

Section 5

- (b) the Minister shall file in his office the true copy of the document to be registered by binding up the same in a book (to be called the register of documents affecting leaseholds) and shall endorse the original with the following memorial of registration:

Registered the day of
 19

Register of Documents Affecting
 Leaseholds:
 Book: Folio:

.....
 Signature of Minister

- (c) the Minister shall also endorse the original lease or transfer or the sub-lease (as the case may be) together with the duplicate of the same on file in his office with a memorial of registration in accordance with such one of the forms set out in Schedule IX as the nature of the case requires;
- (d) the original lease or transfer or the sub-lease (as the case may be) endorsed as provided in paragraph (c) together with the original of the document to be registered endorsed with the memorial of registration shall be delivered by the Minister to the person entitled thereto.

Explanatory Notes:

- (i) The general purpose of this section needs no further change or explanation.

Recommendation:

No change.

1.1.145 Section 112:

There shall be paid to the Minister for the registration of documents under this Act the fees specified in Schedule IV and the Minister shall give his official receipt for the payment of same.

Explanatory Notes:

- (i) This provision is unnecessary. Refer to Section 22.

Section J

.1.146 Section 113:

Should two or more instruments executed by the same proprietor and purporting to transfer or encumber the same land or portion of land be presented at the same time to the Minister for registration and endorsement he shall register and endorse the instrument presented to him by the person who shall present to him the lease transfer or sub-lease (as the case may be) of such land.

Explanatory Notes:

- (1) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

.1.147 Section 114:

The register of documents affecting leaseholds shall be open to search or inspection and the fees set forth in Schedule IV shall be charged for such search or inspection which shall in all cases be done under the eye and direction of the Minister.

Explanatory Notes:

- (1) The general purpose of this section is not being altered but improved by the rewording below.

Recommendation:

The register of documents registered under this Act shall be open to inspection by the public upon payment of the prescribed fee.

.1.148 Section 115:

The Minister shall keep a proper nominal index and also a lands index alphabetically arranged of each book of the registers kept by him in accordance with this Part of this Act.

Explanatory Notes:

- (1) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

Section J

DIVISION IV

CAVEATS

1.1.14) Section 116:

- (1) Any person claiming to be interested under any will, settlement or trust deed or any instrument of transfer or transmission or under any unregistered instrument or otherwise howsoever in any leasehold land may lodge a caveat with the Minister to the effect that no disposition of such leasehold land be made either absolutely or in such manner and to such extent only as in such caveat may be expressed or until notice shall have been served on the caveator or unless the instrument of disposition be expressed to be subject to the claim of the caveator as may be required in such caveat or to any conditions conformable to law expressed therein.
- (2) A caveat may be in the form contained in Schedule X and shall be verified by the oath of the caveator or his agent and shall contain an address within the Kingdom at which notices may be served.
- (3) Upon the receipt of a caveat the Minister shall make a memorandum thereon of the date and hour of the receipt thereof and shall enter a memorandum thereof in the register and shall forthwith send a notice of such caveat through the post office or otherwise to the person against whose title such caveat shall have been lodged.
- (4) So long as any caveat shall remain in force prohibiting the transfer or other dealing with any leasehold land the Minister shall not enter in the register any memorandum of any transfer or other instrument purporting to transfer or otherwise deal with or affect the land in respect of which the caveat may be lodged.
- (5) The proprietor or other person claiming land may summon or call upon the caveator to attend before a Court of competent jurisdiction (hereinafter called the Court) to show cause why the said caveat

should not be withdrawn and it shall be lawful for the said Court upon proof that such last mentioned person has been summoned and upon such evidence as the Court may require to make such order in the premises either ex parte or otherwise as to the said Court shall seem fit. And where a question of right of title shall require to be determined the proceedings shall be followed as nearly as may be in conformity with the rules of Court in relation to land cases.

- (6) The caveatee may make application in writing to the Minister to remove such caveat and thereupon the Minister shall give twenty-one days notice in writing to the caveator requiring that the caveat be withdrawn and after the lapse of twenty-one days from the service of such notice at the address mentioned in the caveat the Minister shall remove such caveat from the register by entering a memorandum that the same is discharged unless he shall have been previously served with an order from the Court extending the time as herein provided.
- (7) Such caveatee shall give an address in the Kingdom at which notices and proceedings may be served.
- (8) The caveator may either before or after receiving such notice from the Minister apply by summons to the Court for an order to extend the time beyond the twenty-one days mentioned in such notice and such summons may be served at the address given in the application of the caveatee and it shall be lawful for the Court upon proof that the caveatee has been summoned and upon such evidence as the Court may require to make such order in the premises either ex parte or otherwise as the Court shall think fit.
- (9) The caveator may by notice in writing to the Minister withdraw his caveat at any time but such withdrawal shall not prejudice the power of the Court to make an order as to the payment of costs of the caveatee by the caveator incurred prior to the receipt by the caveatee of notice in writing of the withdrawal of such caveat.

