisable by him under any enactment, including any powers delegated to him under any enactment, but not including this present power of delegation.

(3) Subject to any general or special directions given or conditions attached by the Director; the officer or employee to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(4) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Any delegation under this section may be made to a specified officer or employee or to officers or employees of a specified class, or may be made to the holder for the time being of a specified office or class of offices.

(6) Every delegation under this section shall be revocable at will and no such delegation shall prevent the exercise of any power by the Director.

(7) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding that the Director by whom it was made may have ceased to hold office and shall continue to have effect as if made by the successor in office of that Director.

6. Land Board - (1) There shall continue to be the Land Board which shall be the same body as the Land Board constituted under the Land Ordinance 1959, which Board shall continue to consist of:

- (a) The Minister, who shall be the Chairman of the Board;
- (b) The Director, who shall be the Deputy Chairman of the Board;
- (ba) The Attorney-General;
- (c) The Financial Secretary of the Treasury;
- (d) The Director of Agriculture, Forests, and Fisheries;
- (e) The Director of Works; and
- (f) Not more than 5 other persons to be appointed by the Minister and to hold office during his pleasure.

(2) No member of the Legislative Assembly shall be eligible to be a member of the Board under paragraph (f) of the last preceding subsection, and if any such member of the Board is elected or appointed to the Legislative Assembly during his term of office he shall thereupon vacate his office as a member of the Board.

(3) Meetings of the Board may be summoned by the Minister or by the Director on behalf of the Minister. No meeting shall be held unless either the Minister or Director is present.

(4) Six members of the Board shall form a quorum.

(5) In the absence from any meeting of any member being an officer of any Department or Office of State he may authorise any other officer of that Department or Office to attend the meeting in his stead. While any person is attending any meeting under this subsection he shall be deemed for all purposes to be a member of the Board.

(6) The fact that any person attends and acts as a member of the Board at any such meeting shall be conclusive proof of his authority to do so.

(7) At every meeting of the Board the Chairman of that meeting shall have a deliberative vote and, in case of an equality of votes, shall also have a casting vote.

(8) The powers of the Board shall not be affected by any vacancy in the membership thereof.

(9) There shall be paid, out of money to be appropriated by the Legislative Assembly for the purpose, to every member of the Board appointed under paragraph (f) of subsection (1) of this section who is not a salaried employee of the Government:

- (a) Any travelling expenses reasonably incurred by him in respect of his attendance at meetings of the Board; and
- (b) Such sum as Cabinet from time to time approves as remuneration for each day or part of a day of his attendance at meetings of the Board.

7. Duties of Board - (1) It shall be the duty of the Board to carry out the provisions of this Act for the administration, management, development, alienation, settlement,

protection, and care of Government land; and to undertake, control, and carry out all negotiations for the purchase of land by the Government under this Act, and the performance and completion of all contracts of purchase so entered into by the Government.

(2) In the exercise of its powers and functions under this Act the Board shall have regard to any representations that may be made by the Minister in respect thereof, and shall give effect to any decision of the Government in relation thereto conveyed to it in writing by the Minister.

(3) All the powers, rights, and obligations heretofore vested in or binding on any person or body directly or indirectly by delegation from the Head of State, prior to the commencement of the Land Ordinance 1959 shall continue to be powers, rights, and obligations of the Land Board continued under this Act.

8. Land Committees- (1) For the purpose of assisting in the administration of this Act the Board may from time to time appoint one or more Land Committees. Every Land Committee appointed under this section shall be given a distinctive name corresponding to the locality in which it operates.

(2) Each Land Committee shall consist of 3 members, of whom the Director shall ex officio be one, and shall be the Chairman thereof. In the absence of the Director from any meeting of a Land Committee he may appoint an officer of the Department as his -deputy for the purposes of that meeting. The fact that any person attends and acts as the deputy of the Director at any meeting of the Land Committee shall be conclusive proof of his authority so to do.

(3) No member of the Legislative Assembly shall be eligible to be a member of any Land Committee, and if any member of a Land Committee is elected or appointed to the Legislative Assembly during his term of office he shall thereupon vacate his office as a member of that Committee.

(4) Two members of a Land Committee, of whom the Director or his deputy shall be one, shall form a quorum.

(5) Every member of a Land Committee other than the Director shall be appointed to hold office for a term not exceeding 2 years, but may be reappointed from time to time. Every member may be removed from office by the Minister for disability, insolvency, neglect of duty, or misconduct, or at any time resign his office by writing addressed to the Minister.

(6) Every member of a Land Committee, other than the Director or his deputy, shall be paid such travelling allowance, as well as locomotion expenses or mileage allowance, as may from time to time be prescribed by regulation and shall be paid out of money to be appropriated by the Legislative Assembly for the purpose.

(7) Every Land Committee established under the Land Ordinance 1959 shall continue to exist as if established under this Act.

9. Board may delegate its powers- (1) The Board may from time to time delegate any of its powers to any Land Committee appointed or continued under the last preceding section, or to any officer or officers of the Department, either as to matters within its jurisdiction generally, or in any particular case or matter, or any particular class of cases or matters.

(2) The officer or officers referred to in the last preceding subsection may be an officer or officers referred to by name, or the officer or officers who for the time being and from time to time hold a specified position or positions in the Department.

(3) Subject to any general or special directions given by the Board, the Land Committee or officer to whom any powers have been so delegated may exercise those powers in the same manner and with the same effect as if they had been directly conferred on that Land Committee or officer by this Act and not by delegation.

(4) Every Committee or officer purporting to act under any delegation under this section shall, in the absence of proof to the contrary be presumed to be acting within the terms of the delegation.

(5) Any, such delegation may be at any time revoked by the Board, in whole or in part, but that revocation shall not affect in any way anything done under the delegated authority.

(6) No such delegation shall prevent the exercise by the Board itself of any of the powers conferred on it by this Act.

10. Board may conduct inquiries- For the purpose of hearing and determining any matter, question, doubt, or difference in relation to any matters within the Board's jurisdiction, or for the purpose of arriving at a decision upon any application submitted to it, or of making any inquiry into breaches of this Act, the following provision shall apply:

(a) The Board may, by summons under the hand of the Minister, of the Director acting as Chairman for any particular meeting require any person to attend as a witness at a time and place specified in the summons;

(b) That person may in like manner be required to bring and produce to the Board any books, papers, writings, deeds, and documents of which a Court of law could compel the production;

(c) The Board may examine on oath any person so summoned and attending touching the matter to be inquired into, and all the proceedings of the Board shall be deemed to be judicial proceedings within the meaning of section 36 of the Crimes Ordinance 1961;

(d) Every person on whom any summons has been served who fails or neglects to appear, or to produce any books, papers, writings, deeds, and documents according to the

exigency of the summons, or refuses to be sworn or to affirm, or to give evidence, commits an offence against this Act;

(e) A summons may be served by delivering a copy thereof personally or by leaving a copy at the usual place of abode of the person to be served, or by sending a copy by registered post to his last known place of address;

(f) No person shall be compelled to attend until a reasonable sum is tendered to him to pay the probable expenses of his travelling and maintenance, or, if the summons is not personally served, such sum is paid to him on his demand;

(g) The amount to which a witness other than any party prosecuting a claim before the Board, shall be entitled for his expenses and loss of time shall be such as the Board awards; and the Minister, or the Director acting as Chairman, as the case may be, shall, as soon as the examination is concluded, give a certificate to the person entitled setting forth the amount allowed; and

(h) All expenses incident to the conduct of any such inquiry, including the expenses of witnesses, shall be deemed to be expenses incident to the administration of Government land, and shall be paid out of any money appropriated by the Legislative Assembly for that purpose:

PROVIDED THAT where any such inquiry is held at the instance of any person the Board may order that the costs of the inquiry, or part thereof shall be paid by that person to the Department, and any amount so ordered may be recovered as a debt owing by that person to the Board.

11. Application for rehearing- (1) Any person aggrieved by the decision of the Board on any matter may, within one month after being notified of that decision, apply to the Board for a rehearing, and the Board may, at any time within one month after receiving the application, grant a rehearing of the case if it thinks that justice requires it, and on the rehearing may reverse, alter, modify, or confirm the previous decision in the same case.

(2) Every application for a rehearing under this section shall be lodged with the Director at the Land Office at Apia.

12. Appeals to Supreme Court- (1) If any person considers himself aggrieved by any decision of the Board he may appeal to the Supreme Court if within one month after being notified of that decision, he gives notice of appeal to the Board, and also to such persons (if any) as have appeared before the Board as opponents of the case or claim or application to which the decision relates, and also gives security to be approved of by the Registrar of the Supreme Court for the costs of the appeal.

(2) Every notice to the Board under the last preceding subsection shall be lodged with the Director at the Land Office at Apia.

(3) The appeal shall be in the form of a case agreed on by the Board and the appellant, or, if they cannot agree, the Court shall hear the appeal without a case stated, and in any case may receive evidence either orally or by affidavit or by both of such means.

(4) The Court, if it thinks fit, instead of deciding any question of fact in dispute upon affidavit or personal examination by it of witnesses, may order that question to be found and determined by assessors, and may settle an issue or issues for that purpose.

(5) After hearing the parties the Court shall give its decision and cause the same to be certified in writing by the Registrar of the Supreme Court to the Board, and the Board shall be bound to follow that decision and shall reverse, alter, modify, or confirm its own decision in accordance therewith.

(6) The Court may make such order as to payment of costs to either party as it thinks fit.

(7) For following such decision no action or other proceeding by any process of any Court shall lie against the Government of Western Samoa, or the Board, or any Land Committee, or the Director.

13. Powers and duties of Director- (1) The powers and duties of the Director exercisable for and on behalf of the Government in respect of all Government land shall be:

- (a) To prevent unlawful trespassing or intrusion upon or occupation of Government land;
- (b) To remove or expel, or cause to be removed or expelled, all trespassers and intruders on and persons unlawfully occupying Government land, and to remove or cause to be removed there from all livestock, goods, chattels, and effects whatsoever of such persons, and such livestock, goods, chattels, and effects to impound in some public pound, and sell by public auction, if the same are not replevied [sic] or redeemed within 21 days after being so impounded by payment of all expenses incurred by the removal and impounding thereof and incidental thereto, and also of all penalties which may have been incurred in consequence of the trespass or intrusion by such livestock, goods, chattels, and effects; and the proceeds of any sale (after payment of the costs thereof, of the removal and impounding of such livestock, goods, chattels, and effects and incidental thereto, and of all penalties aforesaid) shall be paid to the person entitled thereto on application to the Director;
- (c) To ascertain the limits of and to define, according to the laws in force relating thereto, the boundaries of all Government land held under or affected by any lease;
- (d) To enter on any Government land in order to take possession thereof in the name of the Government;
- (e) To distrain, sue for, and recover money due to the Government for rent, or for use and occupation in respect of any Government land, or for injury or damage done to any Government land by wrongful entry or occupation, or by wrongful removal there from of anything the property of the Government;
- (f) To enforce contracts respecting leases or other disposition of Government land, and to compel payment of money due to the Government in respect thereof;
- (g) To determine any determinable contracts respecting Government land;
- (h) To resume possession of Government land on non-performance of contracts;

- (i) To recover rents and other money due to the Government in respect of any leases or other disposition of Government land; and
- (j) Such other duties as may from time to time be assigned to him by the Board.

(2) Subject to any general or special directions given by the Board, the Director may delegate to any officer of the Department any of the powers set out in the last preceding subsection. The provisions of subsections (3), (4), (5) and (6) of section 9 of this Act shall apply, with the necessary modifications, to any delegation by the Director under this subsection.

(3) All actions and proceedings by or on behalf of the Government respecting Government land or respecting any contract relating thereto, or any breach of any such contract, or any trespass thereon, or any damage accruing by reason of trespass thereon, or for the recovery of any rents or other money in respect of Government land, or in respect of any damages or wrongs whatsoever in any way suffered by the Government in respect of Government land, and any proceedings for the breach of any provision of this Act, may be commenced, prosecuted, and carried on by and in the name of the Director on behalf of the Government, and the Director may be plaintiff, or defendant, or informant, as the case may require, in any such action or proceeding.

(4) All documents which require to be executed for the purposes of this Act by or on behalf of the Government, or by or on behalf of the Board, may, unless otherwise provided by this Act, be executed by the Minister and, if so executed, shall be as valid and effectual as if executed by or on behalf of the Government or by or on behalf of the Board, as the case may be.

14. Recovery of possession of Government land - (1) When any person, without any right, title, or licence, or whose right, title, or licence has expired or been forfeited or cancelled, is in occupation of any Government land, or of any public reserve not granted to or vested in any local body, trustees, or other persons, the Director or some person appointed in writing by him, may enter a plaint in any Court to recover possession thereof; and the jurisdiction of the Court shall not be negatived by any plea that the title of the land is involved in such matter or that the estimated value or the cost of the land being sought to be recovered exceeds the maximum limit of the jurisdiction of the Court or that of the Judge.

(2) If on the hearing of the plaint the defendant does not appear, or appears but fails to establish himself an absolute right or title to the possession of the land, or if it is shown by or on behalf of the plaintiff to the satisfaction of the Court hearing the plaint, that the title under which the defendant claims has, as between himself and the Government, expired or become liable to forfeiture or cancellation, the Court shall declare such title to be extinguished, and may order that possession of the land sought to be recovered be given by the defendant to the plaintiff, either forthwith or on or before such a day as the Court thinks fit to name, and that the defendant do pay the costs.

(3) If possession is not given pursuant to that order, the Court may issue a warrant requiring the bailiff of the Court or any constable, to give possession of those lands to the plaintiff.

(4) All documents which are required to be executed for the ' purposes of this Act by or on behalf of the Government, or by or on behalf of the Board, may, unless otherwise provided by this Act, be executed by the Minister and, if so executed, shall be as valid and effectual as if executed by or on behalf of the Government or by or on behalf of the Board, as the case may be.

