

# **APPENDIX 11**

*(FAKALAH 11)*

# **Land (Amendment) Bill 2010**

LAND (AMENDMENT) BILL 2010

Explanatory Notes

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

**Background**

This Bill intends to empower all land holders as defined in the Land Act, providing them more scope and control over their land and to streamline the role of the Minister of Lands and Government in the administration of land title. It also seeks to enfranchise the greatest number of Tongans possible, including women, with respect to access to land. It provides modernised administrative and commercially facilitative procedures to implement these objectives whilst maintaining the cornerstones of our traditional land tenure system. It is to be enacted in conjunction with an Act of the Constitution of Tonga (Amendment) Bill and a Supreme Court (Amendment) Bill to ensure the amendments contained in this Bill remain consistent with these essential Acts.

The following tabulation provides for the manner in which the Bill achieves the foregoing by enumerating the relevant provision in the Land Act which has been amended and the effect thereof:

Section in this Bill	Section amended in the Land Act	Content of the section, sub-section or paragraph and relevant amendment made thereto	Effect
1		Short Title to Bill – self explanatory	
2	11 - King may grant estates	The King <del>in</del> Privy Council and subject to the provisions of this Act, may grant from the Crown Lands hereditary estates to Tongan subjects who are holders of hereditary estates or who may at any time be granted by royal letters patent a title of honour	<del>The King with the consent of the Privy Council</del> – these words have been deleted.  The usage in reference to the King in Privy Council has been standardised throughout the Act to conform with the various amendments made to the Constitution and consequential amendments made to the relevant ancillary legislation.
3	14 - Alien not to occupy land	It is unlawful for any alien to occupy any land <del>for commercial purposes</del> without having first obtained from the Minister of Lands a permit so to do issued by him in exercise of the powers conferred under section 19(4) of this Act. Any alien who contravenes the provisions of this section shall on conviction be liable to a fine not exceeding \$20 or in default of payment to imprisonment for any period not exceeding 3 months.	“It is unlawful for any alien <del>to hold or to reside upon or to occupy any land...</del> ” – these words have been deleted  Occupancy of Tongan land by an alien for commercial purposes is now prohibited without a permit while mere occupancy is

			now permitted
4	15 - Holder not to permit alien to occupy	Any landholder who allows an alien to occupy any part of his holding for commercial purposes shall, unless such alien has been granted a lease or permit in accordance with this Act, be guilty of an offence and on conviction therefore shall be liable to a fine not exceeding \$20 or in default of payment to imprisonment for any period not exceeding 3 months.	<p>"Any landholder who allows an alien to reside upon or occupy any part of his holding..." - these words have been deleted</p> <p>No Tongan national may contravene the prohibition at section 14 but may now permit mere occupancy</p>
5	18 - Conditions of holding	<p>(1) Religious bodies and charitable and social organizations holding land on lease shall not have the right to use such land for any other than the original purposes of the body or organization declared at the time of the making of the lease, or to transfer or sub-let such land, without the prior consent of Cabinet in <del>the case of hereditary estates.</del></p> <p>(2) If any such body or organization contravenes the provisions of this section the Minister may with the consent of the Cabinet <del>of the estate</del> institute proceedings in the Land Court against such body or organization claiming therein the cancellation of its lease and on proof of the contravention of this section by such body or organization the Court shall order such lease to be delivered up to be cancelled and upon cancellation of the lease the lands therein specified if situate in an hereditary estate (tofia) or town allotment (apikolo) shall revert to the holder and if situate elsewhere shall revert to the Crown.</p> <p>(3) It shall be unlawful for any person holding a town allotment or any land upon lease other than a charitable lease to erect thereon a place of worship and any holder of a town allotment or lessee acting in violation of this section shall be liable to forfeiture of his town allotment or to the cancellation of his lease or sub-lease (as the case may be)</p>	<p>The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.</p> <p>This has been standardised throughout the Act.</p>

		upon the institution in either case by the Minister with the consent of the Cabinet of such legal proceedings as are specified in the immediately preceding subsection.	
6	19 - General Powers	<p>(2) He shall grant allotments on crown land to Tongan subjects duly entitled thereto by law.</p> <p>(3) He shall grant leases (including sub-leases) and permits in respect of crown land with the consent of Cabinet; provided that the consent of His Majesty in Privy 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.</p> <p>(4) He shall issue permits for foreigners to <del>reside on the land</del> of a Tongan subject <del>for commercial purposes.</del></p> <p>(7) He shall collect the rents for all allotments on Crown Land, and all leases (including sub-leases) and permits; and where the land leased is part of any hereditary estate or an allotment shall <del>ensure payment of the lease rent into the Treasury or to such other person or persons as may be nominated by the Government in writing to the Minister and the proceeds of such payments shall be made into the Treasury</del> shall issue a voucher in favour of the holder of the estate or allotment for that amount of rent less two and a half centum thereof.</p> <p>(8) He shall in every case where no application is made to the Court for the appointment of a Trustee or Trustees <del>within six months</del> appoint one or more fit and proper persons to act with or without remuneration as trustee or trustees for any Tongan other than a noble or matapule who being entitled to land is under the age appointed by law for succeeding thereto.</p>	<p>(2) The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.</p> <p>This has been standardised throughout the Act.</p> <p>(3) The usage in reference to the Privy Council has been standardised throughout the Act to conform with the various amendments made to the Constitution and consequential amendments made to the relevant ancillary legislation.</p> <p>(4) Commercial purposes has been included in line with the amendments to sections 14 and 15.</p> <p>(7) The method of payment to estate and allotment holders has been streamlined to provide for alternative payees at the holder's discretion.</p> <p>(8) A time limit has been set for an application to the</p>

