

SURVEYORS BILL 2012

Explanatory Notes

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

This Bill seeks to regulate the operation of surveyors in the private sector industry.

The relatively new industry to Tonga is the business of private sector surveying as opposed to surveys that have been conducted in the past by the Government through the Survey Division of the Ministry of Lands.

The Bill also comes in the wake of the Royal Land Commission's inquiries into the internal workings of the Ministry of Lands and how to improve its overall efficiencies and performance.

A key recommendation in its Phase One Interim Report by the Royal Land Commission was to privatise all survey services and for the Ministry of Lands to retain the overall compliance, checking and registration of surveys.

The privatisation of surveying has been successfully undertaken in many overseas countries and has freed up the Government to focus its resources on the all important vetting, compliance and registration of all surveys.

A new national Authority is set up under this Bill that will be known as the Surveyors Authority. This Authority seeks to provide national governance that would oversee professional standards, membership, compliance, certification and disciplinary action for its members under this Bill.

The Authority shall be under the management of a Chairman who will be the Chief Executive Officer of the Ministry of Lands. He will act within a range of rules and guidelines laid out in this Bill toward assisting the formation and development of the Authority and its members over the coming two year transition period.

The Authority is to provide a two year transition period to enable the private sector surveyors industry to organise and establish sufficient qualified membership, training, financial support, offices, public notification of its intentions and to achieve other compliance objectives set out in this Bill.

At the end of two years, the Authority will cease to exist and a new independent Society to be known as the Tonga Surveyor's Society shall simultaneously come into existence and perform the functions of the Authority.

C

T

SURVEYORS BILL 2012



C

T

SURVEYORS BILL 2012

Arrangement of Sections

Section

PART I – PRELIMINARY		5
1	Short title.....	5
2	Commencement	5
3	Interpretation.....	5
4	Act binds the Crown.....	7
PART II – TONGA SURVEYORS AUTHORITY		7
5	Establishment of the Authority	7
6	Executive members of the Authority	8
7	Executive meetings	8
8	Objects of the Authority.....	9
9	Powers and Functions.....	9
PART III – TONGA SURVEYORS SOCIETY		10
10	Establishment of the Society.....	10
11	Council.....	11
PART IV – REGULATING SURVEYORS		11
12	Surveyors	11

PART IV – REGULATING SURVEYORS	11
12 Surveyors	11
13 Surveyor Certificate	12
14 Keeping the Roll.....	12
PART V – DISCIPLINARY COMMITTEE	13
15 Disciplinary Committee	13
16 Complaints to the Disciplinary Committee.....	13
17 Powers of the Committee.....	14
PART VI - OFFENCES	15
18 Offence to operate without a Certificate	15
19 Unqualified person not to pretend to be surveyor	15
20 Assault of a registered surveyor.....	16
21 Interference with survey marks.....	16
PART VI - COSTS	16
22 Recovery of costs	16
23 Agreement on costs.....	17
24 Taxation of costs	17
PART VII - MISCELLANEOUS	17
25 Saving for jurisdiction of courts.....	17
26 Regulations	17
SCHEDULE 1	18
SURVEYOR CERTIFICATE.....	18

C

T

SURVEYORS BILL 2012

AN ACT TO REGULATE THE PRACTICE OF LAND SURVEYS BY THE REGISTRATION AND LICENSING OF QUALIFIED LAND SURVEYORS AND FOR RELATED PURPOSES

Commencement []

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

PART I – PRELIMINARY

1 Short title

This Act may be cited as the Surveyors Act 2012.

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 Interpretation

In this Act unless the context otherwise requires –

“aerial photography” means photographic or remote sensing imagery exposed from above the earth’s surface;

“Authority” means the Tonga Surveyors Authority established under section 5;

“cadastral survey” means the determination and description of the spatial extent (including boundaries) of all land under the Land Act;

“cadastre” means all the cadastral survey data held by or for the Crown at the Ministry;

“Certificate” means a surveyor certificate issued under section 13;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“land” means land under the Land Act;

“land interest” means the kind of right or title by which land is held or owned;

“licensed surveyor” or **“surveyor”** means a person registered as a surveyor under this Act and who is the holder of a Certificate issued under this Act;

“Member” means -

- (a) all persons holding a Certificate;
- (b) persons elected by the Authority or Society as honorary members; or
- (c) such other persons for the time as are elected by the Authority or Society as members;

“Minister” means the Minister of Lands, Survey, Natural Resources and Environment and **“Ministry”** has a corresponding meaning;