15. Inspection of Government land- (1) For the purpose of inspecting any Government land held on lease, the Director or any officer authorised by him in writing, shall, at all reasonable times, have free rights of ingress, egress and regress, in respect of that land.

(2) Every person who obstructs the Director or any officer authorised by him in the making of an inspection, or who refuses or wilfully neglects to answer any reasonable question put to him in writing by the Director or that officer, or who makes to him any wilful misstatement, commits an offence against this Act.

PART II SURVEYS

16. Conduct of surveys- All surveys of Government land and of customary land, and all trigonometrical surveys, standard traverses, precise levelling, and topographical surveys for the production of maps, shall be conducted under the direction of the Director.

17. Entry on land for purposes of survey - (1) The Director or any person authorised either specially or generally by him:

- (a) May enter from time to time during the day time, upon any Government land, customary land, or freehold land whatever, with such as assistants as he thinks fit, for the purpose of making any survey which he is authorised to make, and may affix or set up thereon trigonometrical stations, survey pegs; marks, or poles; or for the purpose of inspecting any such survey or station, or of altering, repairing, moving, or removing any trigonometrical station, survey peg, mark, or pole; and
- (b) May do all things necessary for such survey or for any inspection or alteration thereof.

(2) Before entry, the Director, or person authorised as aforesaid, shall, when practicable give reasonable notice to the owner or occupier of the land of the intention to enter thereon, and shall, if required by the owner or occupier, produce and show the authority under which he claims to enter, or has entered, on the land.

18. Standard measurement of length- All measurement of length in surveys and on plans of land affecting registered titles, shall be made and expressed in terms of the

International metre and measurements of area on such surveys and on such plans shall be expressed in acres, roods, and perches, and decimals of perches.

19. Trigonometrical sites - The land on which any trigonometrical station is situated, together with a right-of-way to and from the same, shall for the purposes of survey, and notwithstanding any alienation thereof, be deemed and taken to be Government land and to have been and to be excepted out of any such alienation.

20. Interference with survey marks - Every person not duly authorised who takes away or is found in possession of, or removes, destroys, or displaces, or alters the position of, any trigonometrical station, boundary mark, or survey mark, post, block, or stone which is fixed, placed, or set up for the purposes of any authorised survey (whether made for the purposes of this Act or not), or who wilfully interferes with, damages; or destroys any such station, mark, post, block, or stone, commits an offence against this Act.

21. Obstruction of surveyor- Every person who wilfully obstructs or hinders any surveyor, or any servant or assistant duly authorised by a surveyor, in the execution of his duty in or about ascertaining or marking out any boundary; or survey lines, or in or about the fixing, placing, restoring, repairing, or setting-up of any trigonometrical station, boundary mark, or survey mark; post, block, or stone for the purposes aforesaid, or in any way resists any surveyor or other person as aforesaid in the performance of his duty, commits an offence against this Act.

22. Determination of limit, area, or boundaries of land - If in any action or proceeding touching or concerning any Government land, or any grant or lease, relating thereto any question arises as to the limits or extent of or as to the boundary of any land comprised in, any grant or lease, it shall be competent for the Court before which the action or proceeding is pending to order and direct that that question shall be referred to any person or persons whom the Court thinks fit; and the award, order, and determination of that person or persons shall be conclusive in the action or proceeding as to the matter so referred, and shall be binding on the parties, and may be enforced as a rule of the Court, and the Court may make such rule or order as it deems fit touching such reference or the costs thereof.

PART III PURCHASE AND DEVELOPMENT OF LAND

23. Purchase of private land or interest in Government land - (1) The Board, on behalf of the Government may, with the approval of the Minister, purchase any freehold land, or the interest of any lessee in any Government land for the purposes of settlement as farming, urban, commercial, or industrial land under this Act, or for any Government purpose, or for use in conjunction with land which is already used, or intended to be used, for any of these purposes.

(2) Before purchasing any freehold land or any interest in Government land under this section, it shall be the duty of the Board to ascertain, by report and valuation, and by such other means as it thinks fit, the value thereof and its suitability for the purposes for which it is to be acquired under this Act.

(3) On the approval of the Minister being given to the purchase, the Board may execute all deeds and instruments and do and perform all acts necessary for the completion of the purchase.

(4) In payment either in whole or in part for freehold land or interest in Government land purchased under this section the Board may agree with the vendor that he will accept a lease of any Government land; and in such a case the Director shall, when so required by the Board, give effect to the agreement by executing such documents as may be necessary to give effect thereto.

(5) All freehold land purchased under this section shall when so purchased be deemed to be Government land subject to this Act.

24. Unformed and unused roads- (1) In any case where any unformed and unused road intersects or is adjacent to any freehold land or interest in Government land purchased under this Part of this Act and is not suitable to the subdivision of the land, the Minister may, by notification in the Western Samoan Gazette, close such road or portion thereof and declare the land comprised therein to be Government land subject to this Act.

(2) No road or portion thereof adjacent to any land purchased under this Part of this Act shall be closed under the last preceding subsection without prior consent in writing of the owners of all lands having a frontage to the portion of the road intended to be closed.

25. Preparing land for settlement- For the purpose of preparing any Government land for settlement, the Board, with the approval of the Minister, may undertake and carry out such development works as it thinks fit, including, but without limiting the generality of the foregoing provisions, the survey, roading, subdivision, draining, reclamation, fencing, clearing, and planting of the land, the erection of buildings, the provision of water; and any other works calculated to improve the quality or condition of the land or to make it fit for settlement under this Act.

26. Joint preparation of land for settlement - The Board may, with the approval of the Minister, construct or join with any person or Department of State in constructing roads, bridges, drainage works, river protection works, and other works upon or in respect of Government land for the purpose of preparing it for settlement as provided in the last preceding section, or for its protection from injury from floods, river encroachment, or otherwise; or may arrange for the work to be undertaken by that person or Department of State upon such terms and conditions as may be agreed upon.

27. Land held for Government purpose may be developed - The authority conferred on the Board by sections 25 and 26 of this Act for the development of any Government

land shall extend and apply to any land purchased, acquired, set apart, or held by the Government for any Government purpose and not for the time being required for that purpose.

PART IV CLASSIFICATION AND ALIENATION OF GOVERNMENT LAND

28. Classification of Government land - (1) All Government land available for disposal under this Act may be classified by the Board into:

- (a) Farm land, being land suitable or adaptable for any type of farming;
- (b) Urban land, being land suitable or adaptable for residential purposes, and being in or in the vicinity of any town or village; and
- (c) Commercial or industrial land, being land suitable or adaptable for use for any commercial or industrial purpose.

(2) The Board may also classify under the last preceding subsection any Government land which is held on lease at the commencement of this Act.

(3) The Board may from time to time reclassify any land which has been classified under this section.

29. Board may alienate land - (1) The Board may alienate Government land under this Act either after calling for applications therefore or without competition in accordance with the provisions of this Act.

30. Board may call for public applications - (1) The Board may by public notice call for applications for any Government land available for alienation under this Act.

(2) The notice shall specify the rental value or yearly rent at which the land and any improvements thereon may be acquired, and the time and place for the making of applications.

(3) The time within which applications may be made shall be not less than one month from the date when the land is first notified as being open for acquisition.

(4) All land which has been notified as open for acquisition under this section and which has not been disposed of on the day mentioned in the notice shall remain open for acquisition on the terms advertised.

(5) Any land which has been notified as open for acquisition under this section may at any time be withdrawn by the Board or the Director, notwithstanding that application to acquire the land may have been made.

31. Allotment of land without competition - (1) The Board may alienate any Government land without public notice under the last preceding section and without competition by way of lease at such price or rent and subject to such terms and conditions as the Board may determine, in any of the following cases:

(a) Where the land already owned, leased, or held by the applicant is insufficient in the opinion of the Board for the maintenance of himself and his family, or where the Government land is required to provide adequate water supply, or for any similar purpose;

(b) Where the Government land is without a convenient way of access, or lies between land already alienated and a road which forms or should form the way of approach to the alienated land;

(c) Where the Government land is insufficient in area for lease, or is for any other reason suitable only for use in conjunction with other land.

(2) Before approving any application under this section the Board may require the applicant to advertise his application and it may also require him to serve notice of his application on the owner, lessee, or occupier of any land adjacent to the Government land applied for.

(3) Where any land is disposed of by way of lease under this section to an applicant who already holds adjoining land under lease from the Government, the Board, may, in lieu of issuing a lease over the additional land, incorporate it in his existing lease subject to such increase in rental value or rent as the Board may determine, but otherwise subject to the same terms and conditions as apply to the existing lease. For the purposes of this subsection lands which are separated only by a road, street, river, or stream shall be deemed to adjoin.

(4) Where any land is disposed of under this section to an applicant who already is a lessee but the land disposed of does not adjoin the land held by him within the meaning of the last preceding subsection the Board may require the applicant to surrender his existing lease, whereupon the Board shall issue to the lessee a new lease covering both the original land and that now allotted to him. The new lessee shall be for the balance of the term of the surrendered lease and be subject to such rental value or rent as the Board may determine, but shall otherwise be subject to the same terms and conditions as the surrendered lease and shall, as to the interest of the lessee in the whole of the land included in the new lease, be subject to the same reservations, trusts, rights, titles, interests, and encumbrances, if any, as those to which the surrendered lease was subject.

32. Improvements belonging to the Government- (1) Where on any Government land to be disposed of under this Act there are improvements belonging to the Government, the Board may in its discretion determine that the value, as fixed by the Board, of those improvements, or any of them, shall be purchased by the lessee as hereinafter provided, or that the lessee shall pay interest on the value as fixed by the Board of those improvements or any of them at the rate of 5 percent per annum in the same manner as

rent. Any such interest, shall for the purposes of this Act be deemed to be rent payable under the lease, and be deemed to form part of the rental value of the land.

(2) Where the Board determines that any improvements are to be purchased by the lessee, the amount of the value of the improvements shall be deemed to have been advanced to the lessee by the Board, and shall be secured and made repayable in such manner and subject to such terms and conditions as the Board may determine, together with interest thereon at 5 percent per annum.

33. Lands not immediately productive or profitable - (1) In order to facilitate the settlement of any farm land in which in the opinion of the Board is not likely to be immediately productive or profitable. The Board may determine that on the disposal of the land by way of lease under this Act it shall be exempt from the payment of rent, either wholly or in part, for such period not exceeding 2 years as the Board determines.

(2) Any such exemption may be conditional on the lessee effecting improvements in addition to those ordinarily required under this Act or be subject to such other conditions as the Board may determine.

34. Land reserved - (1) The Board may, if it considers it expedient for soil or water conservation, reserve from any lease a strip of land of such width as it considers necessary:

- (a) Along the mean high-water mark of the sea and of its bays, inlets, and creeks;
- (b) Along the margin of any lake; and
- (c) Along the banks of any rivers or streams.

(2) Where any unsurveyed farm land is disposed of under this Act the Board may at any time before the approval by the Director of the plan of the survey of the land, and without liability to pay compensation, exclude from the disposition:

- (a) Any land which may be required for a road;
- (b) Any part of the land which is situated along the mean high-water mark of the sea or along the margin of any lake or along the bank of any river or stream, and which is required to be reserved under subsection (1) of this section, and
- (c) Any part of the land which is required for a reserve for any public purpose.

35. Creation of easements - (1) The Board in allotting any land on any tenure under this Act may grant or reserve any right of way, water rights, or other easements so as to make the same appurtenant to the land allotted, or so as to make that land subject thereto.

(2) The Board may grant to the owner or lessee of any land (whether Government land or freehold land) any right of way, water rights, or other easements over any Government land:

PROVIDED HOWEVER THAT where that Government land is held under lease the lessee shall be entitled to compensation for any reduction in the value of his lease by reason of the grant of any such easement.

(3) Any grant or reservation of a right of way, water rights, or other easement under either of the last 2 preceding subsections may be subject to such conditions, restrictions, and covenants as the Board determines.

(4) Every instrument granting, pursuant to subsection (2) of this section, an easement over any Government land not held under lease may be registered with the Land Registrar in the same manner, with the necessary modifications, as any lease of Government land under this Act. Any such instrument granting an easement over Government land held on lease may be registered with the Land Registrar in the same way as any dealing with that lease.

36. Exchange of Government and other land - (1) The Minister may, in any case where he deems it expedient in the public interest to do so, grant in fee-simple any area of Government land in exchange for the fee-simple of any other land, and on any such exchange the Board may pay or receive any sum by way of equality of exchange.

(2) Any sum payable by the Government under the last preceding subsection shall be paid out of money to be appropriated by the Legislative Assembly for the purpose.

(3) All land acquired by the Government by way of exchange under this section shall become Government land subject to the provisions of this Act.

37. Tenure - (1) Government land may be disposed of under this Act by way of lease for a term not exceeding 20 years.

(2) Having regard to all the surrounding circumstances, the Board may determine that such a lease may contain all or any of the following provisions:-

(a) A provision that on the expiration of the term the lessee may obtain a renewed lease for a further term not exceeding 20 years, and such renewed lease may, at the option of the Board, a similar provision for one or more further renewals for terms not exceeding 20 years;

(b) A provision that the rent payable under the lease and any renewal or renewals may be reassessed at intervals of not less than 5 years as the Board may determine; and

(c) The amount of the rent payable on the granting or renewal of every lease or from the commencement of any period for which the rent is to be reassessed shall be 5 percent per annum of the value of the land as determined by the Board. In determining such value, no account shall be taken of the value of any improvements effected or paid for by the lessee.

(3) The term of any lease shall commence on the next 1st day of January or July following the date of the lease, and there shall be added to the term the period between the date of the lease and the said day.

(4) Any lease shall contain such further terms and conditions as the Board determines.

