

LAND (AMENDMENT) (NO.3) 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 have been made to cover proposals received from extensive public meetings throughout Tonga and also in New Zealand (Auckland and Wellington), Australia (Brisbane, Sydney, Melbourne and Canberra), the United States of America (Hawaii, Los Angeles, San Francisco and Salt Lake City), where many Tongans reside. The views of the churches, special interest groups and those expressed in written submissions have also been taken into account in these amendments.
2. This Bill was drafted on the assumption that the Land (Amendment) Bill 2012 and the Land (Amendment)(No.2) 2012 have been enacted. Therefore, the three Bills amending the Land Act should be considered in the order in which they are numbered.
3. Most of the amendments relate to the transfer of powers over land matters from Privy Council and Cabinet to the Minister of Lands. Other amendments are detailed in the paragraphs that follow.
4. Section 3 gives a meaning to the term “newly acquired land” being land received as a first grant and not through family inheritance. Such land has been developed by the family for their benefit and has been dealt with so that it is retained by the family. A proposal to amend the succession rules to allotments to enable this is provided in a subsequent section in this Bill. Section 3 also gives a definition of fixtures attached to the land so that it is considered part of the land and the amendment in section 4 combines land and fixtures on the land into one interest.
5. Section 5 requires applications for allotments to be made to the Minister of Lands for Crown land and to the Hereditary Estate Holder for land on his estate. Subsection (2) gives the right to women to apply for a town allotment in response to popular demands for equality by women. The same rights are not given for tax allotments.
6. Section 6 covers public concern over the time taken to make a decision in respect of an application for a grant. A decision within 12 months is required after which the application is deemed to be approved.
7. Section 7 is made in response to many views expressed by the public in relation to the difficulty in meeting the Estate Holder. This is covered in subsection (2). The second concern is in respect of the Estate Holder allowing a person to live on an allotment without registering it. The third concern is in respect to demands for money before a grant is made. This is made an offence liable to a fine of \$1000.

8. Section 8 deals with rent for leases to religious bodies and charitable institutions where the concern is with the amount of the rent and the demand for upfront payments before a lease is granted. This is made an offence liable to a fine of \$1000.
9. Section 9 requires the Minister to make a decision within 3 months. This period is shortened to one month in respect for mortgage applications to allow normal commerce to flow.
10. Section 10 allows for the appointment of a Registrar General and a Surveyor General which have been made necessary by the proposal to privatize the work of surveyors.
11. Section 11 allows penalties to be imposed by Regulations for breach of those Regulations.
12. Section 12 concern leases by Estate Holders in excess of the legal limit of 5 percent of the area of the estate but exempting leases to religious bodies and charitable institutions.
13. Section 13 gives the right to make regulations to the Minister on the advice of the Independent Land Commission.
14. Section 14 gives the right to a female Tongan over 21 years of age to apply and hold a town allotment.
15. Section 20 gives a widow the right to lease her holding without the consent of the heir if it is newly acquired land.
16. Section 21 makes it an offence to demand money for the renewal of a lease and empowers the Minister to renew leases.
17. Section 23 amends the rules of succession to allotments to allow daughters and legally adopted children of the landholder to succeed to land on specific circumstances.
18. Section 24 gives a deserted wife the right to live in the family home with her children.
19. Section 25 gives certain rights to a family member who has lived and looked after the land for over five years.
20. Sections 26 and 27 take the power of consenting to leases away from Cabinet and give it to the Minister on the advice of the independent Land Commission.
21. Section 28 gives the widow the right to mortgage newly acquired land.
22. Section 30 gives the power to the Minister to resume land for public purpose on the advice of the Independent Land Commission.
23. Section 31 prohibits the issuance of charging orders over land.

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LAND (AMENDMENT) (NO.3) BILL 2012

AN ACT TO AMEND THE LAND ACT TO MAKE MISCELLANEOUS CHANGES AS THE THIRD STAGE OF A REVIEW OF LAND POLICIES, AND RELATED PURPOSES

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.3) 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 following new definitions –

“**fixture**” means anything personal attached to the land including a building;

“**newly acquired land**” means a town or tax allotment that has been registered upon a grant and not inherited as an heir;”

4 Section 4 amended

Section 4 of the Land Act is amended by renumbering the section it as a new subsection (1) and adding a new subsection (2) as follows –

“(2) The interest of a holder of land shall include all fixtures on that land”.

5 Section 7 amended

Section 7 of the Land Act is amended by –

- (a) inserting the words “of the age of 21 years or over” after “birth” in the first line;
- (b) inserting the words “for Crown land or the Hereditary Estate Holder for land on his estate” after “Minister of Lands” in the second line;
- (c) re-numbering the section as subsection (1); and
- (d) adding the following new subsections (2) and (3) –

“(2) Every female Tongan subject by birth upon attaining the age of 21 years, upon making application in the prescribed form, to the Minister for Crown land or the Hereditary Estate Holder for land in his estate shall be entitled to receive, subject to the provisions of this Act a grant of land not exceeding 1618.7 square metres in a town as a town allotment.

(3) All applications made under this section shall be filed in writing with the Minister of Lands who shall inform the Hereditary Estate Holder of the land involved.”