“qualification” means any certificate, diploma, degree or licence granted by overseas academic institutions or authorities and recognised by the Tonga Surveyors Authority or Society as sufficient evidence of the possession by the holder of the requisite knowledge and skill for the efficient practice of land surveying in Tonga;

“Registrar” means the Registrar of the Tonga Surveyors Authority and, upon ceasing to exist; will be the Registrar of the Society who is responsible for the registration of all licenced surveyors and the administration of the Roll;

“**Roll**” means the Roll of surveyors listed with the Registrar and filed with the Ministry;

“**Society**” means the Tonga Surveyors Society set up under section 10;

“**survey**” means the determination for boundary or other relevant purposes of the form, contour, position, area, shape, height, depth, or nature of any part of the earth or of any natural or artificial features, and the position, length, and direction of bounding lines on, below, or above any part of the earth; and includes the making of a plan or plans of any matter so determined; and

“**survey mark**” means any survey monument or reference or boundary mark or peg fixed or placed in accordance with this Act or any regulations made under this Act, and includes any mark or beacon fixed or placed for the any national survey control system.

4 Act to bind the Crown

This Act binds the Crown.

PART II - TONGA SURVEYORS AUTHORITY

5 Establishment of the Authority

- (1) There is hereby established an Authority to be known as the Tonga Surveyors Authority.
- (2) The Authority shall function for a period of two years beginning from the commencement of this Act.
- (3) Upon the Authority ceasing to exist, all its powers and functions will be transferred to Society together with any assets, property and all other interests.
- (4) The object of the Authority is to enable the new, private sector surveyor industry to organise and establish sufficient private surveyor business capability, develop qualified surveyor membership of the Society, establish

training and financial support, establish Society offices and staff, develop public awareness of the Society's intentions and to achieve other compliance objectives set out in this Act.

- (5) Upon the completion of the two year transition period, all surveyors, with the exception of three qualified surveyors in the employ of the Ministry shall cease employment for the Ministry.

6 Executive Members of the Authority

- (1) The Authority shall consist of the following executive members –
- (a) the Chief Executive Officer who shall be the Chairman;
 - (b) three other members, one being an experienced law practitioner in the area of land law and two other persons with suitable survey qualifications and experience, to be appointed by the Minister.
- (2) The executive members of the Authority shall be responsible for the administration of the Authority and exercise of its powers and functions under this Act.
- (3) The Chairman shall be the head of the Authority and shall be responsible for the efficient and effective operation of the Authority.
- (4) The Minister may remove a member of the Authority from office and appoint a successor.
- (5) An executive member of the Authority may resign by giving the Minister 3 month's written notice.
- (6) The Authority shall appoint officers of the Authority including a director as head of its secretariat and any such other officers as may be required.

7 Executive Meetings

- (1) The quorum for an executive meeting shall be 3 members, one of whom shall be the Chairman.
- (2) The Chairman shall —
- (a) call and attend regular meetings of the Authority;
 - (b) preside over the meetings of the Authority; and
 - (c) co-opt any person from the public or specialist to any meeting of the Authority if he considers it necessary.

- (3) Subject to this Act, the Authority shall determine its own procedures.

8 Objects of the Authority

- (1) The objects of the Authority are to –
- (a) promote the interests of the surveyor profession and the interests of the public in relation to surveys and all land interests and property related matters;
 - (b) promote and encourage proper conduct among surveyors;
 - (c) prevent illegal, dishonourable or improper practices by surveyors; and
 - (d) maintain the integrity of the surveyor profession.
- (2) Upon coming into existence, the Society shall continue to observe the same objects as the Authority.

9 Powers and Functions

- (1) The Authority shall have all such powers, rights, and authorities as are reasonably necessary or expedient for or conducive to the exercise of any of its functions.
- (2) Without prejudice to subsection (1), the Authority shall in addition to any other powers conferred on it by this or any other Act, have the following powers –
- (a) to appoint the Registrar;
 - (b) to administer the licensing regime for surveyors;
 - (c) to ensure that the Roll is established, kept, and maintained;
 - (d) to make recommendations on any application made for a Certificate, membership or any other application made under this Act;
 - (e) to intervene in any application for a Certificate;
 - (f) to develop practice directions and make rules for regulating the professional practise, conduct and discipline of surveyors;
 - (g) to set fees and levies;
 - (h) to investigate complaints of professional misconduct against surveyors;

- (i) to maintain and improve the standards of learning of surveyors;
 - (j) to assist the Government and the public in all matters affecting surveyor affairs;
 - (k) to assist law reform and to represent the views, interests and wishes of surveyors in relation to law reform;
 - (l) to borrow money required for any of the purposes of the Authority, and for the purpose of securing any money so borrowed, mortgage charge or pledge any right, title, estate or interest in any real or personal property vested in or owned by or being acquired by the Authority;
 - (m) to perform such other functions that are specified in this Act or that the Authority, with the approval of the Minister, decides are appropriate.
- (3) Upon coming into existence, the Society shall continue to perform the same functions as the Authority.