(5) Notwithstanding anything to the contrary in this Act, land held for the housing of Government servants may be let to such servants on a weekly or monthly tenancy subject to such terms and conditions and at such rent as the Board, with the concurrence of the Public Service Commission of Western Samoa may determine.

(6) (a) The Board may grant to any person a licence to occupy any building on Government land on a weekly or monthly basis or at the pleasure of the Board, subject to such terms and conditions and subject to the payment of such fees or charges (whether single or periodic) as the Board may from time to time determine;

(b) The Board has the power and shall be deemed always to have had the power to let or lease any building or part of a building erected on Government land at such price or rent for such term and subject to such conditions as the Board may determine or may have determined.

38. Age of Applicants - Any person of the age of 21 years and upwards may become a lessee under this Act.

39. Applications by several persons - Two or more persons may make application to take on lease as joint tenants or tenants in common any Government land available for disposal under this Act.

40. Land to be acquired for sole use and benefit - (1) Subject to the provisions of section of this Act, no person shall, by himself or through any other person for him, be entitled to acquire, obtain, or hold, either by original application or by transfer, or otherwise in any manner, any land under this Act unless it is exclusively for his own use or benefit.

(2) No person who at the time of making his application has made any arrangement or agreement to permit and other person to acquire by purchase or otherwise the land in respect of which his application is made, or any part thereof, or the applicant's interest therein, shall become a lessee under this Act.

(3) Every person who wilfully commits, or incites, instigates, or employs any other person to commit a breach of the provisions of this section commits an offence against this Act.

41. Method of application- (1) Every application to acquire Government land under this Act shall be made in writing to the Director and shall be lodged in the Land Office at

Apia during the hours when that office is open to the public for the transaction of business, or be posted prepaid addressed to the Director at that office.

(2) Every such application shall be deemed to be made at the time when it is received at the Land Office.

42. Declaration- (1) To every application for land under this Act where shall, if so required by this Act or by regulations under this Act or by the Board, be annexed or appended a statutory declaration in such one of the forms as may be from time to time prescribed as is applicable to the case, made and signed by the applicant to the effect that he is legally qualified to acquire the land applied for, and that the land is required exclusively for his own use and benefit and not, either directly or indirectly, for the use or benefit of any other person or persons.

(2) If any person in any statutory declaration required under this Act wilfully declares to anything which is false, any lease acquired through any such declaration shall, on conviction of the declarant for making a false declaration, be deemed to be forfeited.

(3) Where the Director has reason to believe that any statement in any declaration made by any applicant for land is false, or that the applicant in making the same had in any manner evaded or attempted to evade the requirements of this Act in their true intent and spirit, the Board, on the report of the Director, may, in its discretion, hold an inquiry into the case, and may declare forfeited all the rights of the applicant to the land and all money paid in respect thereof.

(4) Nothing in this section shall be deemed to exempt any applicant from any prosecution or penalty to which he may have become liable by reason of making a false declaration.

43. Board may reject application- (1) The Board shall at all times have power, in the public interest and in its discretion, to refuse any application whatsoever, and in the event of any such refusal the Board shall cause any entry to be made in its minutes of the ground on which that refusal was based.

(2) Before taking a ballot or otherwise disposing of any application for land the Board may, in such manner as it thinks fit, inquire into all matters affecting an applicant's suitability or his right of preference under this Act and may reject any application where the applicant refuses or fails to answer any such inquires to the satisfaction of the Board.

44. Simultaneous applications - (1) Where any Government land is notified as open for public application and more than one application is made within the time specified, all such applications shall be deemed to be simultaneous.

(2) All applications made on the same day to acquire any Government land not notified as open for public application or remaining open for acquisition under subsection (4) of section 30 of this Act shall be deemed to be simultaneous.

45. Allotment of land where simultaneous applications received - (1) Where there are simultaneous applications for any area of Government land the Board shall determine which applicant is the most suitable applicant for the land, and shall allot the land to him:

PROVIDED THAT nothing in this section shall limit the right of the Board to refuse or reject any application under section 43 of this Act, nor compel the Board to allot the land where in its opinion there is no suitable applicant.

(2) In determining which is the most suitable applicant under the last preceding subsection the Board shall take into consideration the following matters:

- (a) The purpose for which the land is suited or intended to be used;
- (b) The ability, having regard to his experience, financial resources, and any other relevant matters, of the applicant to use the land for the purpose for which it is suited or intended to be used; and
- (c) The land which the applicant already holds or in which he has an interest within the meaning of section 140 of this Act.

(3) Subject to any regulations under this Act for the time being in force granting preference to persons who have made simultaneous applications for Government land, where in the opinion of the Board there are 2 or more applicants equally suitable to be allotted the land, the allotment shall be decided by ballot.

(4) Subject to the foregoing provisions of this section, the decision of the Board on any question arising under this section shall be final and conclusive.

46. Conduct of ballot- (1) At any ballot held pursuant to the last preceding section the officer conducting the ballot may draw as many names as he thinks fit, not exceeding the number of applicants for the land.

(2) If the applicant whose name is drawn first forfeits his right to be allotted the land pursuant to subsection (6) of the next succeeding section, or if he surrenders his right to be allotted the land, the applicant whose name is drawn second shall be declared the successful applicant.

(3) If the successful applicant pursuant to the last preceding subsection forfeits his right to be allotted the land pursuant to subsection (6) of the next succeeding section, or if he surrenders his right to be allotted the land, the applicant whose name is next drawn in rotation shall be declared the successful applicant; and so on until the list of applicants whose names have been drawn is exhausted.

(4) In any case where all the successful applicants within the meaning of the preceding subsections of this section forfeit their rights to be allotted the land pursuant to the said subsection (6) or surrender their rights to be allotted the land, a further ballot may be taken among the applicants whose names were not drawn at the former ballot:

PROVIDED HOWEVER THAT the further ballot shall be taken not later than 2 months from the date of the former ballot.

47. Approval of application and payment of deposit- (1) Where public applications have been called for any land the Director, as soon as possible after the date fixed for the selection or ballot, shall notify each applicant of the result of his application and of the name of the successful applicant.

(2) The successful applicant shall forthwith after he is notified of the approval of his application pay the required deposit and the value or portion thereof of any improvements purchased by him, in accordance with the next 2 succeeding subsections:

PROVIDED THAT the Director may in his discretion allow such further time for payment as in the circumstances appears to him to be reasonable.

(3) The required deposit shall be an amount equal to half of the annual rent payable under the lease together with the amount mentioned in subsection (5) of this section.

(4) Where there are improvements on the land which are to be purchased by the successful applicant, he shall, in addition to the deposit payable under the last preceding subsection, pay either the whole of the value of those improvements or where the Board allows that value to be paid over a period of years, such portion thereof as may be fixed by the Board.

(5) The deposit payable under subsection (3) of this section shall be deemed to be the half-yearly rent due on the 1st day of January or the 1st day of July then next ensuing together with rent for the period between the date of lease and the said day.

(6) If the successful applicant does not pay the required deposit and other money payable by him under the foregoing provisions of this section within the time allowed, his application shall thereupon lapse and his right to be allotted the land shall be deemed to be forfeited.

48. Application for unsurveyed land - (1) Where application is made to acquire land under this Act and the land requires to be surveyed, the Director may require the applicant to pay the estimated cost of survey to the Department, and until that amount is paid the Board may decline to consider the application.

(2) If the application is refused, or the land is withdrawn from disposal, the survey deposit shall be refunded; but if the application is approved and the applicant refuses or delays to complete, within such time as the Board requires, the lease of the land after survey, the survey deposit shall be deemed to be forfeited unless the Board, having regard to the circumstances of the case, directs that it be refunded in whole or in part.

(3) The fact that the area as surveyed is greater or less, than the estimated area applied for

shall not exempt the applicant from the forfeiture of his survey deposit as provided in the last preceding subsection.

(4) Except where the Board approves of an application subject to the condition that the applicant shall pay the cost of survey in whole or in part, the survey deposit shall be credited to the applicant towards the rent accruing due.

PART V LEASES

49. Leases: form and execution- (1) The Board may issue leases and other instruments over or in respect of Government land.

(2) Every lease and any renewal thereof issued by the Board shall be in such form and subject to such covenants and conditions, not inconsistent with this Act, as the Board determines. Any lease may be varied to suit the circumstances of any particular case which may arise.

(3) For every- lease there shall be paid by the lessee such fee for the preparation and registration thereof as may be prescribed and which shall be paid at the same time as the deposit required by this Act.

(4) Every lease shall be prepared in duplicate by the Director and shall be dated as of the date of the granting thereof.

(5) Every lease shall be signed by the Minister and by the lessee.

(6) If any person who has been declared a lessee fails to sign his lease within one month after being required by written notice so to do, the Board may declare the right of that person to obtain a lease to be cancelled, and thereupon the amount of his deposit, and the sum paid for the lease and the registration thereof shall, unless the Board otherwise determines, be deemed to be forfeited.

50. Registration of leases- (1) Every lease issued under this Act shall, after execution by the Minister and the lessee as hereinbefore provided, be registered by the Land Registrar shall form a folium of the register book in that office, and on it all dealings therewith shall be registered.

(2) All dealings with or under any such lease in contravention of the provisions of this Act shall be void, and the Land Registrar shall not register any dealing with or under a lease until he is satisfied that the said provisions have been complied with.

51. Payment of rent- (1) The rent payable under any lease shall except where otherwise specially provided, be computed and payable as from the date of the lease, or as from the date of the commencement of the term, whichever date is the earlier.

(2) The rent shall be payable in equal parts every half-year in advance on the 1st day of January and 1st day of July in each year, unless the Board in any case otherwise determines.

52. Adjustments in rental value, etc., where land included in or excluded from lease-

Where pursuant to any authority conferred by this Act or any other enactment, any land is incorporated in a lease or is excluded from any lease, the Board shall make all necessary and equitable adjustments in the rental value and in the rent or instalments of purchase money and interest payable under the lease.

53. Purchase of improvements during currency of lease- (1) The holder of every lease of Government land on which there are improvements belonging to the Government may, with the approval of the Board, at any time elect to purchase those improvements at the value at which they are included in the rental value of the land. Any such purchase may be for cash or over such period as the Board approval.

(2) Where the purchase price is payable otherwise than in cash the amount owing to the Government shall be deemed to have been advanced to the lessee by the Board and shall be secured and made payable in such manner and subject to such conditions as the Board determines, together with interest thereon at the rate of 5 percent per annum.

(3) Where a lessee elects to purchase improvements belonging to the Government in accordance with the provisions of this section the rental value of the land and the rent payable under the lease shall be reduced proportionately as follows:

(a) Where the purchase is made concurrently with the renewal of the lease, as from the commencement of the term of the renewal lease; and

(b) Where the purchase is made during the currency of the lease, as from the date on which the purchase price is paid (where the improvements are purchased for cash), or as from the date on which the money is deemed to be advanced to the lessee by the Board (where the improvements are purchased for cash) or as from the date on which the purchase money is deemed to be advanced to the lessee by the Board (where the improvements are purchased over a period of time).

54. Board to consent to dealings with leases - (1) A lessee shall not transfer, sublease, mortgage, or otherwise dispose of his interest, or any part thereof, in the land subject to the lease, unless he has first obtained the consent of the Board. For the purposes of this section the term "mortgage" includes a variation of mortgage.

(2) The Board shall at all times have power, in the public interest and in its discretion, to refuse any application for consent whatsoever, or to grant its consent subject to such conditions as it thinks fit:

PROVIDED THAT the Board shall not consent to a mortgage except for the erection of

a dwelling on the land or to increase the production thereof, and may take such steps as it thinks fit to ensure that the mortgage money is applied for such purposes and not otherwise.

(3) No transfer, sublease, mortgage, or other disposition of any lease shall be valid unless all the conditions, whether expressed or implied, on which the lease was granted (including the condition for the payment of rent) shall have been complied with up to the date of transfer, sublease, mortgage or other disposition.

(4) Every person to whom any lease has been lawfully transferred shall have all the rights and privileges and be subject to the same obligations as the original lessee and the former lessee shall thereupon cease to be liable for any subsequent breach of any covenant, condition, or obligation (expressed or implied) in the lease.

(5) With every application for consent to transfer, sublease, mortgage, or otherwise dispose of an interest there shall be paid such fee as may be prescribed.

55. Transfers by executors and administrators- On the death of the owner of any lease, his executors or administrators shall have power to assign the lease to any qualified person approved by the Board, but the consent of the Board shall not be necessary for any such assignment if made to a person entitled thereto as a trustee or beneficiary under the will or claiming under an intestacy.

56. Notice to Director of transfer by executor or administrator- Any executor or administrator who assigns any lease to a person entitled thereto under any will or claiming under an intestacy shall forthwith notify the Director in writing of the full name and address of the assignee, and no such assignment shall be registered by the Land Registrar unless and until he is satisfied that the notice has been given to the Director.

57. Transfer by Director where no probate or letters of administration applied for-
(1) If no probate is granted or no letters of administration are issued within 6 months after the death of the owner of a lease and the Director is of opinion that the lease is of so small a value that it is expedient to exercise the powers hereby conferred upon him, he may either sell the lease and execute a transfer of the same to any qualified person, and receive the purchase money on account of the persons entitled thereto under the will or intestacy of the deceased, or he may execute a transfer of the lease to the person appearing to him to be entitled thereto under the said will or intestacy, or to any one or more of them in trust for all.

(2) No person shall have any claim against the Government or against the Director in respect of anything done by the Director under the powers conferred by the last preceding subsection.