			Court
7	22 - Power to make Regulations	<p>(1) The King in Privy Council may, from time to time, make regulations providing for all purposes whether general or to meet particular cases that may be convenient for the administration of this Act or that may be necessary or expedient to carry out the objects and purposes of this Act and where there may be in this Act no provision or no sufficient provision in respect of any matter or thing necessary or expedient to give effect to this Act, providing for or supplying such omission or insufficiency and without prejudice to the foregoing powers, providing for all or any of the matters following, that is to say—</p> <p>(4) <del>The regulations may impose a penalty for any failure to comply with any provision made under this Act.</del></p>	<p>(1) The usage in reference to the Privy Council has been standardised throughout the Act to conform with the various amendments made to the Constitution and consequential amendments made to the relevant ancillary legislation.</p> <p>(4) The authority to impose penalties has been added to the regulations under the Act.</p>
8	23 - Minister to define boundaries	<p>(4) A notice under this section <del>shall</del> be served upon the landholder or his representative in the district in which the land in respect of which the notice is given is situated.</p>	Notice upon the landholder is now mandatory.
9	31 - Holder's right to rents	<p>The holder of a hereditary estate shall receive from every tax allotment holder on that estate the rent prescribed by this Act without deduction. <del>Also, in the exercise of the powers conferred on him, the Minister may give the rent prescribed in any lease to a part of the estate for a term of years.</del></p>	The new methods of payment have been incorporated in line with the amendment to 19(7)
10	33 - Holder's right to lease	<p><del>Holder's right to grant</del></p> <p>(1) The holder of an hereditary estate may subject to the provisions of this Act <del>grant allotments from his estate</del> lease such portions of the estate as have not been granted as allotments.</p>	An explicit right to grant allotments for the estate holder has been included.
11	34 - Holder not to refuse land for	<p><del>The holder of an hereditary estate shall admit into possession any tenant to whom he has granted an</del></p>	The conditions for an estate holder to grant

	allotments	<p>allotment upon his estate, upon registration of that grant by the Minister:</p> <p>Provided that an estate holder shall be entitled to reserve such portion of his hereditary estate as he alone shall determine, for the sole use of himself and his successors in title</p>	<p>an allotment have been streamlined.</p>
12	36 – Renewal of leases	<p>(1) On the expiration of any lease of land forming part of any hereditary estate or of an allotment, the holder of such hereditary estate or allotment, after a request in writing to do so by the holder of the expiring lease, not less than 3 months before the termination of the expiring lease, may grant to such holder of such expiring lease a further lease for a period not exceeding that granted in the expiring lease:</p> <p><del>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 Privy Council has been obtained.</del></p> <p>(2) On the expiration of any lease of land forming part of Government land it shall be lawful for the Minister at the direction of Cabinet after a request in writing so to do by the holder of the expiring lease to grant to such holder of such expiring lease a further lease for a period not exceeding that granted in the expiring lease:</p> <p>Provided 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 Privy Council has been obtained</p>	<p>The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.</p>
13	43 - Tongan subject may apply for allotment	<p>(1) Every male Tongan subject by birth of 21 years of age not being in possession of a tax or town allotment shall be entitled to the grant of a tax or town allotment or if in possession of neither to the grant of a tax and town allotment.</p> <p>(2) The grant shall be subject to the provisions of this Act and shall be made in accordance with the following rules</p> <p>—</p> <p>(a) the applicant shall make an application on the prescribed form</p>	<p>The age for qualification for an allotment has been raised from 16 to 21 to bring it in line with similar definitions of the age of legal capacity in other legislation.</p>

		<p>to the Minister in respect of Crown Land and to the Estate Holder in respect of his Hereditary Estates;</p> <p>(b) the applicant shall produce for the inspection of the Minister or the Estate Holder as the case may be his birth certificate or some other proof of the date of his birth;</p>	
14	44 - Forfeiture	<p>(2) Any person who has been granted an allotment and abandons the same for a period of more than 2 <del>without making provision for the use of the allotment in his absence</del> years shall forfeit such allotment to the holder of the hereditary estate or to the Crown as the case may be: in any such case the holder of the hereditary estate or the Minister where the allotment is situate on Crown Land shall take proceedings in the Land Court for the recovery of such allotment and on the abandonment being proved to the satisfaction of the Court, the Court shall declare such allotment to have been forfeited and shall order the register of allotments to be rectified accordingly and such allotment may be re-granted by the Minister.</p>	This ensures that allotments are not granted which are then left untended.
15	47-Subdivision of land into allotments exceeding area prescribed in Act.	<p>(1) Notwithstanding the provisions of this Act it shall be lawful for any noble, provided in the opinion of Cabinet having regard to the amount of land available for tax allotments there is sufficient land for the purpose, to grant to every Tongan subject making application for a tax allotment on such noble's hereditary estate an area of land containing 4 hectares to be held as follows —</p> <p>(a) as a tax allotment an area of 3.3387 hectares;</p> <p>(b) as a town allotment an area of 7000 square metres.</p> <p>(2) It shall be lawful for a noble with the consent of Cabinet to grant on application being made such an allotment of 4 hectares to be held as aforesaid to any other Tongan subject who already holds a tax allotment on such noble's hereditary estate and on the grant of such allotment of 4 hectares the grantee shall relinquish the tax allotment he already holds.</p>	The requirement for Cabinet consent has been removed from these provisions.



16	50 - Rules for taking lands for allotments	Repealed	
17	51 - Subdivision of town allotments	<p>(1) Where a town allotment is not less than 1618.7 square metres in area the holder thereof may apply to the Minister requesting him to subdivide the allotment between such sons, grandsons, brothers or nephews, of the applicant, being more than 21 years of age, as the applicant shall appoint, but the Minister <del>or the Estate Holder as the case may be</del> shall not grant an allotment less than 752 square metres in area.</p>	<p>The age for qualification for an allotment has been raised from 16 to 21 to bring it in line with similar definitions of the age of legal capacity in other legislation.</p> <p>The consent required for the use of Crown land and hereditary estate land whether for allotments or leases <del>has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.</del></p>
18	53 - Subdivision of tax allotments.	<p>(1) Whenever the Cabinet is satisfied that it is possible so to do the Minister shall arrange for the subdivision of land into rectangular tax allotments and if by reason of such subdivision the holder of a tax allotment is deprived of the whole or part of his allotment he shall in addition to receiving other land in lieu therefore be entitled to the produce of the coconut trees growing on the land of which he has been deprived for a period not exceeding 6 years from the date on which he was deprived of the whole or part of his tax allotment as aforesaid and the period for which he shall be so entitled shall be determined by the Minister</p> <p><del>Provided that no subdivision of an allotment on hereditary estate shall be made without the prior written consent of the Estate Holder</del></p>	<p>The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.</p>
19	55 amended - Surrender of allotments	<p><del>(1) An allotment holder may exchange his town or tax allotment for the town or tax allotment of another allotment holder with the consent of the Estate Holder in the case of hereditary estate and the Cabinet in the case of government land</del></p> <p>(2) An allotment holder, who holds a town or tax allotment on a hereditary estate, may exchange his town or tax allotment for an unallocated town or tax allotment on the same hereditary estate or on another hereditary estate of the same noble or matapule, with the consent of the Estate Holder</p>	<p>The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.</p> <p>Provision has been</p>

