

## LAND (AMENDMENT) BILL 2012

### Explanatory Notes

**(This note does not form part of the Bill but is intended to explain its purpose and effect)**

1. These amendments are made to modernize the Land Act and make many very small overdue changes to make the law more fair and the Act easier to administer. Most of the amendments are self explanatory.
2. The repeal of Sections 14 and 15 is to support the recommendation to remove the requirement for an alien to have a permit before he can reside on land in Tonga. This can now be covered with the provisions on a Tenancy Agreement which is brought to effect with a later amendment in this Bill.
3. The amendment to Section 17 increases the age from 16 to 21 years for a church member before he is counted for the numbers required before a lease can be granted to a religious body, charitable and social organizations. This ties in with the amendments proposed to increase the age of entitlement to an allotment from 16 to 21 years.
4. The amendment to Section 19 removes the authority to allow a lease over 99 years from Privy Council and gives it to the Minister with the consent of Cabinet linking it to other similar changes caused through the removal of the Executive powers of the Privy Council.
5. The amendment to section 23(4) is to make it mandatory for the notice by the Minister regarding the defining holdings and of boundaries to be served on the landholder or his representative in the district in which the land is situated. This amendment is required only to the English version as the Tongan version is already mandatory with the use of the words "kuo pau".
6. The amendment to Section 54(3) gives the Minister the discretion to register an allotment before the required period of one year if he is satisfied who the heir is. Waiting for the end of the 12 month period has deterred the use and development of the land unnecessarily.
7. The amendments to Section 57 inter alia prevent the payment of rent for a lease to 2 years in advance to protect the interests of the heir in the event of the death of the holder.

8. The amendment to Section 60 removes the restriction on the term for which a tax allotment can be renewed.
9. The amendment to Section 80, 81 and 82 is to remove the sin of fornication and adultery by women as a disqualification for holding land. There is no similar disqualification in respect of men. To be fair, this disqualification is removed.
10. The amendment to Sections 85 and 86 removes the right of a grandson to elect between his allotment and that of his grandfather. The right of election moves along the line of brothers before returning to grandsons.
11. The new Part VIB introduces Tenancy Agreements to the Land Act.
12. Form 5 of Schedule VIII and Forms 2, 3 and 11 of Schedule IX have been amended to be in line with the amendments to the relevant sections.

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## LAND (AMENDMENT) BILL 2012

AN ACT TO AMEND THE LAND ACT TO MAKE MISCELLANEOUS IMPROVEMENTS AS THE FIRST STAGE OF A REVIEW OF LAND POLICIES, AND FOR RELATED PURPOSES

Commencement [            ]

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**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

**1 Short title**

- (1) This Act may be cited as the Land (Amendment) Act 2012.
- (2) In this Act, the Land Act, as amended, is referred to as “the Land Act”.

**2 Commencement**

This Act shall come into force on such date as the Minister may provide by Notice in the Gazette, and different sections may be commenced upon different dates.

**3 Section 2 amended**

Section 2 of the Land Act is amended by adding the definition of “Ministry” after the definition of “Minister” as follows –

“ “Ministry” means the Ministry of Lands, Survey, Natural Resources and Environment;”.

**4 Section 11 amended**

Section 11 of the Land Act is amended by deleting “with the consent of the” and replacing it with “in”.

**5 Sections 14 and 15 repealed**

Sections 14 and 15 of the Land Act are repealed.

**6 Section 17 amended**

Section 17 of the Land Act is amended by deleting “16 years” and replacing it with “21 years”.

**7 Section 19 amended**

Section 19 of the Land Act is amended by –

(a) in subsection (3), deleting “provided that the consent of His Majesty in Council is required where the period of lease exceeds 99 years or where the period of renewal of any lease added to any previous renewals and to the original period of the lease exceeds 99 years.”

(b) repealing subsection (4).

**8 Section 22 amended**

Section 22(1) of the Land Act is amended by deleting “with the consent of the” and replacing it with “in”.

**9 Section 23 amended**

Section 23(4) of the Land Act is amended, in the English version only, by deleting “may” and replacing it with “shall”.

**10 Section 30 amended**

Section 30 of the Land Act is amended by inserting, after the word “imbecile” the words “and certified as such by the Director of Health”.

**11 Section 36 amended**

Section 36(1) of the Land Act is amended by deleting “Provided always that no lease shall be granted under this section whereby



the total period of the original lease and any leases granted under this section shall exceed 99 years, unless the prior consent of His Majesty in Council has been obtained.”.

**12 Section 41 amended**

Section 41(b) of the Land Act is amended by inserting, after the word “insane” the words “or imbecile and certified as such by the Director of Health,”.

**13 Section 43 amended**

(1) Section 43(1) of the Land Act is amended by deleting “16 years” and replacing it with “21 years”.