58. Mortgages of leases- (1) In every mortgage (other than to the Government or to a Department of State) of a lease of Government land there shall be implied the following conditions:

- (a) Every sale upon default shall be by public auction or public tender;
- (b) Every sale shall be advertised in at least one newspaper usually circulating in the district in which the land is situated;
- (c) No sale shall take place earlier than 14 days after the first publication of the advertisement notifying the sale;
- (d) Where any mortgaged property has been offered for sale by public auction or public tender in accordance with the foregoing provisions of this section and has not been disposed of, it may with the consent of the Director, be sold by private contract; and
- (e) The mortgagor, at any time before the actual sale, shall be entitled to a release of the security, upon payment to the mortgagee of the principal and any other money advanced, or which has been paid to protect the security, and of interest on the principal and other money advanced calculated up to the date of the intended sale, together with a sum sufficient to cover the actual disbursements for advertising, and a commission not exceeding one and one quarter percent of the sum secured as representing all other charges and expenses. Any sale proceeded with after tender of those amounts shall, but only as between the mortgagor and mortgagee, be null and void if the mortgagor continues ready to pay the amount so tendered.

(2) Any covenant in a mortgage purporting to vary any of the provisions of the last preceding subsection shall be null and void.

(3) No mortgagee of any lease shall be required to make a statutory declaration under this Act unless and until he becomes a purchaser under the provisions of the mortgage, but he shall make such a declaration before the Board consents to a transfer of the lease to him.

(4) The transferee or purchaser (other than a Department of State) of a lease under any power of sale vested in any mortgagee, or assignee, or trustee in bankruptcy shall not be admitted into possession or occupation of the land comprised in the lease until he has deposited with the Director a statutory declaration in the form or to the effect of the declaration (if any) which he would be required to make if he were an original lessee.

59. Encumbrance not to affect Board's power of forfeiture for breach of conditions -

Any encumbrance, lien, or interest registered against the estate or interest of any person in any lease shall not in any way limit or affect the right of the Board to forfeit the lease for breach of conditions, and generally to exercise the powers conferred by this Act in like manner as if no such encumbrance, lien, or interest existed.

60. Lessee to reside - (1) The lessee of any land shall within one year after the date of his lease, or within such further period as the Director may allow, commence to reside personally on the land comprised in his lease and thereafter throughout the term of his lease shall reside continuously thereon unless exempted from doing so under section 61 of this Act.

(2) Where the lessee resides on land which adjoins the land held under lease, he shall be deemed to be complying with this section. For the purpose of this section lands shall be

deemed to adjoin if separated only by a road, street, river, or stream, or by such distance as the Board may in each case determine.

(3) Where land is held on lease by 2 or more persons as joint tenants or as tenants in common, residence by one or more of the lessees shall, at the discretion of the Board, be deemed to be residence by all of them for the purpose of this section.

61. Residence where land held by executor, administrator, or trustee - The executors, administrators, or trustees of the deceased owner of any lease may continue to hold the same in trust for the persons beneficially entitled thereto under the will or intestacy of the deceased, and the conditions as to residence may be fulfilled by the persons so beneficially entitled, or by any of them, or by any suitable person or persons appointed by the executors, administrators, or trustees pending the vesting of the lease in the persons entitled or during the minority of any beneficiaries, as if they were the owners of the lease.

62. Exemption from residence - (1) Where the lessee is an unmarried man or woman living in the locality and residing with his or her parents or near relatives, the Board may approve the postponement of the commencement of residence.

(2) Where a lessee is unable, because of his calling or vocation, or the state of his health, or any other reason which the Board considers sufficient, to take up or continue personal residence on the land comprised in his lease, the Board may exempt the lessee from personal residence.

(3) A lessee who has married the owner, lessee, or occupier of other land, whether Government land or freehold land, may, in the discretion of the Board, be exempted from residence on the land held under the lease.

(4) Any postponement or exemption under this section may be for such period and subject to such terms as the Board may determine, and, in particular the Board may require the lessee to effect improvements additional to those which he is required to effect under this Act and may require him to provide a substitute who shall remain in continuous residence during the period of postponement or exemption.

63. Land to be properly farmed - In every lease under this Act of farm land, there shall be implied on the part of the lessee a covenant that he will throughout the term of the lease:

(a) Farm the land diligently and in a husband-like manner according to the rules of good husbandry, and will not in any way commit waste;

(b) Keep the land free from injurious animal and insect life and in particular comply with the provisions of the Rhinoceros Beetle Ordinance 1954; and

(c) Properly clean and clear from weeds and other growths and keep open all creeks, drains, ditches, and water courses upon the land, including any drains or ditches which may be constructed by the Director after the commencement of the term of the lease.

64. Preservation of timber - In every lease under this Act of farm land there shall be implied on the part of the lessee a covenant that he will not throughout the term of the lease, without the prior consent of the Director, given on such terms and conditions (including the payment of royalty) as he thinks fit, fell, sell, or remove any timber, tree, or bush growing, standing, or lying on the land comprised in the lease, and that he will throughout the term of the lease prevent the destruction or burning of any such timber, tree, or bush, unless the Director otherwise approves:

PROVIDED THAT the consent of the Director shall not be necessary where any timber or tree is required for any agricultural, household, road making, or building purpose on the land comprised in the lease, or has been planted by the lessee.

65. Implied covenants as to improvements - In every lease under this Act there shall be implied a covenant on the part of the lessee that he will to the satisfaction of the Director throughout the term of the lease:

- (a) Cut and trim all live fences and hedges, clear the land of all noxious weeds, and comply with the provisions of the Noxious Weeds Ordinance 1961;
- (b) Maintain all improvements belonging to the Government (including improvements which are being purchased by the lessee by instalments over a period of years), and repair and maintain and keep in good substantial repair, order, and condition all buildings, fences, gates, and other erections then existing or thereafter erected on the said land, and will not, without the prior written consent of the Director, pull down or remove them, or any part of them; and
- (c) Insure against loss or damage by fire all buildings belonging to the Government (including buildings which are being purchased by the lessee by instalments over a period of years), to their full insurable value in the joint name of the Director and the lessee in some insurance office approved by the Director, and will duly pay all premiums falling due under the insurance policy or policies, and deposit with the Director every policy for insurance for the time being issued and in force and, not later than the forenoon of the day on which any such premium becomes payable, the receipt for that premium; and that, if the lessee fails or neglects to effect or maintain any such insurance or to deposit as aforesaid any such policy or premium receipt, it shall be lawful for, but not obligatory upon, the Director to effect that insurance or pay that premium and to recover all payments made in respect thereof in the same manner as rent.

66. Covenants to be binding on executors and assigns - (1) Every covenant implied by any of the last 3 preceding sections shall be deemed to be entered into on the part of the lessee for himself, his executors, administrators, and permitted assigns; and in those sections the word "lessee" shall, where the context so requires or admits, be deemed to include the lessee and his executors, administrators, and permitted assigns.

(2) Every covenant implied by any of the last 3 preceding sections shall be binding on the lessee as if fully set out in the lease; and non-fulfilment of any such covenant shall be a

breach of the covenants and conditions of the lease entitling the Board to declare the lease to be forfeit under the provisions of this Act.

67. Further express covenants and conditions may be required by the Board - Every lease under this Act may contain such further express covenants and conditions on the part of the lessee, not inconsistent with this Act, as the Board determines, either generally or in any particular case, or class or classes of cases.

68. Improvements to be effected - (1) Every holder of a lease under this Act shall, within such period as the Board determines, effect on the land comprised in his lease improvements to such value as the Board determines, either generally or in any particular case or class or classes of cases, and shall thereafter maintain the same in good order, repair, and condition to the satisfaction of the Board.

(2) In determining the value of the improvements to be effected under the last preceding subsection, the Board shall have regard to:

- (a) The classification of the land under subsection (1) of section 28 of this Act;
- (b) The extent to which the land is already improved;
- (c) The purpose for which the land is suited or intended to be used; and
- (d) Any other matters which in the opinion of the Board may be relevant.

(3) Every determination of the Board under this section shall be made before public applications for the land are called for or, where land is disposed of without competition, shall be made when the application is approved.

(4) Any determination by the Board under this section may, at the request of the lessee, be modified at any time by the Board in any case where it appears equitable to do so.

69. Board to be judge of fulfilment of conditions - Where a lessee is required to fulfil certain conditions, whether expressed in the lease or implied under this Act, the Board shall be the sole judge whether any condition has been fulfilled, and shall have power to enforce fulfilment or, in the event of the lease being forfeited for the non-fulfilment of the conditions as provided in Part VII of this Act, to recover possession of any land, improvements, or money which is forfeited to the Government by reason of the breach of any such condition.

70. Adjustment where land included in or excluded from lease - (1) Where land is incorporated in or, is excluded from a lease which is registered in the Land Registry Office, the Director shall prepare and sign a certificate setting forth such particulars with respect to any alteration in area, rental value, rent, instalments of purchase money and interest, or other matters as he may deem necessary in the circumstances of the case. The certificate shall have endorsed thereon or attached thereto a plan of the lands affected, and shall be produced to the Land Registrar, who shall thereupon endorse on the relevant lease a memorial of the same.

(2) Where any land is incorporated in a lease as aforesaid, the land so incorporated shall, on the endorsement on the lease of an appropriate memorial by the Land Registrar, be held by the lessee on the same tenure and subject to the same terms and conditions as those on which the land with which it is incorporated is held.

(3) Any land so incorporated in a lease shall be subject to the same reservations, trusts, rights, titles, interests, and encumbrances as those to which the land with which it is incorporated is subject.

71. Lost lease- (1) The Board on being satisfied that any lease [not being a lease registered under the Samoan Land Registration Order 1920 (N.Z.)] has been lost or accidentally destroyed, may issue a new lease in lieu thereof, on such terms and conditions and on payment of such fee in each case as it thinks fit.

(2) Where any endorsement is required to be made on any such lease that has been lost or destroyed, the Board may issue a new lease in lieu thereof, and may make the required endorsement thereon, or, if it thinks fit, may incorporate the substance of the endorsement with the terms of the original lease and insert them together in the new lease.

72. Land held under lease may be resumed - (1) The whole or any portion of any land held under lease may be resumed by the Government if in the opinion of the Minister the land is required for a road, or street, or any public purpose, and in that case the lease shall, as from a date to be specified in notice signed by the Minister and published in the Western Samoan Gazette, be determined insofar as it relates to the lands specified in that behalf in that Western Samoan Gazette.

(2) Upon resumption of part of any land held on lease the rent payable by the lessee shall be abated in the proportion to the whole rent payable under the lease which the value of the area so resumed bears to the value of the whole area so held, excluding in each case the value of improvements belonging to the lessee; and upon resumption of the whole or any part of the land held by him the lessee shall be entitled to compensation for any improvements belonging to him then in existence on the land which has been so resumed, and also for the value of his interest in the unexpired term of his lease over the land so resumed.

(3) Every lessee having any estate or interest in any land injuriously affected by reason of any such resumption shall be entitled to full compensation for that injurious affection.

(4) If by reason of such resumption any portion of the land is so severed from the rest as in the opinion of the lessee greatly to diminish the value thereof, he shall be entitled to surrender any portion so severed, and shall be entitled to a further proportionate abatement of rent, and to compensation as if the portion so surrendered had been actually resumed.

PART VI
RENEWAL OF RENEWABLE LEASES
AND REASSESSMENTS

73. Lease in exchange for land resumed - (1) Where the whole or portion of any Government land held under a lease is resumed under the last preceding section, or is or has heretofore been taken for any public work, and the lessee has agreed to accept as compensation in whole or in part therefore a lease of any other Government land, a lease of that other land may, notwithstanding anything to the contrary in this or in any other Act, be granted to him accordingly.

(2) Any such land may be incorporated in the original lease or in any other lease held by the lessee.

74. Rent on renewal of renewable lease - The yearly rent payable in the first and each subsequent renewal of a renewable lease granted under this Act shall be determined in accordance with the provisions of this Part of the Act.

75. Valuation for calculation of renewal rent - (1) Not earlier than one year and not later than 5 months before the expiry of a renewable lease the Board shall cause the following values to be ascertained:

- (a) The value of the improvements which are then in existence and unexhausted on the land included in the lease, and which have either been put on the land by the lessee or his predecessors in title during the continuance of the lease or have been purchased by the lessee or his predecessors in title as existing at the commencement of the lease;
- (b) The value of all other improvements which are then in existence and unexhausted on the land included in the lease; and
- (c) The value of the land included in the lease exclusive of the said improvements:

PROVIDED THAT the sum of the values under paragraphs (a), (b), and (c) of this subsection shall not exceed the capital value of the land.

(2) For the purposes of the last preceding subsection, the expression "capital value" means the sum which the land and improvements thereon might be expected to realise at the time of valuation if offered for sale, unencumbered by any mortgage or other charge thereon, on such reasonable terms and conditions as a bona fide seller might be expected to require.

(3) In respect of the improvements referred to in paragraph (b) of subsection (1) of this section the lessee shall, at his option, either:

(a) Purchase the improvements at the value determined either for cash or by instalments, together with interest at 5 percent per annum over such period not exceeding 20 years as may be determined by the Board; or

(b) Pay interest at the rate of 5 percent per annum on the value determined, in the same manner as rent.

(4) The rental value of the land for the term of the new lease shall be the value of the land as determined under paragraph (c) of subsection (1) of this section, and where the lessee elects pursuant to the last preceding subsection to pay interest on the improvements referred to in paragraph (b) of subsection (1) of this section, shall include the value of those improvements as determined under that paragraph.

(5) The yearly rent for the term of the new lease shall be 5 percent of the rental value as defined in the last preceding subsection.

(6) As soon as possible after the values have been ascertained under subsection (1) of this section, and not later than 9 months before the expiry of a renewable lease, the Director shall deliver to the lessee a notice in writing informing him of those values, and requiring him to elect whether he will accept a renewal lease at the rent based on those values, and to make his election in respect of improvements in accordance with subsection (3) of this section.

(7) If the Board omits to cause the said values to be ascertained, or the Director omits to deliver the said notice to the lessee within the prescribed times, the lessee may require the values to be ascertained and notice to be given at any time thereafter so long as he remains in possession of the land, whether the term of his lease has or has not expired, and his right to a renewal of the lease shall not be affected by any such omission or delay.