		<p>(3) An allotment holder who holds a town or tax allotment on Crown Land may exchange his town or tax allotment for an unallocated town or tax allotment on Crown Land with the consent of the Cabinet on the recommendation of the Minister.</p> <p>(4) It is hereby provided that in all cases in which an exchange is permitted in terms of subsection (1) if any allotment is held by Trustees for a minor, such an exchange will only be permitted if in the opinion of the Court such exchange is for the benefit of the minor.</p> <p>(5) The fees payable on any exchange permitted by subsections (1), (2) and (3) of this section shall be the same as those payable for the registration of allotments.</p>	made for inter-estate exchange of allotments.
20	56 - Tax or town allotment may be leased	<p>The registered holder of a town or tax allotment may grant a lease over the whole or part of his town or tax allotment, provided that</p> <ul style="list-style-type: none"> <li>(i) the consent of Cabinet of the hereditary estate holder or the estate may be has been obtained in the manner provided in this Act;</li> <li>(ii) the consent of the heir has been obtained where the holder is a widow holding the tax or town allotment of her deceased husband;</li> <li>(v) no mortgage or other security or other form of security whatsoever is in force in respect of the allotment or part thereof.</li> </ul>	<p>The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.</p> <p>Provision has been made for any many of encumbrance or security to act as a bar to lease of an allotment.</p>
21	57 - Rentals	<p>(1) The amount of rental which shall be payable in respect of a lease shall be as agreed between the parties thereto.</p> <p>(2) The rents for all allotments or part or parts thereof may be paid into the Treasury or such alternative payee as shall be nominated by the lessor and where such payee is the Treasury the Minister shall issue a voucher in favour of the lessor for that amount of rent less two and a half per centum.</p> <p>(3) The registered holder of a tax allotment leased in terms of the foregoing section shall remain personally liable for the rental payable in terms of section 64 of this Act to the holder of the hereditary estate or to the Minister as the case may</p>	<p>The method of payment to estate and allotment holders has been streamlined to provide for alternative payees at the holder's discretion.</p>

		be.	
22	60 - Renewal	<p>Any lease granted under this Act may contain an automatic right of renewal or an option to renew provided that any renewal of a lease granted in terms of this Part of the Act shall be subject to -</p> <p>(a) the consent of the lessor and Cabinet in the case of crown land; and</p> <p>(b) the consent of the estate holder in the case of his hereditary estates;</p> <p>And provided that in the case of a lease of the whole or any part of a tax allotment the original and renewal periods together shall not exceed 30 years</p>	The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.
23	65 - Toff's Holder to keep rent Roll	Sub-section (2) is repealed	
24	89 - Consent to lease	<p><del>Consent to lease</del></p> <p><del>No lease shall be granted except with</del></p> <p><del>the consent of the Cabinet in the case of</del></p> <p><del>Crown land;</del></p> <p><del>and the consent of the estate holder</del></p> <p><del>in the case of his hereditary estates;</del></p> <p><del>and the consent of the Minister in the case of</del></p> <p><del>any lease of the whole or any part of a tax allotment</del></p> <p><del>of the land of a deceased</del></p> <p><del>husband.</del></p>	The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate
25	91 - Leases to occupier of land in excess of statutory area	(1) Whenever it is found that any person is holding land as a tax allotment which is of greater area than the statutory area, the Minister <del>in the case of Crown land</del> <del>and</del> <del>any lease of the whole or any part of a tax allotment</del> <del>of the land of a deceased</del> <del>husband</del> may give 21 days' notice in writing to such person informing him that he intends to subdivide such land and to grant from out of the same to such person a tax allotment of the statutory area.	The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate
26	93 - Restriction on permitting to occupy area leased	No person to whom a lease has been granted under the provisions of the foregoing sections may permit any alien to occupy <del>for commercial purposes</del> the area thus leased to him unless such alien has first obtained a permit in accordance with the provisions of	This has been amended to confirm with the amendments to sections 14 and 15

		sections 14 and 15 of this Act.	
27	95 - Minister to submit report to Cabinet	<p>(1) Upon receiving the report of the Director the Minister shall submit the same with the application to the Cabinet in order that it may consent to the grant of the lease; and the Cabinet, if satisfied as to the ability and character of the applicant, and that he has complied with section 74 relating to planting, shall authorize the Minister to grant to the applicant a Tongan lease of the land proposed to be leased or such portion thereof as it may deem fit.</p> <p><del>(2) This section applies only to the lease of Crown land.</del></p>	The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate
28	107 - Documents affecting mortgages to be registered	<p>(1) The registration of the following documents affecting mortgages shall be compulsory:</p> <ul style="list-style-type: none"> <li>(a) assignments;</li> <li>(b) assignments for the benefit of creditors;</li> <li>(c) grants of Letters of Administration;</li> <li>(d) grants of probate;</li> <li>(e) injunctions affecting land and releases of such injunctions;</li> </ul> <p><del>(f) assignments of land;</del></p> <ul style="list-style-type: none"> <li>(f) memorials of pending suits affecting lands;</li> <li>(g) orders of Court appointing a trustee or trustees or an official receiver;</li> <li>(h) powers of attorney;</li> <li>(i) discharge granted in terms of section 108 hereof;</li> <li>(j) Gazette notice proclaiming the name of the lawful successor to an hereditary title;</li> <li>(k) claim by or on behalf of the heir or widow for tax or town allotment;</li> <li>(l) notification of default;</li> <li>(m) sub-lease;</li> <li>(n) agreement, bond or other document in any way regulating the terms of the mortgage transaction.</li> </ul>	This is amended to include caveats.