6 Section 7A added

The Land Act is amended by adding a new section 7A immediately after section 7 as follows –

“7A Decision on application

The Minister or the Hereditary Estate Holder shall make a decision on an application for grant of an allotment made under the preceding section within 12 months failing which he will be deemed to have approved the grant and the applicant can proceed to register the allotment.”

7 Section 8 amended

Section 8 of the Land Act is amended by renumbering it as subsection (1) and adding the following new subsections immediately thereafter –

“(2) Every estate holder shall declare a place and time where he will be available in each month to meet with the public on applications and matters concerning his

estate. Should an estate holder be absent overseas then he shall appoint a member of his family to carry out his responsibilities under this Act. A Trustee for a minor shall likewise declare a place and time he will be available to meet the public on matters concerning the estate.

- (3) Where a person has resided and worked an allotment for a period of one year or more, with the approval of the estate holder, he may apply for the registration of the allotment and the estate holder shall facilitate the registration. If the estate holder refuses to facilitate the registration, the applicant may apply to the Minister to carry out the registration under his powers in section 34 of this Act. The same shall apply to Crown land where the remedy will be through the Independent Land Commission and the Land Tribunal.
- (4) Demand for money or goods, whether directly or indirectly, in exchange for the grant of an allotment is an offence. Any person who commits this offence shall be liable upon conviction to a penalty of \$1000. This does not apply to the customary and voluntary giving of gifts in cash or in kind for the grant of land practiced in Tonga.”

8 Section 17 amended

Section 17 of the Land Act is amended by renumbering it as subsection (1) and adding the following new subsections immediately thereafter –

- “(2) The rent for the lease by these bodies shall be kept low and to be set by the Minister on the advice of the Commission in consultation with the estate holder.
- (3) It shall be unlawful and an offence to demand any upfront payment of money to allow a renewal of a lease. Any person who commits this offence shall be liable upon conviction to a fine of \$1000. This does not apply to the customary and voluntary giving of gifts in cash or in kind for the grant of a lease of land practiced in Tonga.”

9 Section 19 amended

Section 19 of the Land Act is amended by -

- (a) in subsection (8), inserting the words “within six months” after “Trustee or Trustees”;
- (b) adding the following new subsection (12) –

“(12) When a matter concerning land is referred to the Minister for a decision, he shall make and deliver such decision within three months except with mortgage applications where the decision shall be delivered within one month.”

10 Section 21A inserted

The Land Act is amended by adding the following new section immediately after section 21-

“21A There shall be a Registrar General and a Surveyor General who shall be responsible respectively for the registration of land and titles and for the surveying of land and the control of surveyors and any other duties that may be assigned by the Minister.”

11 Section 22 amended

Section 22 of the Land Act is amended by deleting subsection (4) and replacing it with the following –

“(4) The Regulations may impose penalties for acting in breach of such regulations.”

12 Section 33 amended

Section 33 of the Land Act is amended by adding the following new subsections immediately after subsection (2) –

“(3) Land that has been leased in excess of the five percent shall on the expiry of the lease be returned to the estate holder for distribution in accordance with this Act. An estate holder who fails to comply with this provision commits an offence and upon conviction shall be liable to a fine of \$1000, and lose that part of excess land which will become Crown land. .

(4) If the estate holder refuses to approve a lease, the applicant may refer the matter to the Minister for a decision on the advice of the Commission.

(5) If the Minister refuses to make a grant in respect of Crown land, then the applicant may seek a review by the Land Tribunal.”

13 Section 34 amended

Section 34 of the Land Act is amended by adding to the proviso in subsection (1) the words “made by the Minister on the advice of the Independent Land Commission” after “regulation”.

14 Section 43 amended

Section 43 of the Land Act is amended by –

(a) adding a new subsection (1A) immediately after subsection (1) as follows -

“(1A) Every female Tongan subject by birth of 21 years of age or more not being in possession of a town allotment shall be entitled to a grant of a town allotment.”;

- (b) in subsection (2)(b), inserting the words “in respect of Crown land and to the Hereditary Estate Holder in respect of land in his estate” after “Minister”; and
- (c) in subsection (2)(c), inserting the words “or the Hereditary Estate Holder as the case may be” after “Minister”.

15 Section 43A added

The Land Act is amended by adding a new section 43A immediately after section 43 as follow -

- “43A (1) If the Hereditary Estate Holder refuses to make a grant, the applicant may refer the matter to the Minister for a decision on the advice of the Commission.
- (2) If the Minister refuses to make a grant, the applicant may seek a review by the Land Tribunal.”

16 Section 47 amended

Section 47 of the Land Act is amended by deleting “Cabinet” wherever it appears and replacing it with “Minister”.

17 Section 51 amended

Section 51 of the Land Act is amended by adding a new subsection (3) as follows -

- “(3) Notwithstanding the provisions of the previous subsections, where the land involved is in an estate of an Hereditary Estate Holder then he will make the decisions instead of the Minister provided however that if the Hereditary Estate Holder does not give his consent the matter may be referred to the Minister who will act on the advice of the Commission. A refusal by the Minister may be reviewed on application by the Land Tribunal.”