76. Lessee's election - (1) Within 3 months after the receipt of the notice referred to in the last preceding section notice in writing shall be given to the Director by the lessee to the effect:

(a) That he accepts the offer of a renewal lease at the rent based on the values set out in the notice and exercises his option in respect of improvements in accordance with subsection (3) of the last preceding section;

(b) That he does not desire a renewal lease, and agrees to the value of improvements under paragraph (a) of subsection (1) of the last preceding section; or

(c) That he does not desire a renewal lease, but requires the value of the improvements under paragraph (a) of subsection (1) of the last preceding section to be fixed by arbitration as hereinafter provided; or

(d) That he desires a renewal lease, and requires any of the values set out in subsection (1) of the last preceding section to be fixed by arbitration as hereinafter provided.

(2) If the lessee of a renewable lease omits to give to the Director within the time limited

therefore the notice referred to in the last preceding subsection, he shall be deemed to have agreed to accept a renewal lease at a rental value ascertained in accordance with subsection (4) of the last preceding section, and to have agreed to the values set out in the notice given to him by the Director.

77. Arbitration - Where the lessee requires any of the values set out in subsection (1) of the last preceding section to be determined by arbitration as provided in that section, the arbitration shall be by 2 arbitrators as provided in the Arbitration Act 1976.

78. Election by lessee after award - (1) Within 2 months after the making of the award on any arbitration under the last preceding section, the lessee shall, except there the application is made under paragraph (c) of subsection (1) section 76 of this .Act, elect whether he will accept a renewal lease at a rent based on the values as fixed by the arbitration, and shall give notice in writing of his election to the Director.

(2) If the lessee fails to give, that notice within the time aforesaid, he shall be deemed to have elected to accept a renewal lease at that rent.

(3) Any such election to accept a renewal lease shall amount to a binding agreement to accept the lease

79. Failure of lessee to sign renewal lease - If the lessee fails to execute a renewal lease within one month after the lease has been presented to him for execution, the Board may, unless it considers that the lessee had reasonable excuse for so failing, declare that his right to a renewal lease is forfeited, and his right shall be thereupon determine; and the land shall be dealt with by the Board as if the lessee had elected not to accept a renewal lease.

80. Procedure where lessee does not accept renewal - (1) Where the holder of a lease under this Act elects not to accept a renewal lease, or where his right to a renewal lease is declared forfeited pursuant to the last preceding section, the land shall be offered for acquisition in accordance with the provisions of this Act, weighted with the value of the improvements belonging to the outgoing lessee as fixed in accordance with this Part of the Act.

(2) Where land offered for acquisition in accordance with the last preceding subsection is acquired by an incoming lessee the value of the improvements shall be paid by him in cash before he is admitted into possession of the land:

PROVIDED THAT, with the consent of the former lessee and of any person entitled to receive payment of any amount in respect of the whole or any part of the value of the said improvements, the said value or any part thereof may be paid by instalments over a period of years or be secured by way of mortgage to the former lessee or other person entitled. Any payment by instalments over a period of years shall be subject to such conditions as to payment of interest and otherwise, and any mortgage shall contain such provisions, as the Board thinks fit.

(3) All payments under the last preceding subsection, other than under any mortgage as therein provided, shall be made to the Department and paid into a deposit account.

(4) The value of the improvements when so paid as aforesaid shall, without further appropriation than this section, be paid by the Department out of the said deposit account to the former lessee or other person entitled to receive payment, less any money due to the Government in respect of the land and improvements and less also the amount of any expenses incurred in recovering possession of the land.

(5) Save as provided in this section, no outgoing lessee or other person shall have any right or claim against the Government, or the Board, or the Director in respect of the value of any improvements to which he may be entitled.

81. Appreciation or depreciation of improvements - (1) If the improvements belonging to a lessee have become for any reason appreciated or depreciated in value between the date of valuation or arbitration, as the case may be, and the date of expiry of the lease or on which the lessee gives up possession, whichever is the later, the amount of this appreciation or depreciation shall be added to or deducted from the value of the improvements as fixed by the said valuation or arbitration.

(2) If the Board and the lessee are unable to agree as to the amount of the appreciation or depreciation, the amount shall be determined by further arbitration as hereinbefore provided.

(3) Where the Board is of the opinion that the disposal of any land offered for acquisition under the last preceding section is being hindered by reason of the value of the improvements being excessive or of the terms for payment being onerous, the Board may in its discretion from time to time reduce the value of the improvements or vary those terms, as the case may be, and again offer the land for acquisition. No claim shall lie against the Government, or the Board, or the Director by reason of any such reduction or variation.

PART VII REMISSIONS, REVALUATIONS, FORFEITURES

82. Remissions and postponements - (1) Where any lessee is unable at any time, by reason of natural disaster, abnormal climatic conditions, illness of or accident of the lessee, or other cause sufficient in the opinion of the Board, to pay the rent due under this lease, the Board may, on being satisfied that it would be reasonable and equitable to afford relief, remit the rent payable for any period or periods, either in whole or in part, or may postpone the payment of any rent until such date or dates, or reduce the rent for such period as it may determine.

(2) Interest, at such rate as the Board may determine, but not exceeding 5 percent per annum, may be charged on any rent postponed under the last preceding subsection, payable half-yearly in the same manner as rent.

(3) Any relief granted under this section may be subject to the condition that the lessee shall effect improvements to such value and within such time as the Board determines, in addition to those which he is required to effect under the terms of this lease.

(4) On any application for consent to transfer any lease of land in respect of which any rent or interest has been postponed under subsection (1) of this section, the Board may grant its consent subject to the condition that the amount of the postponed rent and interest thereon, or any part of that rent and interest, shall be paid prior to transfer.

(5) The provisions of this section as to remissions and postponements of rent shall apply to a lessee who is purchasing any improvements belonging to the Government, as if the interest payable in respect of any unpaid purchase money for those improvements were rent.

(6) The provisions of this section as to postponements of rent shall apply to a lessee who is purchasing any improvements belonging to the Government as if the principal portion of any instalment of purchase money and interest were rent.

83. Reassessments of rent - The yearly rent payable during any period for which such rent is to be reassessed shall be determined *mutatis mutandis* in the same manner as the rent for the renewed term of a renewable lease is determined under this Part of this Act and with a like right of submission to arbitration.

84. Land reduced in value through deterioration, etc.- (1) Where the productivity of any Government land held under lease has by reason of reversion, deterioration, erosion, national disaster, or other cause been seriously diminished, or where the land has become incapable of being successfully occupied as an independent farm unit, the Board may reduce the rental value or rent, as the case may be, to such amount as in the circumstances it considers appropriate, or may accept a surrender of the lease and again allot the land, or any part thereof, to the lessee together with such further area of Government land as may be necessary to provide a holding which may be successfully occupied as an independent farm unit.

(2) In allotting any land under the last preceding subsection the Board may determine that the lease shall be exempt either wholly or in part from the payment of rent and of interest on the improvements (if any) for such period and subject to such conditions as it considers in the circumstances to be equitable.

(3) No surrender shall be accepted under subsection (1) of this section without the consent in writing of every person having a registered interest in the lease; and any land allotted under subsection (2) of this section may be subject to the condition that the lessee shall execute an appropriate instrument granting to any person having a registered interest

in the surrendered lease a similar interest in the new lease.

85. Certificate respecting revaluation - (1) Where the rental value or yearly rent and interest, as the case may be, are reduced under the last preceding section, the Director shall prepare and sign a certificate setting forth the reductions in rental value or yearly rent, or interest, as the case may be.

(2) The production of that certificate to the Land Registrar shall be sufficient authority for him to make all proper entries on the relevant lease registered in his office, and on the outstanding copy thereof when produced to him; and those entries shall be made accordingly.

86. Surrender of lease - Any lessee may, with the approval of the Board given on such terms and subject to such conditions as it thinks fit, and with the consent of every person having a registered interest in the lease, surrender the whole or any part of the land comprised in his lease.

87. Lease may be forfeited - (1) Where the Board has reasons to believe that any lessee is not fulfilling the conditions of his lease in a bona fide manner according to their true intent and purport, the Board, after holding an inquiry into the case and giving the lessee an opportunity of explaining the non-fulfilment of the conditions, and being satisfied that any one of the grounds specified in the next succeeding subsection has been established may, with the approval of the Minister, by resolution declare the lease to be forfeited.

(2) The grounds on which a lease may be declared forfeit may be any one of the following:

- (a) That the rent or other payments under the lease have not been paid within 2 months after the time when payment was due;
- (b) That the lessee has not occupied the land comprised in his lease exclusively for his own use and benefit; or, while occupying the said land for his own use and benefit nominally, has permitted other persons to derive the virtual use and benefit thereof;
- (c) That the lessee has not complied with the conditions implied in his lease or by this Act relating to residence, the proper management of the land, and the effecting of improvements, or with any other condition expressed or implied in his lease; and
- (d) That the lessee has left Western Samoa or cannot be found, or has abandoned the land comprised in his lease, or is deceased and no claimant for the lease can be found.

(3) The right, title, and interest of a lessee under any lease declared to be forfeited under this section shall absolutely cease and determine as at the date of that declaration, and the land comprised in the lease with all improvements thereon, shall revert to the Government of Western Samoa, and, save as provided in section 90 or in section 91 of this Act, the lessee shall not be entitled to any compensation.

88. Gazetting and correction of register after forfeiture - (1) Every forfeiture of a

lease under the last preceding section shall be notified in the Western Samoan Gazette and Savali.

(2) The production of a copy of the Western Samoan Gazette and Savali containing a notice of the forfeiture of any lease shall be conclusive evidence that the lease has been lawfully forfeited.

(3) Where any lease is forfeited the Director may send a notice of the forfeiture to the Land Registrar who shall enter a memorial thereof upon the register.

89. Liability for rent up to forfeiture - In every case of the forfeiture of a lease the lessee shall be liable for rent or other payments in respect of his lease accruing up to the date of forfeiture or the time when possession of the land comprised therein has been obtained by or on behalf of the Board, whichever is the later, but not afterwards.

90. Re-offering of land after forfeiture - (1) Where a lease is declared to be forfeited the Board shall, as soon as possible after the date of the forfeiture or after recovering possession of the land, cause a valuation to be made in such manner as the Board directs of the improvements effected or purchased by the former lessee.

(2) Subject to the provisions of section 92 of this Act, as soon as possible after the valuation referred to in the last preceding subsection is made, the land shall be offered for acquisition in accordance with the provisions of this Act, weighted with the value of the improvements effected or purchased by the former lessee as determined by the said valuation

(3) Where the Board is of opinion that the disposal of any land is being hindered by reason of the value of the improvements as provided in the last preceding subsection being excessive, the Board may in its discretion from time to time reduce the value of the improvements and again offer the land for acquisition. No claim shall lie against the Government, or the Board, or the Director by reason of any such reduction of valuation.

91. Improvements to be purchased by incoming lessee - (1) Where land offered for acquisition as provided in the last preceding section is acquired by an incoming lessee, the value of the improvements shall be paid by him in cash before he is admitted into possession of the land:

PROVIDED THAT the Board may in its discretion allow the value of the said improvements to be paid by instalments over a period of years, subject to such conditions as to the payment of interest and otherwise as the Board thinks fit:

PROVIDED ALSO THAT in any case where the former lessee or any other person is entitled as hereinafter provided to receive payment of any amount in respect of the whole or any part of the value of the said improvements, the Board may, with the prior consent of the person entitled to receive the payment, allow the amount to be secured by way of mortgage to that person. Any such mortgage shall contain such provisions as to payment

of interest and otherwise as the Board thinks fit.

(2) All payments under the last preceding subsection, other than under any mortgage given pursuant to the second proviso thereto, shall be made to the Department and paid into a deposit account.

(3) From the amount payable by the incoming lessee there shall be deducted:

(a) Any money due to the Government or to any Department of State in respect of the land by the former lessee;

(b) Any expenses incurred in recovering possession of the land and in respect of its re-disposal; and

(c) Any sum in respect of arrears of rates which the Board declares to be a charge on the improvement money, -

and the balance of the amount after the deductions aforesaid shall, without further appropriation than this section, be paid by the Department out of the said deposit account to the former lessee, or other person entitled to receive payment.

92. Provision where land not again opened for acquisition - (1) Notwithstanding the provisions of the last 2 preceding sections, the Board may, in its discretion, determine that the land, or any part thereof, comprised in a forfeited lease shall not be again offered for acquisition under this Act.

(2) In any such case the value of the improvements or such part as the Board determines, on the land, or on any part thereof, as the case may be, shall, subject to the deductions mentioned in subsection (3) of the last preceding section, be paid to the former lessee or other person entitled to receive payment, out of money appropriated by the Legislative Assembly for that purpose.

(3) Save as provided in the last preceding subsection or in the last preceding section, no former lessee or other person shall have any right or claim against the Government, or the Board, or the Direct in respect of any improvements effected or purchased by him on land comprised in any lease which has been declared forfeited.

PART VIII ENVIRONMENT AND CONSERVATION

Division 1 Environment and Conservation

93. Principal Environmental Officer - (1) There shall be appointed as a member of the Public Service and as a deputy to the Director a fit person to be the Principal Environmental Officer.

(2) The Principal Environmental Officer shall be responsible to the Director for the proper administration of Part VIII of this Act.

94. Application of this Part - (1) This Part of this Act shall apply to all or such parts of Western Samoa and Western Samoan waters as are specified from time to time by the Head of State, acting on the advice of Cabinet, by Order.

(2) Where the provisions of this Act are inconsistent with any of the provisions of any other Act, or of any regulations, by-laws or other laws made under any other Act, the provisions of this Act shall prevail.