29	109 - Default	<p>(1) In the event of the mortgagee wishing to take possession of the lands mortgaged following default by the mortgagor of any of the obligations to the mortgagee set out in the mortgage deed or in any other document lodged with the Minister in terms of the next succeeding section the mortgagee shall give notification both to the mortgagor <del>and the estate holder</del> and to the Minister of his intention to take possession of the lands mortgaged and may thereafter take possession at any time after the expiry of 14 days from the date of said notification.</p>	<p>The consent required for the use of Crown land and hereditary estate land whether for allotments or leases has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate</p>
30	124 - Form of Leases	<p>(3) No lease shall be for a longer term than 99 years, except with the consent of His Majesty in <del>Privy</del> Council.</p> <p>(4) Every lease shall be signed and sealed in <del>accordance with the provisions of the Act of the Constitution of Tonga</del></p>	<p>The usage in reference to the Privy Council has been standardised throughout the Act to conform with the various amendments made to the Constitution and consequential amendments made to the relevant ancillary legislation.</p> <p>The accompanying Act of the Constitution of Tonga (Amendment) Bill has amended the criteria for registration of deeds and this amendment has been included to maintain consistency with the Constitution.</p>
31	131 - Documents affecting leasehold to be registered	<p>The registration of the following documents affecting leaseholds shall be compulsory:</p> <ul style="list-style-type: none"> <li>(a) assignments for the benefit of creditors;</li> <li>(b) grants of Letters of Administration;</li> <li>(c) grants of probate;</li> <li>(d) injunctions affecting land and releases of such injunctions;</li> <li>(e) memorials of pending suits affecting lands;</li> <li><del>(ee) caveats;</del></li> <li>(f) mortgages (including therein assignments by way of mortgage);</li> </ul>	<p>This has been amended to include caveats.</p>

		<p>(g) orders of Court appointing a trustee or trustees (including the appointment or discharge of a trustee in bankruptcy proceedings);</p> <p>(h) orders of Court for the sale of interests in land under lease, transfer or sub-lease;</p> <p>(i) powers of attorney to deal with any interest in lands whether by sale, surrender, mortgage, or otherwise, including powers to execute any document affecting lands.</p>	
32	141 - Land may be resumed compulsory	<p>(1) The King <del>in</del> Privy Council, <del>may</del> call upon any holder to give up possession of land held by him provided that the Council is satisfied that the land is required for public purposes.</p>	The usage in reference to the Privy Council has been standardised throughout the Act to conform with the various amendments made to the Constitution and consequential amendments made to the relevant ancillary legislation.
33	142 - Notice of resumption to be given	Where the Crown intends to resume land held by any person, the Minister shall give to the holder thereof a notice in writing of such intention in the form specified in Schedule XIII to this Act, and the said notice must be given at <del>the date</del> <del>90</del> days before the date on which it is intended to resume possession of the land.	This amendment provides for an increase in the period required for notice preceding resumption of land by the Crown.
34	143 - Compensation to resumed land	<p>(1) The King may <del>in</del> Privy Council, make regulations from time to time specifying the rates of money compensation to be paid for land resumed by the Crown under this Part of this Act; and for crops being grown and for buildings on such land and the method of calculation of such rates:</p>	The usage in reference to the Privy Council has been standardised throughout the Act to conform with the various amendments made to the Constitution and consequential amendments made to the relevant ancillary legislation.

35	151 - Power for enforcing process of Court	(3) Notwithstanding the foregoing provisions of this section, no charging order shall be granted for the enforcement of any judgment or order of the Land Court of Tonga (or any Court on appeal therefrom).	This amendment ensures charging orders shall not be granted.
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Lord Fakafanua

Nobles No.2 Representative for Ha'apai

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**LAND (AMENDMENT) BILL 2010**

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## LAND (AMENDMENT) BILL 2010

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**LAND (AMENDMENT) BILL 2010**

**A BILL FOR AN ACT TO MAKE VARIOUS AMENDMENTS TO REVISE THE LAND ACT**

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

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**1 Short Title**

- (1) This Act may be cited as the Land (Amendment) Act 2010.
- (2) In this Act, the Land Act (Cap. 132) as amended, is referred to as "the Principal Act".

**2 Section 11 amended - King may grant estates**

Section 11 of the Principal Act is amended by repealing the words "The King with the consent of the Privy Council" and replacing with "the King in Privy Council".

**3 Section 14 amended - Alien not to occupy land**

Section 14 of the Act is amended by:-

- (a) repealing the words "to hold or to reside upon or";
  - (b) adding after the word "land" the words "for commercial purposes".
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**4 Section 15 amended - Holder not to permit alien to occupy**

Section 15 of the Act is amended by:-

- (a) repealing the words "reside upon or";
  - (b) adding after the word "holding" the words "for commercial purposes".
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to

**5 Section 18 amended - Conditions of holding**

Section 18 of the Principal Act is amended by: -

- (a) adding at the end of sub-section (1) the words “in respect of crown land or of hereditary estate holders in respect of their estates.”;
- (b) in sub-section (2):-
  - (i) adding after “Cabinet” the words “or the estate holder as the case may be”;
  - (ii) deleting the word “Land” before “Court”; and
  - (iii) deleting the word “town” where it appears.
- (c) in sub-section (3):-
  - (i) in the English version only inserting a full stop after “subsection” at the end of the penultimate line and deleting all words thereafter;
  - (ii) and deleting the word “town” where it appears;
  - (iii) adding after “Cabinet” “or the estate holder as the case may be”; and
  - (iv) in the Tongan version only, inserting “(2).” after the word “si’i” and the second to last line and repeal the remaining words of the sentence.