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- (10) The Minister shall cause an entry to be made in the register of the withdrawal lapse or removal of any caveat or of any order made by the Court.

Explanatory Notes:

- (1) This section requires extension to cover all landholdings. It is necessary with the introduction of the freeholding proposal.

Recommendation:

Apply to all land holdings not just leasehold.

PART VIII

LAND FOR PUBLIC PURPOSES

1.1.150 Section 117:

The Minister shall with the consent of the Cabinet reserve such portions of Crown Land as may from time to time be required for roads, public ways, commons, cemeteries, school sites, playgrounds, public health purposes and for use by Government Departments or for other public purposes and may grant land to be used as a cemetery for foreigners.

Explanatory Notes:

- (i) The proposed amendment with the deletion from this section of reference to cemetery for Europeans is an updating procedure to cover current practices.

Recommendation:

Reference to cemetery for Europeans be deleted.

1.1.151 Section 117B:

- (a) It shall be an offence punishable by imprisonment not exceeding six months or a fine of up to \$100 or both to use a cemetery for any purpose other than the burial of bodies.
- (b) It shall be an offence punishable by imprisonment not exceeding six months or a fine of up to \$100

Section 117

or both to conceal or bury the body of any deceased person in any place other than a cemetery save for the body of an executed criminal which shall be buried in accordance with the Criminal Offences Act and the Court may order the removal of such body to a cemetery.

(c) In this Section -

- (i) "Body" shall include the remains of any deceased person whether embalmed, cremated or otherwise treated;
- (ii) "Cemetery" shall mean any area of land declared by the Minister to be a cemetery and any area reserved under Section 117 or resumed for the purpose of creating a cemetery.

Explanatory Notes:

- (i) The general purpose of this section needs no example or further explanation.

Recommendation:

No change.

2.4.18 Section 118:

All commons, cemeteries, Government school sites heretofore constituted or taken under any law, or custom shall be deemed to be Crown Land reserved for public purposes.

Explanatory Notes:

- (i) This amendment is necessary to update the law to cover current practice.

Section J

Recommendation: Add - Provided that cemeteries shall be subject to the control of the estate holder.

1.1.153 Section 119:

- (1) The King may, with the consent of the Privy Council, 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.
- (2) In all such cases the Minister shall, to the holder of the land be resumed:
 - (a) in respect of the crops being grown on the land to be resumed, pay money compensation to be calculated at the rates and in the manner provided in this Part of this Act;
 - (b) in respect of the land to be resumed, at the Minister's own discretion, either grant other land in its place, or pay money compensation to be calculated at the rates and in the manner provided in this Part of this Act, or both grant other land and pay money compensation;
 - (c) in respect of any building or buildings erected on the land to be resumed, pay money compensation to be calculated at the rates and in the manner provided by this Part of this Act.

Explanatory Notes: (1) The general purpose of this section needs no change or further explanation.

Recommendation: No change.

1.1.154 Section 120:

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 XII to this Act, DECLARING that said notice must be given at least thirty (30) days before the date on which it is intended to resume possession of the land.

Section J

Explanatory Notes: (1) The general purpose of this section needs no change or further explanation.

Recommendation: No change.

.1.155 Section 121: (1) The King may, with the consent of the 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;

(2) The amount of money compensation to be paid based on said rates will be calculated within thirty days of the date of the said notice specified in Section 120 of this Act.

Explanatory Notes: (1) The general purpose of this section needs no change or further explanation.

Recommendation: No change.

PART IX
THE LAND COURT

DIVISION I
CONSTITUTION AND JURISDICTION

.1.155 Section 122: There is hereby established and constituted for the Kingdom a Court which shall be called the Land Court.

Explanatory Notes: (1) The general purpose of this section needs no change or further explanation.

Recommendation: No change.

Section J

1.1.157 Section 123:

The Court shall have a seal bearing the device of the Tongan Arms with the inscription "Fakamaau'anga Fonua 'o Tonga" and every summons, writ, order or other process of the Court shall before being issued be signed by the Judge and sealed with the Seal of the Court.

Explanatory Notes:

- (1) The function reserved in this section for the Judge is administrative in nature and more in line with the duties normally performed by a Registrar. Also refer to proposed amendment of Section 126.

Recommendation:

Change Judge to Registrar.

1.1.158 Section 124:

- (1) The Land Court shall consist of and be presided over by the Judge assisted by an assessor to be selected by the Judge from a panel of assessors.
- (2) The orders and judgments of the Court shall be formulated and pronounced by the Judge alone and the assessor shall have no voice or part therein.
- (3) The duties of the assessor shall be to assist the Judge with explanation and advice in regard to Tongan usages and customs and other matters of a similar nature.