95. Principal functions of the Department under this Part - The principal functions of the Department under this Part of this Act shall be:

(a) To advise the Minister on all aspects of environmental management and conservation including:

- (i) Policies for influencing the management of natural and physical resources and ecosystems as to achieve the objectives of this Act;
- (ii) The potential environmental impact of any public or private development proposal;
- (iii) Ways of ensuring that effective provision is made for public participation in environmental planning and policy formulation processes in order to assist decision making at the national and local level;

(b) To ensure and promote the conservation and protection of the natural resources and environment of Western Samoa;

(c) To act as the advocate of environmental conservation at Government, its agencies, and other public authorities with advice on:

- (i) Procedures for the assessment and monitoring of environmental impacts;
- (ii) Pollution control and analysis of pollutants in the environment;
- (iii) Control and management of hazardous and potentially hazardous substances including the management of the manufacture, use, storage, transport and disposal of such substances.

(d) To make recommendations to the Minister in relation to:

- (i) The establishment and naming of national parks and/or nature reserves;
- (ii) The administration, management and control of national parks and reserves including the protection, conservation and management of wild life, water resources and other marine and terrestrial ecosystems.

(e) To prevent, control and correct pollution of air, water (including inland and coastal waters) and land resources and to promote litter control;

(f) To carry out investigations and research relevant to the protection and conservation of natural resources and the environment;

(g) To provide and promote training in the skills relevant to its functions;

(h) To promote public awareness to the importance of the environment and its conservation; and

(i) To do anything incidental or conducive to the performance of any of its functions.

96. Powers - (1) The Department shall have power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Part of this Act and, in particular shall have power:

- (a) To enter into contracts;
- (b) To erect buildings and structures and carry out works in the public interest on any national park or reserve;
- (c) To accept gifts, devises, and bequests made to the Department for the purposes of this Part of this Act;
- (d) To do anything incidental to any of its powers.

(2) The Department shall have power to perform any of its functions in co-operation with any Department of State or any other organisation.

97. Environment Board - (1) There shall be an Environment Board which shall be responsible for carrying out the following functions:

- (a) Review, report on, or decide on matters referred to it by the Minister;
- (b) Act as conciliator in cases involving disputes between the Department and proponents of development projects insofar as they relate to the environment;
- (c) Review annual reports of the Department to the Minister and Cabinet insofar as they relate to the environment;
- (d) Review and endorse the annual corporate plans of the Department insofar as they relate to the environment; and
- (e) Inform the Minister of development projects having an adverse effect on the environment.

(2) The Board shall consist of 11 members appointed by Cabinet and comprising:

- (a) The Director-General of Health or his nominee;
- (b) The Director of Agriculture, Forests and Fisheries or his nominee;
- (c) The Director of Works or his nominee;
- (d) The Director of Education or his nominee;
- (e) The Manager of the Visitors' Bureau or his nominee;
- (f) The Secretary of Transport or his nominee;
- (g) The Director of Economic Development or his nominee; and
- (h) Four persons nominated by the Prime Minister, one to represent the Manufacturing industries and one to represent the Hotel industries, one to represent Pulenuu Committee and one to represent the Public.

(3) The Director shall act as advisor and secretary to the Board.

98. General Discretion - The Board shall, in the exercise of the functions conferred upon it by this Act, have as its principal objective the protection and conservation of the natural resources and environment.

99. Tenure of office - (1) Except as otherwise provided by this section every member of the Board shall be appointed by Cabinet for a term of 3 years, but may from time to time be re-appointed upon the recommendation of the nominating authority.

(2) Any member of the Board may at any time resign by giving notice to the Minister who shall then notify Cabinet of such resignation..

(3) Where a member as a result of illness, incompetence, or for any other reason is unable or unfit to discharge his functions as a member, the Minister with the approval of Cabinet may by notice in writing remove that member from the Board.

(4) Where any appointed member of the Board ceases to be a member before the expiration of his appointed term of office, the Prime Minister shall nominate another person in his stead for the balance then remaining of his term of office.

100. Meetings of the Board - (1) Every meeting of the Board shall be presided over by the Chairman who shall be appointed by the Board from its members. In the absence of the Chairman the members present shall appoint one of their number to be the Chairman of that meeting.

(2) The first meeting of the Board shall be held on a date to be appointed by the Minister and subsequent meetings shall be held at such times as the Board may from time to time determine being in any event, not less than once every three months.

(3) The Chairman may at any time convene a special meeting and, on the requisition in writing of any four members, shall forthwith convene a special meeting.

(4) At all meetings of the Board the quorum necessary to transact business shall be five members.

(5) Every question before a meeting of the Board shall be determined by a majority of valid votes of the members present and in the case of equality of votes the Chairman shall have a casting as well as deliberative vote.

(6) The Board may decide from time to time to invite representatives from any other agency to any of its meetings, but such representatives shall not be entitled to vote at any meeting they attend.

(7) Subject to the provisions of this Act and any regulations made under this Act, the Board may regulate its proceedings in such a manner as it thinks fit.

101. Minutes of meetings - (1) The Board shall cause minutes of all meetings to be kept

in a book provided for that purpose.

(2) The minutes of every meeting shall be confirmed at the next ordinary meeting of the Board following the meeting to which they relate.

(3) A copy of the minutes of every meeting shall be furnished to every member of the Board.

102. Remuneration of Board members - Except for the two members representing the private sector, no remuneration, expenses or allowances shall be paid to members of the Board. Remuneration and expenses for the members representing the private sector may be paid out of money to be appropriated by the Legislative Assembly at a rate to be determined by Cabinet.

103. Disclosure of conflicting interests - (1) Any member who, otherwise than in his capacity as a member, is directly or indirectly interested in any arrangement or agreement entered into or proposed to be entered into by the Board or the Department shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the meeting and the member shall thereafter not take part in any deliberations or decisions relating to the arrangement or agreement but shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decision.

Division 2 Powers of Minister

104. Powers of Minister - For the purpose of enabling the Department to carry out its functions under this Part the Minister may, in addition to exercising any other powers vested in him pursuant to this Act:

- (a) Ensure that all important issues relating to the natural and socio-cultural environment have been adequately addressed before committing political or extensive capital funding support to any particular project;
- (b) Establish land use and environmental management guidelines for Government agencies, for village authorities and for developers;
- (c) Assess the environment implication any development project or proposal which involves or will involve the consumption of terrestrial, coastal or marine natural resources, or any change in the established use of any such resources;
- (d) Carry out monitoring and follow-up work on development projects;
- (e) Devise, promote and carry out experiments, researches, investigations and measures to conserve natural resources and to protect the environment;

- (f) Promote and carry out by publicity and other means the diffusion or dissemination of information relating to the environment for the instruction, guidance and benefit of persons engaged in natural resource-based industries and village communities;
- (g) Enter into agreement with owners and occupiers of customary lands for the purpose of protecting their natural resources and environment;
- (h) Enter into agreement with any competent organisation wishing to assist with the conservation and protection of the natural resources and environment of the country;
- (i) Exercise any powers relating to the protection of the environment conferred on him by any Act or regulation in relation to the introduction of plants, animals, chemical or hazardous substance suspected of being injurious to the environment;
- (j) Employ such consultants as he considers necessary to assist the Department in the performance of its functions; and
- (k) Exercise such other powers as are reasonably necessary for the effective performance of the functions of the Department.

105. Special investigations - (1) The Minister may from time to time, as he thinks fit, cause an investigation pursuant to this section to be made into any matter connected with or affecting the environment.

(2) For the purpose of any such investigation the Minister may, by order in writing signed by him, require any person involved in the carrying on of any business relating to or affecting the environment to produce for the inspection of any person nominated in that behalf by the Minister any papers, books, or documents which are in the possession or control of that first-mentioned person, or to set down in writing any facts relating to the subject matter of the investigation which are within his knowledge, and to allow copies or extracts from any such papers, books, or documents to be made by the person inspecting them.

(3) Any person who fails to comply with any order of the Minister under this section or who deceives or obstructs or attempts to deceive or obstruct any person nominated by the Minister as aforesaid in the conduct of any such investigation commits an offence and shall be liable on conviction to a fine in the case of an individual not exceeding \$400, or in the case of a body corporate not exceeding \$500.

(4) Except where expressly or impliedly authorised by this Act for the purposes of this Act no person shall disclose to any other person any information obtained by him pursuant to this section.

(5) Every person who contravenes the provisions of subsection (4) of this section commits an offence and shall be liable upon conviction to a fine of \$500 or to imprisonment for a term not exceeding three months or to both.

Division 3 Conservation Officers

106. Appointment of Conservation Officers - (1) The Director may with the approval of the Minister appoint officers or employees of the Department to be called Conservation Officers.

(2) The Director shall, by virtue of his appointment be deemed to be a Conservation Officer.

(3) Every police officer shall, by virtue of his office, have all the powers of a Conservation Officer under this Act.

(4) The Director shall cause to be issued to each Conservation Officer, other than a police officer, an identity card in such form as the Director thinks fit, containing a photograph of the holder.

(5) Any person who ceases to be a Conservation Officer shall forthwith return his identity card to the Director.

107. Power of Conservation Officer to make search - A Conservation Officer may, on producing his identity card issued under section 106 of this Act, and in the presence of a police officer, search a vehicle, aircraft, or vessel if he believes on reasonable grounds that there is in or on that vehicle, aircraft or vessel:

(a) Any animal, plant or article in respect of which an offence against this Act has been committed; or

(b) Anything that will afford evidence as to the commission of an offence against this Act, and may for that purpose stop or detain a vehicle, aircraft or vessel.

108. Arrest by Conservation Officer - (1) Any Conservation officer may, without warrant, in the presence of a police officer arrest any person whom he reasonably believes to have committed an offence against this Act or regulations made under this Act, being an offence which is punishable by imprisonment.

(2) Before arresting any person under subsection (1) of this section the Conservation Officer shall produce and show his identity card to the person being arrested.

(3) Any person arrested under subsection (1) of this section shall be brought before a Court as soon as practicable after his arrest to be dealt with in accordance with law.

109. Power of Conservation Officer to seize vehicle, aircraft, vessel and article - A Conservation Officer may, in the presence of a police officer; seize any vehicle, aircraft, vessel, or article that he reasonably believes to have been used or otherwise involved-in the commission of an offence against this Act or regulations made under this Act, and may retain it for a period of 3 months from the date of its seizure, or, if a prosecution for an offence against this Act is instituted within that period, until the prosecution is

terminated and, in the event of an appeal against the decision in that prosecution, until the appeal has been determined.

110. Additional powers of Conservation Officer - (1) A Conservation Officer may in a national park, or other protected area, on producing his identity card issued under section 106 of this Act:

(a) Order a person whom he finds committing or whom he suspects of having committed an offence against this Act or any regulations under this Act, to disclose his full name and place of residence;

(b) Order a person whom he finds committing or whom he suspects of having committed an offence against this Act or any regulations under this Act, to leave forthwith that national park or protected area; and

(c) Order any person whom he reasonably suspects of having done an act in respect of which the person is required to hold a licence, permit, or other authority under this Act to produce such a licence, permit or evidence of such an authority.

(2) Every person who fails to comply with an order lawfully given under this section commits an offence and upon conviction is liable to a fine of \$100 or imprisonment for a term not exceeding one month or to both.

111. Assaulting or threatening Conservation Officer an offence - Every person who assaults or threatens any Conservation Officer acting in the performance of his duties commits an offence, and is liable upon conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 3 months or to both.

112. Impersonation of Conservation Officer an offence - Every person commits an offence who by words or conduct falsely represents that he is or impersonates a Conservation Officer, and is liable upon conviction to a fine not exceeding \$500 or to imprisonment for a term not exceeding 3 months or to both.

113. Judge or Magistrate may order release of vehicle, aircraft, vessel, or article - A Judge or a Magistrate may on application by the person from whom it was seized, or the owner, order any vehicle, aircraft, vessel, or article seized under section 109 of this Act to be released to its owner or to the person from whom it was seized, either unconditionally or upon such conditions as the Judge or Magistrate, in his absolute discretion, considers necessary.

114. Order for forfeiture may be imposed in addition to fine and imprisonment - Upon the conviction of any person of any offence against this Act, the Court may, in addition to imposing any penalty by way of fine or imprisonment or both, order the forfeiture to the Government of Western Samoa of any vehicle, aircraft, vessel, or article used or otherwise involved in the commission of the offence.

115. Disposal of forfeited vehicle, aircraft, vessel, or article - Any vehicle, aircraft,

vessel, or article forfeited under section 114 of this Act may, subject to the directions of the Court be sold or otherwise disposed of as the Director thinks fit, and proceeds of such sale shall be paid into the Treasury Fund.

Division 4 Management Plans

116. Management Plans - (1) The Director shall from time to time prepare one or more draft management plans for the protection, conservation, management, and control of:

- (a) National parks;
- (b) Reserves;
- (c) Western Samoa waters and water resources;
- (d) Coastal zones;
- (e) Indigenous forests;
- (f) Soil erosion;
- (g) pollution;
- (h) Waste and litter disposal; and
- (i) Any other matter relating to the environment which in the opinion of the Board will benefit from a management plan.

(2) When the Director has prepared a draft management plan and such plan has been considered by the Board, the Director shall, by public notice:

- (a) State that a management plan has been prepared and the areas affected by the plan;
- (b) Specify the place or places where such a plan is displayed and maybe inspected by interested persons;
- (c) Invite interested persons to make representations in connection with the draft management plan by a specified date, being not less than one month after the publication of the notice;
- (d) Specify an address to which such representations may be forwarded.

(3) The Board shall give due consideration to any representations so made, and may alter, amend or vary the proposed management plan.

(4) In the preparation of the management plan regard shall be had to the following objects:

- (a) In the case of a national park, the protection, conservation, and management of wildlife and natural features, and the encouragement and regulation of the appropriate use, appreciation, and enjoyment of the park by the public;
- (b) In the case of a reserve, the protection and regulation of the use of the reserve for the purpose for which it was declared;

(c) The protection of special features, including objects and sites of biological, archaeological, geological, and geographical interest in those areas within the plan;
(d) The protection of the water catchment values of those areas within the plan; and
(e) The protection, conservation, control and management of soil resources, erosion, related works, and coastal zones of those areas within the plan.