PART III - TONGA SURVEYORS SOCIETY

10 Establishment of the Society

- (1) There is hereby established a Society to be known as the Tonga Surveyors Society that shall come into force on the date the Authority ceases to exist under section 5.
- (2) Upon ceasing to exist, the Authority shall hand over to the Society all information, files, assets, interests in land within its control.
- (3) The Society is a body corporate with perpetual succession and a common seal and in its corporate name is capable of –
 - (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
 - (c) borrowing or lending money;
 - (d) entering into contracts; and

- (e) doing anything which a body corporate may lawfully do or perform or which is calculated to facilitate the discharge of its functions.

11 Council

- (1) The affairs of the Society shall be managed by a Council consisting of –
 - (a) Chairman;
 - (b) Vice-Chairman;
 - (c) Treasurer; and
 - (d) three other members of the Society.
- (2) The Council shall be elected annually from within the Society's members and shall hold office until the election of its successor.
- (3) In the absence of the Chairman, the Vice Chairman shall act in his place.
- (4) In the absence of the Vice-Chairman the Council may appoint another member of the Council to act as Vice-Chairman.
- (5) If any vacancy occurs in the office of a member the Council shall appoint a member of the Society in his place.

PART IV – REGULATING SURVEYORS

12 Surveyors

- (1) Save as provided in this Act, no person shall operate as a surveyor unless -
 - (a) he has in force a valid Certificate; and
 - (b) his name is on the Roll;
- (2) A person shall be deemed to practise as a surveyor if for gain or reward, whether directly or indirectly, they do any survey authorised under the Land Act.

13 Surveyor Certificate

- (1) An application for a Certificate shall be made to the Authority in the prescribed form together with payment of the prescribed fee.
- (2) The Authority shall consider the application and make a recommendation to the Chairman.
- (3) The Chairman may approve or refuse the application after considering the application and whether the applicant satisfies the following requirements —
 - (a) he is at least 21 years of age;
 - (b) he has no criminal record;
 - (c) he is not suspended from practicing as a surveyor;
 - (d) he satisfies the Authority that he has sufficient experience or training in the survey industry.
- (4) A Certificate shall be issued in the Form provided in Schedule 1.
- (5) A person who is issued with a Certificate shall have his name registered on the Roll by the Registrar.

14 Keeping the Roll

- (1) The Registrar shall keep a Roll on which he shall register the name of all persons who have been issued with a Certificate.
- (2) The Roll may be kept by means of a computer provided the Registrar makes it available for inspection in legible form during office hours, without payment, by any person who applies to inspect it.
- (3) Any person may inspect a hard copy during office hours without payment.
- (4) The Registrar shall ensure that a copy of the Roll is filed with the Ministry.
- (5) The Registrar shall once in every calendar year cause to be published in the Gazette a list of all persons who have been issued with a Certificate.

PART V - DISCIPLINARY COMMITTEE

15 Disciplinary Committee

- (1) The Authority shall appoint from among its members a Disciplinary Committee.
- (2) The Committee shall, in accordance with this Act, hear and determine complaints relating to the professional conduct of surveyors.
- (3) The Committee shall consist of a chairman and four other members.
- (4) The chairman shall preside at all meetings of the Committee.
- (5) Three members, who must include the chairman, constitute a quorum.
- (6) Questions before the Committee shall be decided by a majority of votes of the members present at the meeting.
- (7) The chairman has a deliberative vote and, in the event of an equality of vote, also has a casting vote.
- (8) Subject to this Act, the Committee shall regulate its meetings, proceedings and conduct as it thinks fit.