**6 Section 19 amended - General Powers**

Section 19 of the Principal Act is amended by: -

- (a) adding after the word “allotments” in sub-section (2) “on crown land”;
- (b) in sub-section (3) by adding after “permits”, the words “in respect of crown land”;
- (c) in the Tongan version only inserting after the word “Kapineti” in line two of sub-section (3) the words “‘o kapau ko e kelekele ‘a e Tu’i”;
- (d) in the English version only, in line 2 of sub-section (3) by adding the word “Privy” between “in” and “Council”;
- (e) in the English version only, deleting the words “reside upon” in sub-section (4) and substituting “occupy”;
- (f) in the English version only, deleting the word “premises” and substituting “land” in sub-section (4);
- (g) in the Tongan version only deleting the words “fale pe” in sub-section (4);
- (h) in sub-section (7) by deleting “to pay” and replacing it with “ensure payment of” and by adding after “Treasury” the words “or to such alternative payee as the holder of the estate or allotment shall have nominated by notice in writing to the Minister.”;
- (i) by adding after “and” of sub-section (7) the words – “where such payment has been made into the Treasury”;
- (j) sub-section (7) by repealing “ten” and replacing it with “two and a half”; and
- (k) adding in sub-section (8) after the word “Trustees”, the words “within six months”.

**7 Section 22 amended - Power to make Regulations**

Section 22 of the Principal Act is amended by: -

- (a) sub-section (1) by repealing “with the consent of the” and replacing these words with “in”; and
- (b) repealing sub-section (4) and replacing it with: -

"The Regulations may impose a penalty for any person acting in breach of any regulations made under this Act."

**8. Section 23 amended - Minister to define boundaries**

In the English version only, section 23 of the Principal Act is amended by, in sub-section (4) by repealing "may" and replacing it with "shall".

**9 Section 31 amended - Holder's right to rents**

Section 31 of the Principal Act is amended by repealing the second sentence and replacing it with "Also, in accordance with the provisions of section 19(7) he shall receive the rent reserved in any lease demising a part of the estate for a term of years."

**10 Section 33 amended - Holder's right to lease**

Section 33 of the Principal Act is amended by: -

- (a) amending the Headnote to read "Holder's right to grant";
- (b) repealing the whole of section 33 and replacing it with the following:-

"The estate holder may pursuant to the provisions of the law grant or lease allotments from his estate that has not been granted to anyone else."

**11 Section 34 replaced - Holder not to refuse land for allotments**

Section 34 of the Principal Act is amended by repealing the whole section and replacing it with: -

"The holder of an hereditary estate shall admit into possession any Tongan to whom he has granted an allotment upon his estate, upon registration of that grant by the Minister:

Provided that an estate holder shall be entitled to reserve such portion of his hereditary estate as he alone shall determine, for the sole use of himself and his successors in title."

**12 Section 36 amended - Renewal of leases**

(1) Section 36(1) of the Principal Act is repealed and replaced with the following:

"On the expiration of any lease of land forming part of any hereditary estate or of an allotment, the holder of such hereditary estate or allotment, after a request in writing to do so by the holder of the expiring lease, not less than 3 months before the termination of the expiring lease, may grant to such holder of such expiring lease a further lease for a period not exceeding that granted in the expiring lease:

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 Privy Council has been obtained."

(2) In the English version only, section 36(2) is amended by inserting the word "Privy" before "Council" in the final line of the Proviso.

**13 Section 43 amended - Tongan subject may apply for allotment**

Section 43 of the Principal Act is amended by: -

- (a) adding at the end of sub-section (2)(a) the words: "in respect of Crown Land, and to the Estate Holder in respect of his Hereditary Estates."; and

- (b) adding in sub-section (2)(b) after "Minister" the words "or the Estate Holder as the case may be."

**14 Section 44 amended - Forfeiture**

Section 44 (2) of the Principal Act is amended by adding after "2 years" the following – "without making provision for the use of the allotment in his absence".

**15 Section 47 amended - Subdivision of land into allotments exceeding area prescribed in Act**

Section 47 of the Principal Act is amended by: -

- (a) in sub-section (1) repealing the words "provided in the opinion of Cabinet"; and  
(b) in sub-section (2) repealing the words "with the consent of Cabinet".

**16 Section 50 repealed - Rules for taking lands for allotments**

Section 50 of the Principal Act is repealed.

**17 Section 51 amended - Subdivision of town allotments.**

Section 51(1) of the Principal Act is amended by –

- (1) in the English version only, by adding after "Minister" in the penultimate line, the words "or the Estate Holder as the case may be"; and  
(2) in the Tongan version only after "Minisita" in the last line inserting the words "pe koe taha ma'u tofi'a".

**18 Section 53 amended - Subdivision of tax allotments.**

Section 53(1) is amended by adding at the end a Proviso in the following terms: -

"Provided that no subdivision of a tax allotment on Hereditary Estate is valid without the prior written consent of the Estate Holder."

**19 Section 55 amended - Exchange of allotments.**

(1) Section 55(1) of the Principal Act is repealed and replaced by the following: -

- (a) An allotment holder may exchange his town or tax allotment for the town or tax allotment of another allotment holder with the consent of the Estate Holder in the case of Hereditary Estate and the Cabinet in the case of Crown Land.  
(b) ~~An allotment holder, who holds a town or tax allotment on an hereditary estate, may exchange his town or tax allotment for an unallocated town or tax allotment on the same hereditary estate, or on another hereditary estate of the same noble or matapule, with the consent of the Estate Holder.~~  
(c) An allotment holder who holds a town or tax allotment on Crown Land, may exchange his town or tax allotment for an unallocated town or tax allotment on Crown Land with the consent of the Cabinet on the recommendation of the Minister."

- (2) Section 55(2) is renumbered Section 55(4) and the word "Cabinet" is repealed and replaced with "the Court".
- (3) Section 55 (3) is renumbered Clause 55(5) and the words "and (2)" are repealed and replaced with ", (2) and (3)".

**20 Section 56 amended - Tax or town allotment may be leased**

Section 56 of the Principal Act is amended by: -

- (a) in (i) inserting after "Cabinet" the words "or the hereditary estate holder as the case may be"; and
- (b) in (v) by adding after "mortgage" the words "or encumbrance or other form of security whatsoever."

**21 Section 57 amended - Rentals**

Section 57 amended by:

- (a) repealing sub-section (1);
- (b) renumbering sub-section (2) as (1) and deleting the words "of a town allotment" appearing therein;
- (c) inserting a new sub-section (2) as follows:  
"The rents for all allotments or part or parts thereof may be paid into the Treasury or such alternative payee as shall be nominated by the lessor and where such payee is the Treasury the Minister shall issue a voucher in favour of the lessor for that amount of rent less two and a half percentum.";
- (d) repealing sub-section (3); and
- (e) renumbering sub-section (4) as (3).