(5) The Board shall submit to the Minister the draft management plan, together with such comments and representations as have been made.

(6) The Minister may:

(a) Accept or decline to accept the draft management plan as so submitted; or
(b) Refer it to the Board together with his suggestions for further consideration and for any necessary amendment to the draft management plan.

(7) Where the Minister has referred the draft management plan to the Board under paragraph (b) of subsection (6) of this section, the Board shall consider the Minister's suggestions, and may alter, amend, or vary the draft plan before resubmitting the draft plan to the Minister for his approval.

(8) As soon as practicable after a management plan has been accepted by him, the Minister shall cause it to be laid before Cabinet for adoption.

(9) Cabinet may approve and adopt any management plan or refer the plan to the Board for reconsideration and revision.

(10) An approved management plan shall come into force by Order of Cabinet, and the Department shall then manage those areas within the management plan in accordance with that plan.

117. Amendment and review of management plan - (1) Every approved management plan may be amended in the same manner as is provided for in section 116 of this Act for the preparation and approval of a management plan.

(2) Every approved management plan shall be reviewed upon the expiration of 5 years after coming into force.

118. Contravention of management plan - Every person commits an offence, and is liable to a fine not exceeding \$500, who does any act in contravention of any provision of a management plan that is in force.

Division 5

Coastal Zones

119. Protection of foreshore - No person shall, except with the prior consent in writing of the Minister:

- (a) Remove any- silt, sand, gravel, cobble, boulders or coral from the foreshore, provided that such consent shall not be granted unless the Minister is of the opinion that such removal will result in the restoration or preservation of the natural configuration and features of the foreshore or the natural flow of water; or
- (b) Carry out any excavation, dredging, clearing, paving, grading, ploughing or other activity within the foreshore which may result in the alteration of the natural configuration of the foreshore; or
- (c) Place any fill or material of any type within the foreshore; or
- (d) Carry out the construction or erection of any structure within the foreshore.

120. Protection of coastal waters - No person shall, except with the prior written consent of the Minister:

- (a) Remove any silt, sand, gravel, cobble, boulders or coral from the coastal waters; or
- (b) Carry out any excavation, dredging, clearing, paving, ploughing or other activity within the coastal waters; or
- (c) Place any fill or material of any type within the coastal waters; or
- (d) Carry out any construction or erection of any structure in, on, across or under the coastal waters.

121. Director may require or take remedial action - Where the Director is of the opinion that any person has acted in contravention of sections 119 or 120 of this Act or otherwise than in accordance with the written consent of the Minister, the Director may:

- (a) Require that person to desist from so acting and take such remedial action as the Director may determine; or
- (b) Where that person refuses to take such remedial action as may be determined by the Director, take such remedial action as may be necessary in the circumstances.

122. Penalties - (1) Every person commits an offence who acts in contravention of any of the provisions of this Division and shall be liable on conviction to a fine not exceeding \$5,000.

(2) A Court may, in addition to any penalty provided for by this section, order the offender to repair or restore under the supervision of the Director any damage done by him as a consequence of his offence, and, if the Department shall have undertaken work pursuant to paragraph (b) of section 121 of this Act, the Court may in its discretion, order the offender to pay the Department all or part of the expenses incurred by the Department in so doing and the amount so awarded shall be deemed to be a judgment debt due to the

Department from the offender and may be enforced in any manner in which a judgment or order of the Court for the payment of a civil debt may be enforced.

Division 6

Pollution of Seas and Inland Waters

123. Pollution of Western Samoan waters - (1) Every person commits an offence against this Act who:

(a) Throws; discharges, or deposits, or causes; suffers, or procures to be thrown, discharged, or deposited into any Western Samoan waters, either from or out of any ship, barge, or other floating craft of any kind, or from the shore or any wharf, manufacturing establishment, or mill of any kind, any refuse matter of any kind or description whatever; or

(b) Deposits or causes, suffers, or procures to be deposited material of any kind in any place where the same may be washed into Western Samoan waters as a consequence whereof navigation may be impeded or obstructed or the level of pollution of such waters increased.

(2) Except in case of emergency imperilling life or property, or unavoidable accident; collision or stranding, and except as otherwise permitted by regulation made under this Act, no person shall discharge or suffer or permit to be discharged any oil, noxious liquid or solid substances or other harmful substances, by any method, means, or manner, into or upon any Western Samoan waters.

(3) Every person who commits an offence against this Division:

(a) Is liable upon conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding five years or to both; and

(b) Is also liable upon conviction to pay such amount as the court may assess in respect of the expenses and costs that have been incurred or will be incurred in removing or cleaning up or dispersing any oil or noxious liquid substance, or other harmful substance to which the offence relates.

(4) Where the offence is committed through the discharge of oil or noxious liquid substances or other harmful substances from a vessel, the outward clearance of any such vessel by the Comptroller of Customs shall be withheld until:

(a) All proceedings before the Court have been finally dealt with; and

(b) Any amount payable pursuant to subsection (3) of this section is paid, and the amount shall constitute a lien on such vessel, which may be recovered in proceedings by action in the Court.

Division 7 Financial Provisions

124. Environment Fund - (1) The Minister, in consultation with the Minister of Finance, shall cause to be established an Environment Fund which shall consist of all money from time to time received by way of grants, donations, and subsidies, for purposes authorised under this Act.

(2) The Environment Fund shall be administered by the Department of Treasury.

(3) The money of the Environment Fund shall be applied only:

(a) In the payment or discharge of the costs, expenses, and other obligations incurred by the Department in the performance of its functions under this Part; and

(b) In payment of any compensation payable under this Part.

Division 8 Control of Litter

125. Interpretation - In this Division, unless the context otherwise requires:

"Depositing" in relation to litter, includes:

(a) Casting, placing, throwing, or dropping of litter; and

(b) Allowing litter to be cast, thrown, dropped or, without reasonable excuse, to escape, from any motor vehicle, trailer, receptacle or place.

"Litter" includes any refuse, rubbish, animal remains, glass, rubble, ballast, stones, earth or waste matter, or any other thing of a like nature.

"Occupier" in relation to any land or premises, means any lessee; licensee, or other occupant of the land, and includes the owner or agent of the owner where there is no apparent occupier.

"Private land" means every place other than or a public place.

"Public place" means any place used by the public or to which the public have or are permitted to have access whether with or without payment and includes every road, street, footpath, access way, service lane, Court; mall, thoroughfare, park, garden, reserve, place of recreation, foreshore, Western Samoan waters, wharf, pier, airport, but does not include an area designated by the Minister pursuant to section 126 of this Act.

126. Designation of litter and rubbish areas - The Minister may by notice in the Savali:

(a) Designate any Government land as an area for the depositing of litter and rubbish; and

(b) Subject to the terms on which such land is held by the Govt, designate any other land occupied by the State by lease, licence or otherwise as an area for the depositing of litter and rubbish.

127. Powers and duties of Conservation Officer - (1) Every Conservation Officer is authorised to enforce the provisions of this Division and may, without further authority than this section, summarily interfere to prevent the deposit or attempted deposit of litter in any public place or on private land if he has good reason to believe the deposit or attempted deposit has been or is being made without the consent of the occupier of that land.

(2) Where a Conservation Officer finds a person depositing litter (whether inadvertently or otherwise) in a public place or on private land without consent of the occupiers of that private land, or has good cause to believe that a person has deposited litter (whether inadvertently or otherwise) in or onto any place or land, he may:

(a) Require that person to remove the litter from that place or land and dispose of it in such a manner as will not contravene the provisions of this Act; and

(b) Require that person to pay to him within a period of 7 days a fine of \$10.00.

(3) Every person who is required by a Conservation Officer to pay a fine pursuant to paragraph (b) of subsection (2) of this section:

(a) May elect to pay the sum of \$10.00 in which case the Conservation Officer shall upon payment acknowledge in writing the receipt of such sum and that person shall not be liable to prosecution pursuant to section 130 of this Act; or

(b) May elect not to pay the sum of \$10.00 in which case that person shall be liable to prosecution pursuant to section 130 of this Act; or

(c) Who defaults in payment the sum of \$10.00 shall upon such default, be liable to prosecution under section 130 of this Act.

(4) Where a Conservation Officer has reasonable cause to believe that litter has been deposited (whether inadvertently or otherwise) in a public place or onto private land without the consent of the occupier of that private land, the Conservation Officer may require the person responsible for so depositing that litter to provide his name and place of residence.

(5) A Conservation Officer may, if permitted or, requested to do so by the occupier of any private land, enter that land if so required for the discharge of his duty.

(6) Every person who:

(a) Refuses to remove and dispose of litter when requested by a Conservation Officer pursuant to paragraph (a) of subsection (2) of this section (a); or

(b) Refuses to supply his name and place of residence upon request,-

commits an offence and shall be liable upon conviction to a fine not exceeding \$500.

128. Receptacles to be provided in public places - (1) Every person and Department of State shall at all times provide and maintain in every public place under his or its control or management where litter is likely to be deposited, such number of litter receptacles of suitable construction and design for the temporary deposit of litter as may reasonably be necessary to keep the place free from litter.

(2) Where litter generated on or attributable to any particular land or premises is likely to be carried or to otherwise escape from that land or those premises onto a public place a Conservation Officer may require the occupier of that land or premises to take all reasonable steps to prevent such litter being carried or escaping onto the public place.

(3) Where a person or Department of State fails to provide suitable litter receptacles in accordance with subsection (1) of this section or an occupier fails to comply with any proper request of a Conservation Officer to take reasonable steps to prevent litter being carried or escaping under subsection (2) of this section, a Conservation Officer may provide and install those receptacles or take those steps and recover the cost of so doing from the person or Department of State or occupier as the case may be as a debt due to the Department.

(4) Every person and Department of State shall also make appropriate provision for the emptying of the contents of litter receptacles situated within public places under his or its control or management and for the removal and disposal of those contents. The work shall be executed promptly, efficiently, and at regular intervals.

129. Conservation Officer may require occupier of land to clear litter - (1) Any Conservation Officer may serve on the occupier of any land a notice in writing requiring the occupier, to the satisfaction of the Conservation Officer:

- (a) To clear away, or remove, from the land; or
- (b) To clean up; or
- (c) To screen, cover, or otherwise obscure from view, such litter as may be specified in the notice within such time as may be so specified.

(2) If, upon the representations of an occupier served with a notice under subsection (1) of this section a Conservation Officer is satisfied that steps have been taken to comply with the requirements of the notice but the occupier has been prevented by reasonable cause from completing the necessary work within the time specified, the Conservation Officer may extend the time specified for such further period as he thinks fit.

(3) Every person receiving a notice under subsection (1) of this section may object to the requirements of the notice within 7 days after its receipt on the grounds that those requirements are unreasonable.

(4) Every objection shall be made in writing to the Board, which shall appoint a time and place for hearing the objection, and shall give reasonable notice of that time and place to the objector who shall be entitled to be present and, if present at the time and place, to be heard.

(5) The Board may, after hearing an objection, confirm, cancel, or vary the requirements of the notice, and shall, within seven (7) days after the hearing, give the objector written notice of its decision.

130. Deposit of Litter in public place or on private land - (1) Subject to subsection (2) of this section, every person commits an offence and is liable, in the case of an individual, to a fine not exceeding \$500, or, in the case of a body corporate, to a fine not exceeding \$5000, who, without reasonable excuse:

(a) Deposit any litter in or on any public place or, in the case of any private land, in or on that private land without the consent of its occupier; or

(b) Having deposited any litter (whether inadvertently or otherwise) in or on any public place, or in or on any private land without the consent of its occupier, leaves the litter there.

(2) Where any person commits an offence against subsection (1) of this section and the litter deposited is of such nature as is likely to endanger any person or to cause physical injury, disease or infection to any person coming into contact with it (including in particular any bottle whether broken or not, glass, article containing glass, sharp or jagged material, or any substance of toxic or poisonous nature) that person is liable:

(a) In the case of an individual, to imprisonment for a term not exceeding 1 month, or to a fine not exceeding \$500, or to both; or

(b) In the case of a body corporate, to a fine not exceeding \$5000.

131. Liability of officers of a body corporate - If a body corporate commits an offence against this Part, every director, manager, secretary, or other similar officer of the body corporate, and every person purporting to act in any such capacity, shall also be guilty of that offence if that act or omission constituting the offence occurred with his knowledge and consent.

132. Offender may be ordered to clear area - (1) Without limiting the powers conferred on Conservation Officers by this Act, where any person is convicted of an offence against this Division, the Court may, instead of or in addition to imposing a penalty, order the offender, under the supervision and to the satisfaction of a person nominated by the Court, to clear up and remove the deposited litter within such period and to such place as may be specified in the order; and on the making of such order the Court may further order that, if the offender fails to comply with the order, he shall be

liable, in addition to any other penalty imposed, to a fine not exceeding \$500.

(2) Where the order is complied with to the satisfaction of the person nominated by the Court, that person shall give or send to the offender and to the Court, a statement in writing to that effect.

(3) Where an offender fails to comply with any such order, the Court on the application of the person nominated by the Court to supervise the clearing and removal of the litter, may issue a summons requiring the offender to show cause why the order should not be enforced.

(4) On the hearing of the summons to show cause, the Court may make such order as it thinks fit.

133. Cost of removing litter - Where a Court convicts a person of an offence under this Division, it may, if it thinks fit, in addition to imposing a penalty, order the offender to pay by way of compensation to the person or Department of State having the control or management of the public place or, as the case may be, the occupier of the private land where the offence was committed such sum as it considers reasonable to cover the cost of the removal of the litter; and the amount so awarded shall be deemed to be a judgment debt owing to the person, or Department of State, or occupier from the offender and may be enforced in any manner in which a judgment or order of the Court for the payment of a civil debt may be enforced.

