

LAND (AMENDMENT) (NO.2) BILL 2012

Explanatory Notes

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

This Bill establishes an Independent Land Commission and a Land Tribunal to provide support roles that will promote transparent, legal and fair decision making by the Minister of Lands in exercising his powers under the Land Act and the Constitution.

The Independent Land Commission will comprise of representatives of the various stakeholder's in Tonga's land system, namely the Monarch and the Royal Family, Hereditary Estate Holders, Government and individual allotment holders. Its main function would be to advise the Minister of Lands on the exercise of his administrative powers and important policy matters. Anyone who may be dissatisfied with a decision by the Minister or performance of duties by staff of his Ministry can lodge a complaint with the Independent Land Commission or an appeal with the Land Tribunal.

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LAND (AMENDMENT) (NO. 2) BILL 2012

**AN ACT TO AMEND THE LAND ACT TO ESTABLISH THE
INDEPENDENT LAND COMMISSION AND TO ESTABLISH THE
LAND TRIBUNAL, AND FOR RELATED MATTERS**

Commencement []

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 Act (Amendment) (No. 2) Act 2012.
- (2) In this Act, the Land Act, as amended, is referred to as “the Land Act”.

2 Amendment of Section 2 – Interpretation

Section 2 of the Land Act is amended by inserting the following definitions —

“**advice of the Commission**” means that the Minister may seek the advice of the Independent Land Commission and when given he shall act in accordance with the advice that the Commission gives to him in respect of that matter;

“**Commission**” means the Independent Land Commission established under this Act;

“**Tribunal**” means the Land Tribunal established under this Act.”

PART 2 - THE COMMISSION

3 Insertion of new Part XI – Independent Land Commission

The Land Act is amended by inserting the following new Part –

“PART XI - THE INDEPENDENT LAND COMMISSION

171 Establishment of Commission

- (1) There is hereby established a Commission to be known as the Independent Land Commission.
- (2) The Commission is a body corporate capable of owning property, being a party to contracts, and suing and being sued.

172 Members of Commission

- (1) The Commission shall consist of five members as follows —
 - (a) a person nominated by the King;
 - (b) a person nominated by the hereditary estate holders of the realm, in such manner as they shall decide;
 - (c) a person nominated by the Cabinet;
 - (d) a person nominated by the People’s Representatives in the Legislative Assembly, in such manner as they shall decide;
 - (e) a fifth person, a law practitioner who is qualified for appointment as a Judge and who shall be Chairman, shall be nominated by the other four members.
- (2) The appointing authority for each Commissioner may likewise appoint an alternate who shall act as Commissioner at any time when the substantive Commissioner is unable to attend to the work of the Commission, due to absence, illness, conflict of interest, or otherwise.
- (3) The Chairman and Commissioners or any person appointed under section 182 shall not be subject to the Public Service Act 2002 by virtue of such appointment.

173 Employment terms and Remuneration

- (1) Each Commissioner shall be appointed by Cabinet for a period of 6 years under a contract of employment that shall specify the terms of employment and remuneration (to be agreed by the Minister) and provide for duties to be performed, performance criteria and the termination of that contract.
- (2) A Commissioner and an alternate may resign by giving the Commission 3 month's written notice.

174 Officers

- (1) The Commission shall, in consultation with the Minister, appoint such officers, full-time or part-time, as may be required for the proper conduct of the business of the Commission.
- (2) The Commission shall establish for the period of 6 years after the commencement of this section, a Research and Advisory Unit and appoint officers to manage this unit.

175 Chairman

The Chairman shall be the head of the Commission and shall be responsible for the efficient and effective operation of the Commission.

176 Meetings

- (1) The quorum of the Commission shall be 4 members, one of whom shall be the Chairman, who shall in the event of equality have a casting vote.
- (2) The Chairman shall —
 - (a) call and attend regular meetings of the Commission;
 - (b) preside over the meetings of the Commission; and
 - (c) co-opt any person from the public or specialist to any meeting of the Commission if he considers it necessary.
- (3) Subject to this Act, the Commission shall determine its own procedure.

177 Delegation

The Commission may delegate to a member, officer or committee of the Commission the exercise of any of its functions but such delegation shall not prevent the exercise of the function by the Commission.