(2) Section 43(2) of the Land Act is amended by inserting the following subparagraph and renumbering the subparagraphs accordingly –

“(a) the applicant is not insane or imbecile and certified as such by the Director of Health and certified as such by the Director of Health;”.

**14 Section 44 amended**

Section 44 of the Land Act is amended by inserting the following paragraph –

“(3) An allotment holder may allow another person to make use of and work his allotment and if so used and worked then he will be deemed not to have abandoned his allotment under subsection (2).”.

**15 Section 47 amended**

Section 47(1)(b) of the Land Act is amended by deleting “7000 sq metres” and replacing it with “752.8 sq metres”.

**16 Section 48A inserted**

The Land Act is amended by inserting the following section –

**“48A Invalid grant**

An allotment shall not be granted to two or more people at the same time and where this has happened then the first grant shall be deemed valid unless there is proper reason for the Minister to decide otherwise.”.

**17 Section 51 amended**

Section 51(1) of the Land Act is amended by deleting “752 sq metres” and replacing it with “500 sq metres”.

**18 Section 54 amended**

Section 54(3) of the Land Act is amended by inserting the following proviso at the end –

“Provided that where the heir is identified to the satisfaction of the Minister before the date specified in the notice, the allotment shall be registered in the name of such heir.”.

**19 Section 56 amended**

Section 56 of the Land Act is amended by –

- (a) repealing clause (ii) and replacing it with –
  - “(ii) if the holder is a widow holding the tax or town allotment of her deceased husband then only with the written consent of the heir;”
- (b) repealing clause (iv); and
- (c) repealing clause (v) and replacing it with –
  - “(v) no mortgage or encumbrance or other form of security whatsoever is in force in respect of the allotment or part thereof.”.

**20 Section 57 amended**

Section 57 of the Land Act is amended by –

- (a) repealing subsection (1) and replacing it with –
  - “(1) The amount of rental which shall be payable in respect of a lease shall be as agreed between the parties thereto.”;
- (b) repealing subsection (2);
- (c) inserting the following subsection at the end (after renumbering) –
  - “(4) Payment of rent for the lease of a town or tax allotment shall not be paid in advance for a longer period than two years.”.

**21 Section 60 amended**

Section 60 of the Land Act is amended by deleting the words – “and shall in respect of the whole or part of a tax allotment be for a period not exceeding 10 years”.

**22 Section 80 amended**

Section 80 of the Land Act is amended by deleting the words – “or upon proof in legal proceedings (as provided by section 81) of her having committed fornication or adultery”.

**23 Section 81 repealed**

Section 81 of the Land Act is repealed.

**24 Section 82 amended**

Section 82 of the Land Act is amended by inserting the following subsection and renumbering the remainder as subsection (2) –

“(1) When claiming succession to an allotment a person shall produce two officially recognized identity documents, such as a passport and a driver’s licence, to prove his identity. In addition his genealogy as heir must be verified by appropriate documents.”.

**25 Section 82(2) amended**

Section 82(2)(d) of the Land Act is amended by deleting the words –

“or upon proof in proceedings against her in the Land Court to recover such allotment (after the manner provided in section 81 that she has committed fornication or adultery)”.

**26 Section 84 replaced**

Section 84 of the Land Act is repealed and replaced with –

**“84 Right to elect to take as heir**

A person who already holds a tax or town allotment shall be permitted to choose between an allotment already held by him and one to which he becomes entitled as heir.”.

**27 Section 85 replaced**

Section 85 of the Land Act is repealed and replaced with –

**“85 Right to elect as between allotment of deceased holder and allotment already held**

Where the heir being the son of the deceased holder elects to retain the allotment he already holds it shall be lawful for the next son of the deceased holder if alive and provided he already possesses an allotment of the same kind to elect as aforesaid but if he be dead or if he elects to retain his own allotment it shall be lawful for the next son to elect and so on until a son elects to take the allotment of the deceased holder but if all the sons elect to retain the allotments they already hold the allotment of the deceased holder if situate on Crown land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder provided that if any of the persons above-mentioned do not already possess an allotment of the same kind the right to elect shall pass to the next person entitled as though the person immediately preceding him had elected to retain his own allotment.”.

**28 Section 86 amended**

Section 86 of the Land Act is amended by deleting –

- (a) “or grandson” and “or grandfather as the case may be”; and
- (b) “16 years” and replacing it with “21 years” wherever it occurs.

**29 Section 87 amended**

Section 87 of the Land Act is amended by inserting the following subsection and renumbering the remainder as subsection (2) –

- “(1) A person making a claim as heir must also notify the Minister of any unregistered land that he currently occupies.”.

**30 Section 89 replaced**

Section 89 of the Land Act is repealed and replaced with –

**“89 Consent of Cabinet**

No lease shall be granted except with the consent of the Cabinet, and consent may be granted to a lease by a widow of the land of her deceased husband with the consent of the heir.”.