134. Savings - Notwithstanding any of the provisions of this Act, nothing in this Act shall affect:

(a) The right of any person to fish in any Western Samoan waters or to use such waters for recreational purposes except as may be otherwise provided from time to time by any other enactment or treaty; or

(b) The existing use or occupation of any land or Western Samoan waters (being a use or occupation in being at the date of commencement of this Act).

PART IX MISCELLANEOUS

135. This Act to bind the State - This Act shall bind the State.

136. Registration of memorandum of renewal or variation instead of renewal or new lease - (1) Where a lessee is entitled to a renewal of his lease or to a new lease in exchange for his existing lease, or when the rent of any existing lease is reassessed, the Director may, instead of issuing a renewal or new lease, prepare a memorandum of renewal or variation containing such particulars with respect to the renewed or new term or rent of the lease, the right of the lessee to obtain a further renewal or renewals, the rental value, the value of improvements, the yearly rent or instalments or purchase money

for improvements, and such other matters as may be necessary in the circumstances of the case.

(2) The memorandum shall be signed by the Director and by the lessee, and shall be registered with the Land Registrar, who shall enter an appropriate memorial on the register-book copy of the lease and on the outstanding copy thereof.

(3) On registration of any such memorandum the lease shall be deemed to have been renewed or varied or exchanged, as the case may be in the same way as if a renewal or new lease for the term and subject to the conditions set out in the memorandum had been duly executed and registered, and shall continue to the subject to the same reservations, trusts, rights, titles, interest, and encumbrances as those to which the land in the lease was subject immediately before the registration of the said memorandum.

137. No title by user or adverse possession - (1) No dedication or grant of a right of way shall, by reason only of user, be presumed or allowed to be asserted or established as against the Government or as against any person or body holding lands for any public work or in trust for any public purpose, whether such user commenced before or after the coming into force of this Act.

(2) Notwithstanding any statute of limitation, no title to any land that is a road or street, or is held for any public work, or that has in any manner been reserved for any purpose, or that is deemed to be reserved from sale or other disposition in accordance with section 34 of this Act and no right, privilege, or easement in, upon, or over any such land shall be acquired, or be deemed at any time heretofore to have been acquired by possession or user adversely to or in derogation of the title of the Government of Western Samoa.

138. No certiorari - No order or other proceeding made touching or concerning the matters contained in this Act, or touching or concerning the conviction of any offender against this Act, or any other Act relating to the administration of Government land, shall be quashed or vacated for want of form only, or be removed or removable by certiorari or any writ or process whatsoever into any Court.

139. Valuer to make declaration - Where any person is employed to make a valuation for the purposes of this Act he shall, if so required by the Board, before entering into consideration of any matters referred to him, make and subscribe a declaration under Part IV of the Oaths, Affidavits and Declarations Act 1963, that:

- (a) He has no interest, directly or indirectly, in the matter referred to him; and
- (b) He will faithfully and honestly, and to the best of his ability, make the valuation required.

140. Limitation on area which may be held - (1) No person shall be capable of acquiring any land, or any interest in land, under this Act, whether by way of allotment by the Board, or by transfer or sublease of a lease if:

(a) Having regard to the land (whether Government land or not) already owned, leased, held, or occupied under any tenure of more than one year's duration, either, severally, jointly, or in common with any other person, the acquisition of additional land would, in the opinion of the Board, amount to undue aggregation of land; or

(b) The land is intended, in the opinion of the Board, to be used for speculative or uneconomic purposes.

(2) In determining whether the acquisition of any specified land would amount to undue aggregation of land, or whether it is, intended to be used for speculative or uneconomic purposes, the Board shall take into account all the circumstances of the particular case and all other relevant considerations, including in particular the following matters:

(a) The amount of the purchase money, for good will, rent, or other consideration to be paid, and the extent to which it exceeds the consideration paid in any previous transaction;

(b) The terms of the transaction, and the terms of any other transaction in any way related thereto; and

(c) The suitability of the purchaser, lessee, or sublessee, having regard to the purposes for which the land is being or in the opinion of the Board should be used and to the area of the other land (if any) held by him.

(3) The determination of the Board on any matter arising under this section shall be final and binding on all persons interested therein.

(4) For the purposes of this section:

(a) Land owned, leased, held, or occupied by a company the shareholders of which are less than 20 in number shall be deemed to be owned, leased, held, or occupied in common by every member of the company; and land owned, leased, held, or occupied by any member of the company shall be deemed to be owned, leased, held, or occupied by the company; and

(b) Land owned, leased held, or occupied by a husband or wife, as the case may be, of any person shall be deemed to be owned, leased, held or occupied by that person unless the Board is satisfied that that person and his or her spouse are living separate and apart by virtue of an order of any Court, or of an agreement for separation (whether written or oral), or by virtue of the fact that one spouse has deserted the other.

(5) Nothing in this section shall prevent:

(a) The acquisition of any lease by any executor, administrator, trustee, or beneficiary under any will or intestacy; and

(b) The assignment of any lease to any person by way of mortgage.

(6) In considering for the purposes of this section the area of land already owned, leased, held, or occupied by any person no account shall be taken of land vested in him as a trustee, mortgagee, executor, or administrator only.

141. Trespass on or damage to Government land - (1) In this section the expression "land of the Government" means:

- (a) Government land and any other lands administered by the Board under this Act which respectively are not for the time being subject to any lease, or demise serving to vest the exclusive occupation thereof in any person other than the Government; and
- (b) Any public reserve not granted to or vested in any Board, trustees, or other persons.

(2) Every person commits an offence against this Act who, without right, title, or licence:

- (a) Trespasses on, or uses, or occupies lands of the Government;
- (b) Causes or allows any cattle, sheep, horses, or other animals to trespass on lands of the Government;
- (c) Fells, removes, damages, destroys or otherwise interferes with any forest, wood, or timber growing or being on lands of the Government;
- (d) Takes or removes from lands of the Government any bark, mineral, or other substances whatever;
- (e) Lights a fire on or near to lands of the Government, or causes or permits a fire lighted elsewhere to spread on to lands of the Government, whereby, in any case, any forest, wood, timber, scrub, or grass growing or being on the lands of the Government is destroyed or injuriously affected, or whereby the fertility of the soil is injuriously affected; and
- (f) Uses, sells, or otherwise disposes of any wood, timber, bark, mineral, or other substance whatever knowing the same to have been removed unlawfully from lands of the Government.

(3) No person shall be convicted under this section except on the information of the Director or of some person appointed in writing by him, and any such information shall be laid not later than 2 years after the time when the matter of the information arose.

142. Exemption from stamp duty - All declarations made under this Act shall be exempt from duty under any Act for the time being in force relating to stamp duties.

143. Report to Legislative Assembly - (1) Within 60 days after the close of each financial year, if the Legislative Assembly is in session, or if not, then within 60 days after the commencement of the next ensuing session, there shall be prepared and laid before the Assembly a report on the operations of the Department under this Act during the financial year.

(2) The report shall include the following particulars:

- (a) The area of private land or interest in Government land purchased during the year and the price paid therefor;
- (b) Particulars of each area under development during the whole or any portion of the financial year showing the cost of acquisition and the development of the land to the end of the year;
- (c) The number of leases granted during the year, with the area involved and the total yearly rent payable; and
- (d) The number of leases current at the end of the year, with the area involved and the total yearly rent payable.

144. Offences - Except where otherwise provided in this Act, every person who commits an offence against this Act is liable on summary conviction to a fine not exceeding \$500 or to imprisonment for any term not exceeding one year, and, where the offence is a continuing one, to a further fine not exceeding \$10 for every day during which the offence continues.

145. Service of notices - Any notice required to be given to or served on any person for the purposes of this Act may be given or served by causing the same to be delivered to that person, or to be left at his usual or last known place of abode or business, or at the address stated by him in any application or other document under this Act, or to be sent by registered letter addressed to him at that place of abode or business or address.

146. Regulations - (1) The Head of State, acting by and with the advice of Cabinet, may from time to time make such regulations as may be necessary for the due administration of this Act, and for the administration, management, development, alienation, settlement, protection, and care of Government land.

(2) Without limiting the general power herein before conferred, it is hereby declared that regulations may be made under this section for all or any of the following purposes:

- (a) Imposing reasonable charges for surveys or other services rendered by officers of the Department, and prescribing fees payable on any application under this Act and for the preparation and registration of documents issued under the authority of this Act and for any valuation required under this Act;
- (b) Prescribing forms of application and the conditions and mode of applying for leases to be issued under this Act;
- (c) Providing for any proceedings, forms of leases, and other instruments, and for the execution of any other matter or thing arising under and not inconsistent with this Act, and not herein expressly provide for;
- (d) Providing for a system of ballot;
- (e) Prescribing the order of preference to be given to persons who have made simultaneous application for Government land;

- (f) Regulating the occupation of the outlying islands of Western Samoa, their protection from trespass, and the preservation of their indigenous or introduced fauna or flora;
- (g) Regulating or restricting the purposes for which any land classified under this Act as urban land or commercial or industrial land may be used;
- (h) Prohibiting or restricting the erection on any urban land or commercial or industrial land of any specified class or classes of buildings or of any fence or of fences of a specified class or classes;
- (i) Regulating the protection of forests, bush, or growing timber on Government land, and the prevention of fires therein;
- (j) Providing for the sale of standing or fallen timber on Government land, and regulating the granting of licenses for felling, splitting, or sawing timber thereon;
- (k) Regulating the burning of felled or other timber, wood, or scrub on Government land;
- (l) Providing for the proper maintenance, protection; and control of .any waterworks constructed or purchased by the Board under this Act, and the supply of water therefrom, for the cutting off of the supply in default of payment of any levy, and the prevention of waste;
- (m) Providing for the care, management, and protection of reserves and unoccupied Government land;
- (n) Regulating the meetings of the Board and of land Committees and the conduct of their business;
- (o) Prescribing the time within which and the manner in which shall be done any act, matter, or thing for which under this Act a prescription is contemplated or required;
- (p) Prescribing tables for payment of purchase money and interest where improvements belonging to the Government are purchased by instalments;
- [sic]
- (r) Providing for the functions and powers to be conferred and the duties to be imposed upon Conservation Officers;
- (s) Providing for the protection and conservation of wildlife and in regulating or prohibiting trade and commerce in connection with wildlife;
- (t) Regulating or prohibiting the pollution of air, water, or land, and the depositing or dumping of litter, rubbish, or any substance of a dangerous, noxious, or offensive nature;
- (u) Providing for the prevention and control of soil erosion and the siltation, and of the taking of gravel, sand, rock, coral, or like material;
- (v) Providing for the prevention, and control of the clearing, cutting, lopping, felling, burning or removal of trees and other plants;
- (w) Prohibiting the collection of specimens in national parks or reserves;
- (x) Providing for the regulating or prohibiting the import of environmental pollutants;
- (y) Providing for the undertaking of environmental impact assessment as a prerequisite for development proposals;
- (z) Regulating the use of and entry to national parks, or reserves, or to parts of any national park or reserve or imposing a fee for the use and entry to such parks or reserves or parts thereof;
- (aa) Prescribing offences against the regulations, and prescribing fines for such offences not exceeding \$5,000 and, in the case of continuing offences \$100 for every day on which the offence has continued; and
- (ab) Providing for any matter incidental to or connected with any of the foregoing.

(3) It shall be the responsibility of the Minister to lay all regulations made under this section before the Legislative Assembly within 28 days after the making thereof if the Assembly is then in session, and, if not, to lay them before the assembly within 28 days after the commencement of the next ensuing session.

147. Repeals and Savings - (1) The Land Ordinance 1959, the Land Amendment Act 1964 and section 2 of the Land Amendment Act 1976 are repealed.

(2) Notwithstanding the repeal of any relevant Act of Parliament, any document or declaration made or any thing whatsoever done pursuant to those Acts shall, so far as it is subsisting or in force at the date of commencement of this Act continue and have effect as if it had been made or done under this Act.

(3) Where in any other Act there appears a reference to the Minister of Lands, the Department of Lands, or the Director of Lands, that reference shall be construed as if it were a reference as the case may be to the Minister of Lands, Surveys and Environment, the Ministry of Lands, Surveys and Environment or the Director of Lands, Surveys and Environment as the case may be.

148. Amendment to the Agriculture, Forests and Fisheries Ordinance - Section 4 of the Agriculture, Forests and Fisheries Ordinance 1959 is amended by inserting in paragraph (b) after the "promote" the words "in conjunction with the Department of Lands, Surveys and Environment".

NOTES

The Lands, Surveys and Environment Act 1989, No.33 as shown in this reprint comprises that Act as amended by the Lands, Surveys and Environment Amendment Act 1992/1993, No. 10, as set out below:

Section 1 (1): The amending Act alters the title of this Act by adding the word "Surveys" after the word "Lands".

Section 6 (1)(f): Is amended by section 3 by increasing the number of the members of ordinary members of the Land Board from three to five.

Section 6 (4): Is amended by section 3 by increasing the number of members of the Board to form a quorum from five to six.

Section 37: Section 4 of the amending Act expands the power of the Board to lease or let out building on government land by adding a new subsection (6) paragraphs (a) and (b).

Section 6 of the Land, Surveys and Environment Amendment Act 1992/1993 states: "A reference in the principal Act or in any other Act to:

(a) The Lands and Environment Act 1989; or

(b) The Minister of Lands and Environment; or,

- (c) The Director of Lands and Environment, shall be deemed to be a reference to [sic]
- (d) The Lands Surveys and Environment Act 1989; or
- (e) The Minister of Lands, Surveys and Environment; or
- (f) The Director of Lands, Surveys and Environment as the case may be.

**The Land Surveys and Environment Act 1989 is administered in
the Department of Lands, Surveys and Environment.**