**22 Section 60 replaced - Renewal**

Section 60 of the Principal Act is repealed and replaced with the following: -

**"60 Renewal**

Any lease granted under this Act may contain an automatic right of renewal or an option to renew provided that any renewal of a lease granted in terms of this Part of the Act shall be subject to the consent of the lessor: -

- (a) and Cabinet in the case of crown land; and
- (b) the estate holder in the case of his hereditary estates:

And provided that in the case of a lease of the whole or any part of a Tax allotment the original and renewal periods together shall not exceed 30 years."

**23 Section 65(2) repealed - Tofi'a Holder to keep rent Roll**

Section 65(2) of the Principal Act is repealed.

**24 Section 89 amended – Consent of Cabinet**

Section 89 of the Principal Act and the Headnote are repealed and replaced with the following:

**“89 Consent to Lease**

The allotment holder may lease a portion of his allotment but no lease shall be granted except with:

- (a) the consent of the Cabinet, in the case of Crown land; and
- (b) the consent of the hereditary estate holder, in the case of his hereditary estate.”

**25 Section 91 amended - Leases to occupier of land in excess of statutory area**

Section 91(1) of the Principal Act is amended by adding after “Minister” the words:-

“in the case of Crown Land, and the estate holder in the case of his hereditary estates”

**26 Section 93 amended - Restriction on permitting to occupy area leased**

Section 93 of the Principal Act is amended by: -

- (a) in the English version only, deleting the words “or reside within” in line 2;
- (b) in the Tongan version only the words “pe nofo ‘i ha kekekele” in line 3;
- (c) in the English version only, deleting the words “to reside therein” in line 3;
- (d) in the Tongan version only, deleting the words “ma’u ha ngofua ke nofo” in line 4; and
- (e) inserting after “occupy” the words “for commercial purposes”.

**27 Section 95 amended - Minister to submit report to Cabinet**

Section 95 of the Principal Act is amended by renumbering the current section as sub-section (1) and adding at the end a further new sub-section (2) in the following terms: -

“(2) This section applies only to the lease of Crown Land.”

**28 Section 107 amended - Documents affecting mortgages to be registered**

Section 107(1) of the Principal Act is amended by adding where appropriate a new paragraph as follows -

“(ee) caveats;”.

**29 Section 109 amended - Default**

Section 109(1) of the Principal Act is amended by -

- (1) in the English version only, adding after “mortgagor” in line 5 “, and the estate holder”;
- (2) in the Tongan version only, adding after “mokaso” in line 6 the words “, moe taha ma’u tofi’a”.



**30 Section 124 amended - Form of Leases**

Section 124 of the Principal Act is amended by: -

- (a) in the English version only, adding the word "Privy" before "Council" in subsection (3); and
- (b) by amending subsection (4) by repealing the subsection except for the opening words "Every Lease shall be signed and sealed" and replacing same with "in accordance with Clause 110 of the Constitution."

**31 Section 131 amended - Documents affecting leasehold to be registered**

Section 131 of the Principal Act is amended by adding where appropriate a new paragraph as follows:

"(dd) caveats; "

**32 Section 141 amended - Land may be resumed compulsory**

Section 141(1) of the Principal Act is amended by:

- (a) repealing the words "may with the consent of the" and replacing them with "in"; and
- (b) in the English version only, inserting after "Privy Council" the word "may".

**33 Section 142 amended - Notice of resumption to be given**

Section 142 of the Principal Act is amended by:-

- (1) repealing "thirty (30)" and replacing it with "(90)"; and
- (2) in the Tongan version only, repealing (30) and replacing it with "(90)".

**34 Section 143 amended - Compensation to resumed land**

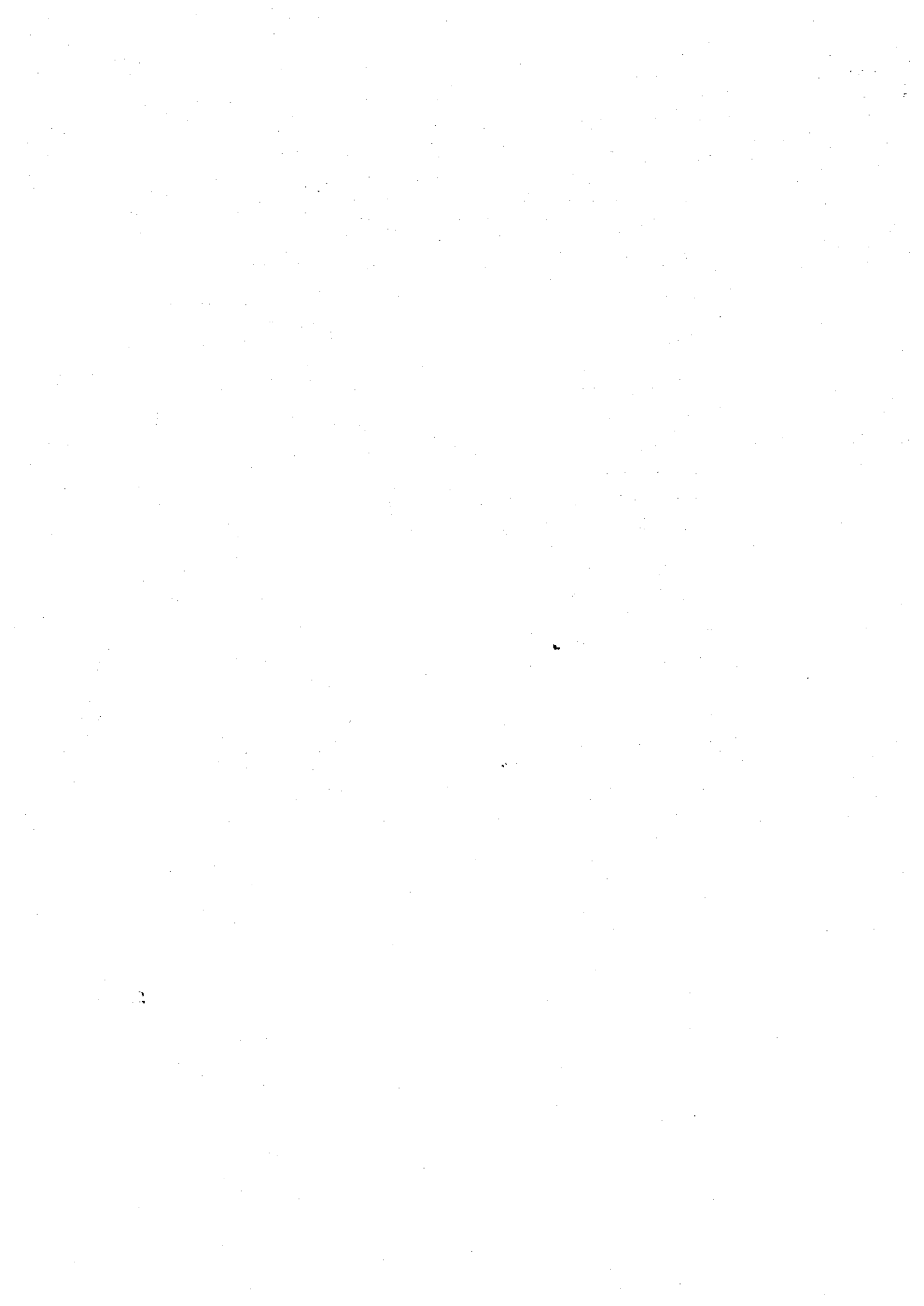
Section 143(1) of the Principal Act is amended by deleting the words "may with the consent of the" and replacing them with "in".