178 Principal role of the Commission

The Commission shall, subject to this Act, —

- (a) establish an office for the Commission and employ staff and control them;
- (b) review the land laws and practices of the Kingdom, including the provisions of the Constitution relating to land, to ensure that there is equity, fairness and transparency; and report thereon to the King, Cabinet and the Legislative Assembly every 5 years;
- (c) oversee and advise the Cabinet on the implementation of the Royal Land Commission report delivered in 2012, any recommendations made in a report delivered under paragraph (b) and any associated legislation;
- (d) advise the Minister and Government and make recommendations on major policy issues relating to land matters, either of its own volition or as requested by the Minister;
- (e) give advice to the Minister on the exercise of administrative and other powers vested in the Minister as required by the Act and in accordance with the principles and guidelines specified in regulations made under section 179;
- (f) consider and decide upon any complaints made against the administration of the Land Act, including complaints against actions or decisions of public servants employed in the Ministry;
- (g) report annually to the Legislative Assembly on its work, matters arising therefrom and recommendations it wishes to make.

179 Principles and Guidelines by regulations

- (1) The Commission shall operate in accordance with the principles and guidelines provided for that purpose in the Land Commission Regulations made by the Commission with the consent of Cabinet.
- (2) Regulations made under this section may specify anything necessary or desirable for the better regulation of the functions of the Commission.

180 Funding of Commission

The funds available to the Commission shall be moneys allocated by the Legislative Assembly for that purpose, whether as part of the Ministry's budget or as a separate budget item.

181 Directions of Government

- (1) The Commission shall, in the exercise of its functions, give effect to the policy of the Government in relation to those functions, as communicated to it in writing by the Minister: PROVIDED THAT such policy shall not be at variance with this Act.
- (2) A copy of every communication made under this section to the Commission in any year shall be included in the annual report of the Commission for that year laid before the Legislative Assembly under section 184.

182 Specialists

The Commission may, for the purpose of any aspect of its functions engage specialists on a temporary basis to —

- (a) consider any matter which should, in the opinion of the Commission, be referred to such person and to report thereon to the Commission; or
- (b) advise the Commission.

183 Protection of Commission, powers and procedures

- (1) Any persons appointed under this Act shall not be liable to any suit for any action done by them in carrying out their functions under this Act.
- (2) The power of the Commission to perform its functions is not impaired by reason of the absence or inability to act, of the Chairman, any Commissioner, or the Director.

184 Annual report

- (1) The Commission shall report on its activities for each calendar year to the Minister by 30 March in the next year.
- (2) The Minister shall table the report before the Legislative Assembly in its next ensuing session."

PART 3 - THE LAND TRIBUNAL

4 Insertion of new Part XII – Land Tribunal

The Land Act is amended by inserting the following new Part –

“PART XII - THE LAND TRIBUNAL

185 Establishment of Tribunal

- (1) There is hereby established a Tribunal to be known as the Land Tribunal.
- (2) The Tribunal shall be comprised of three Members as follows –
 - (a) the Chairman of the Tribunal, who shall be an experienced legal practitioner who is qualified to be a judge;
 - (b) two other members.
- (3) All Tribunal members shall be appointed by the King in Privy Council on the advice of the Judicial Appointments and Discipline Panel established under the Constitution and shall be employed part time under a contract of employment that shall specify the terms of employment and remuneration (to be agreed by the Minister) and provide for duties to be performed, performance criteria and the termination of that contract.
- (4) The Tribunal shall have a registry and other offices, which may be located at the offices of the Commission, but the Tribunal shall be and remain independent.

186 Jurisdiction of Tribunal

- (1) The Jurisdiction of the Tribunal shall be to hear and determine appeals from any decision of the Minister under the Act, whether made with or without the advice of the Commission.
- (2) The Tribunal shall consider whether the law has been adhered to and complied with, that proper lawful process was followed by the Minister in reaching the decision appealed against; but the Tribunal shall not otherwise re-consider the issue on its merits except in a case where the decision was made by the Minister without the advice of the Commission.

187 Orders of Tribunal

The Tribunal may, after considering the appeal, make orders having the effect of

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- (a) dismissing the appeal in whole or in part;
- (b) allowing the appeal in whole or in part and remitting the matter to the Minister to reconsider the original application with such directions as the Tribunal sees fit to make;
- (c) awarding costs of the appeal to a party.