**31 Section 93 repealed**

Section 93 of the Land Act is repealed.

**32 Section 100 replaced**

Section 100 of the Land Act is repealed and replaced with –

**“100 Conditions of mortgage by allotment holder**

(1) The registered holder of a tax or town allotment may grant a mortgage over the whole or part of his tax and town allotment provided that —

- (a) the approval of the Minister has been obtained in the manner provided by this Part of this Act;
- (b) the holder is a widow holding the tax or town allotment of her deceased husband and the heir has given his consent;
- (c) the mortgage is normally for a period not exceeding 30 years but this period may be exceeded by agreement between the mortgagor and the mortgagee with the consent of the heir and the consent of the Minister because of the purpose for which the loan is required and the amount of the loan;
- (d) the mortgage is created by a mortgage lease;
- (e) in the case of a tax allotment the holder remains personally liable for the payment of annual rental and other conditions relative to tax allotments in this Act.”.

**33 Section 101 replaced**

Section 101 of the Land Act is repealed and replaced with –

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to

**“101 Conditions of mortgage by holder of an hereditary estate**

(1) The registered holder of an hereditary estate may grant a mortgage over an unallocated part or unallocated parts of his hereditary estate, provided that —

- (a) the approval of the Minister has been obtained in the manner provided by this Part of this Act;
- (b) the mortgage is normally for a period not exceeding 30 years but this period may be exceeded by agreement between the mortgagor and the mortgagee and the consent of the Minister because of the purpose for which the loan is required and the amount of the loan;
- (c) the mortgage is created by a mortgage lease;
- (d) the total amount of all land mortgaged does not exceed five per centum of the total land comprising the hereditary estate or estates of the holder, with the said percentage to be in addition to the percentage of land which may be leased in terms of section 33 of this Act.”.

**34 Section 104 amended**

Section 104(1)(c) of the Land Act is amended by repealing —

“provided that the total amount of such term shall not exceed that allowed under sections 100 and 101 in respect of town and tax and hereditary estates”.

**35 Section 107 amended**

Section 107(1) of the Land Act is amended by inserting the following subparagraphs —

- “(ee) caveats;” and
- “(o) tenancy agreements.”.

**36 Section 108 amended`**

Section 108(4) of the Land Act is amended by deleting “mortgagor” and replacing it with “mortgagee”.

**37 Section 109 amended**

Section 109(1) of the Land Act is amended by inserting the following at the end



**39 Section 122 amended`**

Section 122 of the Land Act is amended by deleting “or by dispossession of the widow of ... .. on order of the Land Court”).

**40 Section 124 replaced**

Section 124 of the Land Act is repealed and replaced with –

**“124 Form of leases, etc**

- (1) All applications, leases, sub-leases, transfers and permits shall be in the forms prescribed in Schedule IX with such variations as circumstances may require and upon such terms and conditions within the law that the parties may agree, and in the cases of leases, sub-leases, transfers and permits shall be in duplicate.
- (2) Every lease, sub-lease or transfer shall in addition to proper words of description contain a diagram of the lands thereby conveyed:  
  
Provided always that no diagram or description shall be necessary in any sub-lease or transfer wherein the grantor conveys the whole land held by him under a previous lease, sub-lease or transfer.
- (3) No lease shall be for a longer term than 99 years, except with the consent of the Minister.
- (4) Every lease shall be signed by the lessee and by the lessor. The Minister shall sign with his seal of office in respect of Crown land.”.

**41 Section 125 amended**

Section 125 of the Land Act is amended by repealing subsection (2).

**42 Section 131 amended**

Section 131 of the Land Act is amended by inserting the following subparagraphs –

- “(ee) caveats;” and
- “(j) tenancy agreements.”.



**43 Section 141 amended**

Section 141 of the Land Act is amended by –

- (a) repealing subsection (1) and replacing it with –
  - “(1) The Minister may call upon any holder to give up possession of land held by him provided that he is satisfied that the land is required for public purposes.”; and
- (b) in subsection (3), deleting “with the consent of Privy Council” and the words “Privy Council” wherever it appears and replacing it with “Minister”..

**44 Section 142 amended**

Section 142 of the Land Act is amended by replacing “thirty (30)” with “ninety (90)”.

**45 Section 143 amended**

Section 143 of the Land Act is amended by deleting “The King may, with the consent of Privy Council” and replacing with “The Minister may, with the consent of Cabinet”.

**46 Schedule VIII amended**

Form No. 5 of Schedule VIII of the Land Act is amended by deleting “mortgagor” in the last line and replacing it with “mortgagee”.

**47 Schedule IX amended**

Schedule IX of the Land Act is amended by-

- (a) deleting Form No. 2; and
- (b) deleting “16 years” in form No. 11 and replacing it with “21 years”.

Passed by the Legislative Assembly this        day of                                2012.