**35 Section 151 amended - Power for enforcing process of Court.**

Section 151 of the Principal Act is amended by adding a new subsection (3) in the following terms: -

- "(3) Notwithstanding the foregoing provisions of this section, no charging order shall be granted for the enforcement of any judgment or order of the Court (or any Court on appeal therefrom)."

Passed in the Legislative Assembly this      day of      2010.



# **Constitution (Amendment) Bill 2010**

**ACT OF CONSTITUTION OF TONGA (AMENDMENT) BILL 2010**

**Explanatory Notes**

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

**Background**

This Bill intends to accompany the Land (Amendment) Bill 2010 and provides the appropriate ancillary amendments thereto in order to maintain consistency of the latter with the Constitution of Tonga.

The following tabulation provides for the manner in which the Bill achieves the foregoing by enumerating the relevant clause in the Constitution of Tonga which has been amended and the effect thereof:

Section in this Bill	Clause amended in the Constitution	Content of the clause, sub-clause or paragraph and relevant amendment made thereto	Effect
1		Short Title to Bill – self explanatory	
2	<b>105 – Terms of Leases</b>	<p><del>105. Terms of Leases</del></p> <p><del>(1) In the case of Government Land, the Cabinet shall determine the terms for which leases shall be granted.</del></p> <p><del>(2) In the case of His Hereditary Estates, the estate holder shall determine the terms for which leases shall be granted.</del></p> <p><del>(3) Notwithstanding the foregoing sub-clauses a lease shall not be granted for a period in excess of 99 years without the consent of His Majesty in Privy Council.</del></p>	<p>The new clause 105 reflects the proposed amendment to the Land Act with respect to the consent required for the use of Crown land and hereditary estate land whether for allotments or leases, which has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.</p> <p>The requirement for approval of His Majesty in Council has been retained for leases exceeding 99 years.</p>
3	<b>108 – Church Lands not to be sub-let without permission</b>	<p>No leases of any town site shall in future be granted to any religious body for any purpose unless there are thirty adults, male and female, of such church in that town, and it shall not be lawful for any religious body to use such leased lands for other than religious purposes or to sub-let to any person without the prior consent of Cabinet <del>in the case of Government Land and the estate holder in the case of His Hereditary Estates</del>, and upon satisfactory proof before a Court that any such land has been sub-let without consent, such land shall revert to the person from whom the land was leased, or to his successor in title as the case</p>	<p>The amendment to this clause also reflects the proposed amendment to the Land Act with respect to the consent required for the use of Crown land and hereditary estate land whether for allotments or leases which has now been divided between the Minister</p>

		may be.	and Cabinet on the one hand and the estate holder on the other as appropriate.
4	110 - Registration of deeds	<p><b>110 Registration of deeds</b></p> <p>(1) All leases, sub-leases, transfers and other deeds whatsoever dealing with leased land shall be signed:</p> <p>(a) by the King in respect of the Royal Estates and Royal Family Estates;</p> <p>(b) by the estate holder in respect of his hereditary estates; and</p> <p>(c) by the Minister of Lands in all other cases.</p> <p>(2) All leases, sub-leases, transfers and other deeds whatsoever dealing with leased land after signature in accordance with sub-clause (c), forthwith shall be registered in the Office of the Minister of Lands where the Minister shall affix the seal of his office to such deeds.</p> <p>(3) All leases, sub-lease, transfer and other deeds whatsoever dealing with leased land, lease and mortgage registered in accordance with sub-clause (2) are invalid and inoperative for all legal purposes whatsoever.</p>	The new clause 110 provides a more consistent mechanism and set of criteria for the registration of deeds which ensures that the Land Act as it is proposed to be amended in particular at section 124 with respect to the Form or Leases maintains consistency with the Constitution of Tonga.
5	114 - No lease etc. without consent	<p><b>114 No lease etc. without consent</b></p> <p>114 No lease, sub-lease, transfer or mortgage of land, or sub-lease, where the total term including any renewals over 99 years, shall be granted without the prior consent of His Majesty in Privy Council.</p>	The new clause retains the requirement for approval of His Majesty in Council has been retained for leases exceeding 99

		(2) Any lease, sub-lease, transfer of a lease or transfer of a sub-lease granted without the consent required by sub-clause (1) is void and of no legal effect whatsoever	years.
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Lord Fakafanua

**Nobles No.2 Representative for Ha'apai**

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**ACT OF CONSTITUTION OF TONGA  
(AMENDMENT) (NO. 4) BILL 2010**

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## ACT OF CONSTITUTION OF TONGA (AMENDMENT) (NO. 4) BILL 2010

### Arrangement of Sections

#### Section

1	Short Title.....	5
2	Clause 105 replaced – Terms of Leases .....	5
3	Clause 108 amended – Church Lands not to be sub-let without permission.....	5
4	Clause 110 repealed – Registration of deeds.....	6
5	Clause 114 - No lease etc. without consent.....	6



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**ACT OF CONSTITUTION OF TONGA (AMENDMENT) (NO. 4)  
BILL 2010**

**A BILL FOR AN ACT TO MAKE VARIOUS AMENDMENTS TO REVISE THE  
CONSTITUTION**

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

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**1 Short Title**

- (1) This Act may be cited as the Act of Constitution of Tonga (Amendment) (No. 4) Act 2010.
- (2) In this Act, the Act of Constitution of Tonga, as amended, is referred to as "the Principal Act".