188 Proceedings of Tribunal

- (1) An appeal to the Tribunal shall be commenced by lodging at the registry the appeal in the form prescribed in the Land Tribunal Rules.
- (2) On receipt of the appeal the registrar shall, subject to the Rules, within one month, fix a date for the hearing of the appeal and notify all parties of such date.
- (3) Subject to this Act and any regulations made hereunder, a Tribunal shall adopt such procedure as it thinks best suited to the ends of justice.

189 Right of audience

- (1) On an appeal every party thereto and every other person who appears to the Tribunal to have a sufficient interest in the appeal shall be entitled to attend and be heard.
- (2) Parties to an appeal may be represented at the Tribunal by a Legal Practitioner or other person.

190 Evidence

- (1) Evidence tendered to a Tribunal by or on behalf of a party to any proceedings need not be given on oath, but the Tribunal may at any stage of the proceedings require that such evidence, or any specific part thereof, be given on oath whether orally or in writing.
- (2) A Tribunal may, on its own initiative, seek and receive such other evidence and make such other investigations and inquiries as it thinks fit. All evidence and information so received or ascertained shall be disclosed to every party.
- (3) A Tribunal may receive and take into account any relevant evidence or information, notwithstanding the provisions of the Evidence Act and whether or not the same would normally be admissible in a Court of Law.

191 Tribunal may act on evidence available

- (1) If the case of any party is not presented to the Tribunal, after reasonable opportunity has been given to him or her to do so, the issues in dispute in the proceedings may be resolved by the Tribunal, on such evidence or information as is before it, including evidence or information obtained pursuant to section 190(2).
- (2) An order made by the Tribunal in the circumstances described in subsection (1) shall not be challenged on the ground that the case of the party was not presented to the Tribunal, but the party may apply for a rehearing on the ground that there was sufficient reason for his failure to present his case.

192 Appeals

- (1) Any party to proceedings before a Tribunal may appeal against an order made by the Tribunal on the grounds that –
 - (a) the proceedings were conducted by the Tribunal in a manner which was unfair to the appellant or respondent and prejudicially affected the result of the proceedings; or
 - (b) the Tribunal exceeded its jurisdiction.
- (2) An appeal brought pursuant to subsection (1) shall be made to and with the leave of the Land Court in accordance with section 149(1)(g).
- (3) An appeal shall be brought by a party by the filing of a notice of appeal, in the Form (if any) provided in the Rules, together with the fee (if any) prescribed in the Rules within 14 days of the Tribunal's order.
- (4) As soon as practicable after such notice of appeal has been filed, the Registrar of the Land Court shall, subject to any Land Court Rules –
 - (a) lodge a copy thereof in the Tribunal's records relating to the proceedings;
 - (b) fix the time and place for the hearing of the appeal and shall notify the appellant;
 - (c) serve a copy of every notice of appeal together with a notice of the time and place for hearing the appeal on every other party to the proceedings before the Tribunal, and each such party may appear and be heard.

193 Want of form

No proceedings of a Tribunal, or order, or other document thereof shall be set aside or quashed for want of form.

194 Registrar to provide assistance

A Registrar shall ensure that assistance is reasonably available from the registry staff to any person who seeks it in completing the forms required in relation to the lodging of an appeal in a Tribunal, an appeal against an order of a Tribunal, or the enforcement of an order.

195 Rules

- (1) The Minister may, on the advice of the Chairman of the Tribunal make rules-
 - (a) regulating the practice and procedure of the Tribunal;
 - (b) prescribing such things (including fees) as are required by this Part to be prescribed;
 - (c) prescribing such matters as are necessary or convenient for carrying out the provisions of this Part.
- (2) Without limiting the generality of subsection (1), rules may be made providing for the following-
 - (a) the keeping of records by Tribunals and the form thereof;
 - (b) the form of documents to be issued by Tribunals and the sealing of its documents;
 - (c) the form and content of documents to be used by parties and intending parties, and the service of documents and the giving of notices by such persons;
 - (d) the functions, powers, and duties of Tribunals and Registrars in relation to the service of documents and giving of notices; the enlargement of dates of hearing; and the adjournment of proceedings;
 - (e) the withdrawal and amendment of claims;
 - (f) the summoning of witnesses, and the payment of witnesses;
 - (g) the commission of offences by, and punishment of persons who refuse to give evidence or obey a summons to witness;
 - (h) the searching of the records of Tribunals.”.