18 Section 53 amended

Section 53 of the Land Act is amended by -

- (a) in subsection (1), deleting the words “Whenever the Cabinet is satisfied that it is possible so to do the” before “Minister” on the first line and replacing with “The”; and
- (b) adding a proviso to subsection (1) as follows –

“Provided that where a tax allotment is subdivided, the holder shall offer a plot of land to his sons, daughters, brothers and sisters before giving to others”;

(c) adding a new subsection (3) as follows –

“(3) Notwithstanding the foregoing, when the land involved is in a hereditary estate then it will be the Hereditary Estate Holder who will make the decision instead of the Minister and in the case of disagreement then the matter may be referred to the Commission for a decision.”

19 Section 55 amended

Section 55 of the Land Act is amended by –

- (a) in subsection (1), deleting the words “Cabinet may, at their own discretion and on the recommendation of the Minister, permit” and replacing them with “The Minister in respect of Crown land, and the Hereditary Estate Holder in respect of land on his estate, may permit”; and
- (b) in subsection (2), deleting the word “Cabinet” and replacing with “the Minister”;
- (c) renumbering subsections (2) and (3) as subsections (4) and (5); and
- (d) inserting the following as new subsections (2) and (3) immediately after subsection (1) –

“(2) If the Hereditary Estate Holder refuses then an application may be made to the Minister who will make a decision on the advice of the Commission.

(3) If the Minister refuses in respect of Crown land then an application may be made to the Land Tribunal for a review.”

20 Section 56 amended

Section 56(ii) of the Land Act is amended by inserting the words “and in the case of newly acquired land the consent of the heir is not required”.

21 Section 60 amended

Section 60 of the Land Act is repealed and replaced with the following –

“60. (1) No lease granted in terms of this Part of this Act shall contain any clause conferring an automatic right of renewal or an option to renew, and any renewal of any lease granted in terms of this Part of this Act shall be subject to the consent of the Minister.

(2) Demand for an upfront payment of money, goods or a service for the renewal of a lease other than for rent is an offence. Any person who commits this offence shall be liable upon conviction to a penalty of \$1000.”

22 Section 65 amended

Section 65 of the Land Act is amended by repealing subsection (2).

23 Section 82 amended

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

(a) deleting paragraph (d) and replacing with -

“(d) if the holder dies without leaving any son or heir male of the body of a son him surviving, then a daughter of the deceased holder shall inherit for her life and if there are two or more daughters then they shall inherit in turn starting from the eldest daughter. The life estate of a daughter shall terminate upon her death and when the last daughter dies the allotment shall be inherited by the children of each daughter starting with the sons by age of the eldest daughter followed by her daughters then followed by the children of each daughter in similar way from the eldest to the youngest;” and

(b) in paragraph (e), deleting the word “unmarried” before the word “daughter”;

(c) adding a new proviso immediately after paragraph (g) as follows –

“Provided always that if the allotment involved is newly acquired land then in the absence of any legitimate children of the landholder, legally adopted children of the landholder shall succeed beginning with the eldest adopted son and thereafter in accordance with the rules of succession.”

24 Section 88A added

The Land Act is amended by adding the following new section immediately after section 88 -

“88A Rights of a deserted wife

A wife who has been deserted by her husband may, on application to the Court, be granted an order to remain on the town allotment of her husband with her children until she re-marries or dies.”

25 Section 88B added

The Land Act is amended by adding the following section immediately after section 88A -

“88B Rights of person maintaining the land

Where a family member has, with the consent of the landholder, lived on and looked after the land for over five years, he shall have the right to reside on the land for the same period of time that he had been living on and maintaining that land. Should the landholder or his successors wish to take control of the land before the end of that period; this can be done on the payment of an agreed sum of money as compensation failing which the amount of the compensation shall be determined by the Commission.”

26 Section 89 amended

Section 89 of the Land Act is amended by –

- (a) deleting the word “Cabinet” and replacing with “Minister on the advice of the Commission”;
- (b) inserting the words “provided that where it is newly acquired land the consent of the heir is not required” after “heir”.

27 Section 90 amended

Section 90 of the Land Act is amended by deleting the second sentence and replacing it with the following “The Minister may, on the advice of the Commission, grant the lease upon such condition and for such term and at such rent as it deems fit.”

28 Section 100 amended

Section 100(1) of the Land Act is amended by, –

- (a) in paragraph (b), inserting the words “provided that where it is newly acquired land the consent of the heir is not required” after “consent”; and
- (b) in paragraph (c), inserting the words “provided that where it is newly acquired land the consent of the heir is not required” after “loan”.

29 Section 113 amended

Section 113 of the Land Act is amended by adding “on advice of the Commission and” after “Minister may”.

30 Section 141 amended

Section 141 of the Land Act is amended by deleting subsection (1) and replacing it with the following -

- “(1) The Minister may, on the advice of the Commission, call upon any holder to give up possession of land held by him provided that the Commission is satisfied that the land is required for public purposes.”

31 Section 151 amended

Section 151 of the Land Act is amended by adding a new subsection (3) as follows –