16 Complaints to Disciplinary Committee

- (1) Any person may make a complaint in writing to the Committee relating to the professional conduct of a surveyor.
- (2) The Council may appoint one of its members to assist a complainant in the presentation of his complaint to the Committee.
- (3) Before hearing any complaint the Committee shall serve a copy of the complaint against the surveyor in question and shall give him adequate time to investigate the complaint and to submit a written response to the Committee.
- (4) The rules of natural justice shall apply to the hearing of a complaint by the Committee and in particular the complainant and surveyor are entitled -
 - (a) to be present throughout the hearing;
 - (b) to examine witnesses or cross-examine them as the case may be;
 - (c) to produce witnesses;
 - (d) to make oral submissions to the Committee;
 - (e) to have a legal representative.

17 Powers of the Committee

- (1) Where -
 - (a) the Committee is satisfied after hearing a complaint against a surveyor that he has been guilty of professional misconduct; or
 - (b) a surveyor is convicted by a court of an act involving dishonesty or is sentenced to a term of imprisonment of 2 years or more,the Committee may exercise its powers under subsection (2).
- (2) The Committee may recommend to the Council -
 - (a) that the name of the surveyor be struck off the Roll;
 - (b) that the Certificate of the surveyor be suspended for such time as the Committee may determine;
 - (c) that except in the circumstances referred to above in subsection (1)(b), the imposition on the surveyor of a fine not exceeding \$5,000;
 - (d) to censure the surveyor.
- (3) Where the Committee has made a recommendation under subsection (2) the Council may, after the disposition of any appeal under this Act or at the expiration of the time limited for such appeal -
 - (a) order that the name of the surveyor be struck from the Roll; or;
 - (b) suspend the surveyor's Certificate, for such time as deemed proper; or
 - (c) fine the surveyor any sum not exceeding \$5,000;
 - (d) impose such conditions with respect to the surveyor's Certificate as deemed proper.
- (4) The Committee may in its discretion award costs of a hearing to or against the complainant, the surveyor or the Authority.
- (5) The Authority may in its discretion pay any costs awarded against a complainant.
- (6) Any fine imposed under this section shall be paid into the general revenue of the Kingdom.
- (7) Where;

- (a) a complainant;
- (b) the surveyor; or
- (c) the Authority,

is aggrieved by a decision of the Council under this Act he may appeal within 14 days of receipt by him of notice to the Supreme Court.

PART VI – OFFENCES

18 Offence to operate without a Certificate

- (1) Any person who;
 - (a) practices as a surveyor; or
 - (b) in any way holds himself out as entitled by law to practise as a surveyor,

without having in force a valid Certificate, commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000 or to both.

- (2) Without prejudice to any proceedings under subsection (1), failure by an enrolled surveyor in practice to have in force a Certificate may be treated as professional misconduct. The person would commit an offence and shall be liable on conviction to be imprisonment for any period not exceeding 2 years or to a fine not exceeding \$5,000 or to both.

19 Unqualified person not to pretend to be a surveyor

Any person who is not on the Roll and who either by himself or together with others, wilfully and fraudulently -

- (a) pretends to be a surveyor; or
- (b) takes or uses any name, title, addition or description implying that he is a surveyor,

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 2 years or to a fine not exceeding \$5,000 or to both.

20 Obstruction of a surveyor

A person who knowingly obstructs a surveyor or a person assisting the surveyor or acting under the direction of a licensed surveyor in -

- (a) performing the surveyor's duties in relation to a survey;
- (b) ascertaining or marking out a boundary or cadastral survey line; or
- (c) fixing, placing, restoring, replacing or setting up a survey mark,

commits an offence and is liable upon conviction to imprisonment for a term not exceeding one year, or a fine not exceeding 1,000 pa'anga, or both.

21 Interference with survey marks

- (1) A person who knowingly takes, destroys or alters the position of, or markings on, a survey mark which has been placed under the authority of this Act or any other Act commits an offence and is liable upon conviction to imprisonment for a term not exceeding one year, or a fine not exceeding 2,000 pa'anga, or both.
- (2) Where a person is convicted of an offence under subsection (1), the Court may order that the person convicted be liable to pay the costs including survey costs of repairing, replacing or restoring the survey mark to its original position.

PART VI – COSTS

22 Recovery of costs

A surveyor is entitled in respect of services rendered as a surveyor to sue for, and recover -

- (a) his taxed costs; or
- (b) in the case of an agreement as to costs in terms of section 23, the amount of such agreed commissions and costs.

SCHEDULE 1

(Section 13(4))

SURVEYOR CERTIFICATE

No. dated the day of 20....

.....of is hereby authorised to act as a surveyor in the Kingdom of Tonga for the period..... pursuant to the Surveyors Act 2012 and subject to such conditions or restrictions as are set out hereunder.