**2 Clause 105 replaced – Terms of Leases**

Clause 105 of the Principal Act is repealed and replaced with the following: -

**"105 Terms of Leases**

- (1) In the case of Government Land the Cabinet shall determine the terms for which Leases shall be granted.
- (2) In the case of his Hereditary Estates the estate holder shall determine the terms for which leases shall be granted.
- (3) Notwithstanding the foregoing sub-clauses a lease shall not be granted for a period in excess of 99 years without the consent of His Majesty in Privy Council."

**3 Clause 108 amended – Church Lands not to be sub-let without permission.**

Clause 108 of the Principal Act is amended by adding after the word "Cabinet" the following: -

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to

"in the case of Government Land and the estate holder in the case of his Hereditary Estates,".

**4 Clause 110 repealed – Registration of deeds**

Clause 110 of the Principal Act is repealed and replaced with the following: -

**"110 Registration of deeds**

- (1) All leases, sub-leases, transfers and other deeds whatsoever dealing with leased land shall be signed: -
  - (a) by the King in respect of the Royal Estates and Royal Family Estates;
  - (b) by the estate holder in respect of his hereditary estates; and,
  - (c) by the Minister of Lands in all other cases.
- (2) All leases, sub-leases, transfers and other deeds whatsoever dealing with leased land, after signature in accordance with sub-clause (1), forthwith shall be registered in the Office of the Minister of Lands, where the Minister shall affix the seal of his office to such deeds.
- (3) All leases, sub-leases, transfer and other deeds whatsoever dealing with leased land, unless and until registered in accordance with sub-clause (2), are invalid and unenforceable for all legal purposes whatsoever."

**5 Clause 114 - No lease etc. without consent**

Clause 114 of the Principal Act is repealed and replaced with the following: -

**"114 No lease etc. without consent**

- (1) No lease, sub-lease, transfer of a lease, or transfer of a sub-lease, where the total term, including renewals, is over 99 years, shall be granted without the prior consent of His Majesty in Privy Council."

Passed in the Legislative Assembly this                      day of                      2010.

# ACT OF CONSTITUTION OF TONGA (AMENDMENT) BILL 2010

## Explanatory Notes

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

### Background

This Bill intends to accompany the Land (Amendment) Bill 2010 and provides the appropriate ancillary amendments thereto in order to maintain consistency of the latter with the Constitution of Tonga.

The following tabulation provides for the manner in which the Bill achieves the foregoing by enumerating the relevant clause in the Constitution of Tonga which has been amended and the effect thereof:

Section in this Bill	Clause amended in the Constitution	Content of the clause, sub-clause or paragraph and relevant amendment made thereto	Effect
1		Short Title to Bill – self explanatory	
2	105 – Terms of Leases	<p><del>105. – Terms of Leases</del></p> <p><del>(1) – In the case of Government Land and the Cabinet shall determine the terms for which leases shall be granted.</del></p> <p><del>(2) – In the case of His Hereditary Estates, the estate holder shall determine the terms for which leases shall be granted.</del></p> <p><del>(3) – Notwithstanding the foregoing sub-clauses a lease shall not be granted for a period in excess of 99 years without the consent of His Majesty in Privy Council.</del></p>	<p>The new clause 105 reflects the proposed amendment to the Land Act with respect to the consent required for the use of Crown land and hereditary estate land whether for allotments or leases, which has now been divided between the Minister and Cabinet on the one hand and the estate holder on the other as appropriate.</p> <p>The requirement for approval of His Majesty in Council has been retained for leases exceeding 99 years.</p>
3	108 – Church Lands not to be sub-let without permission	<p>No leases of any town site shall in future be granted to any religious body for any purpose unless there are thirty adults, male and female, of such church in that town, and it shall not be lawful for any religious body to use such leased lands for other than religious purposes or to sub-let to any person without the prior consent of Cabinet in the case of Government Land and the estate holder in the case of His Hereditary Estates, and upon satisfactory proof before a Court that any such land has been sub-let without consent, such land shall revert to the person from whom the land was leased, or to his successor in title as the case</p>	<p>The amendment to this clause also reflects the proposed amendment to the Land Act with respect to the consent required for the use of Crown land and hereditary estate land whether for allotments or leases which has now been divided between the Minister</p>

# **Supreme Court(Amendment) Bill 2010**



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**SUPREME COURT (AMENDMENT) BILL 2010**

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**SUPREME COURT (AMENDMENT) BILL 2010**

**Arrangement of Sections**

**Section**

1	Short Title.....	5
2	New section 19 inserted .....	5

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**SUPREME COURT (AMENDMENT) BILL 2010**

**A BILL FOR AN ACT TO AMEND THE SUPREME COURT ACT**

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

**1 Short Title**

(1) This Act may be cited as the Supreme Court (Amendment) Act 2010.

(2) In this Act, the Supreme Court Act (Cap. 10) as amended, is referred to as "the Principal Act".

**2 New section 17 inserted – Bar on charging orders**

The Principal Act is amended by inserting the following new provision:-

**“17 Bar on charging orders**

In any Rules of the Supreme Court from time to time in force, for the enforcement of any judgement or order of the Supreme Court (or any Court on appeal therefrom) no charging order shall be granted over any interest in Land whatsoever (including, without prejudice to the foregoing generality, any leasehold interest or interest under a sub-lease).”

Passed in the Legislative Assembly this      day of      2010.

to