Explanatory Notes:

- (1) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

1.1.159 Section 125:

- (1) The Judge and the panel of assessors shall be appointed by and hold office during the pleasure of His Majesty and the Privy Council.
- (2) It shall be lawful for His Majesty and the Privy Council in cases of temporary illness or absence of the Judge to appoint some fit and proper person to fill such office until the Judge shall resume the duties thereof.

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Explanatory Notes:

- (i) Subsection (1) is to be retained.
- (ii) Subsection (2) should be amended to enable the Prime Minister and Cabinet to perform this administrative act similar to the procedure for judges of the Supreme Court and Police Magistrates.

Recommendation:

- (2) Power to appoint acting Judge to be vested in the Prime Minister and Cabinet.

1.1.150 Section 126:

- (1) The Premier with the consent of the Cabinet may from time to time appoint a clerk to the Court at such salary as may be provided in the Annual Estimates.
- (2) The clerk shall attend all sittings of the Court and shall record the evidence and particulars in every case or matter heard and determined by the Court together with the decision of the Court thereon.
- (3) He shall perform such other duties as may be prescribed by any rules made under this Part of this Act.

Explanatory Notes:

- (i) The work of the Land Court and Judge thereof are performed and carried out by the same personnel of the Supreme. It is appropriate that the designation of the senior official be the same i.e. Registrar.
- (ii) The amendment to subsection (2) is an updating procedure to cover current Court practices.

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Recommendation:

Change "clerk" to "Registrar".

Subsection (2) to read -

"The Registrar or another official of the Court nominated by him shall attend all sittings etc ..."

1.1.161 Section 127:

- (1) The Court shall have jurisdiction -
 - (a) to define the area and boundaries of every parcel of land in the Kingdom;
 - (b) to hear and determine all disputes, claims and questions of title affecting any land or any interest in land in the Kingdom and in particular all disputes, claims and questions of title affecting any tofi'a, tax or town allotment or any interest therein; EXCEPTING any disputes, claims and questions affecting any land or interest in land resumed by the Crown under Part VIII of this Act;
 - (c) to appoint one or more fit and proper persons with or without remuneration to act as trustees for any Tongan other than a noble or matapule who being entitled to any land is either under the age appointed by law for succeeding thereto or is by reason of mental infirmity incapable of managing his affairs for the purpose of protecting and managing such land and of applying in accordance with the directions of the Court for the maintenance and benefit of the person beneficially entitled to such land all moneys received from the management thereof including moneys arising from the sale or hire of live stock or the sale of copra or other produce;
 - (d) to take the account of all such trust estates and to dismiss any trustee guilty of mismanagement, breach of trust or fraud in connection with the trust estate and to appoint another trustee in his stead.

Section J

(2) Whenever an application is made to the Court under this section for the appointment of a trustee or trustees for a minor the lawful brothers and sisters of the mother and father and the grand-parents of such minor shall be cited to appear at the hearing of such application.

(3) Whenever the Court exercising its jurisdiction in accordance with this section shall find that one of the parties to an action relating to the area and boundaries of any parcel of land has wilfully encroached on the land of the other party to the action the Court in addition to any other order it may make shall order the person who has so encroached to pay to the Minister the sum of one pound.

Explanatory Notes:

- (i) Subsection (1) requires no amendment.
- (ii) Subsection (2) requires no amendment.
- (iii) Addition to subsection (3) is intended to cover a loophole in the law.

Recommendation:

No change to subsections (1) and (2). Subsection (3) last line to read "pay to the Minister a sum equivalent to the survey fee prescribed."

.1.152 Section 128:

The jurisdiction of the Court may be exercised on the application of any person claiming to be interested or on the application of the Minister.

Explanatory Notes:

- (i) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

Section J

1.1.125 Section 129:

- (1) The Court for the purpose of exercising its jurisdiction under this Act have and exercise all the powers of the Supreme Court of Tonga in regard to -
 - (a) enforcing the attendance of parties or witnesses;
 - (b) enforcing the production of any books, papers or documents;
 - (c) the administration of oaths and the hearing of evidence.
- (2) The Court may whenever necessary -
 - (a) issue a writ of possession directed to the police officers of any district requiring them to deliver possession of any lands situated in such district and described in the writ to the person therein named;
 - (b) grant and issue injunctions affecting lands.

Explanatory Notes:

- (i) The existing provisions require no change.
- (ii) The additional subclause is intended to cover what appears to have been an omission.

Recommendation:

Add a paragraph (c) to subsection 2 as follows:

- (c) hear a case or part thereof in camera.

1.1.125 Section 130:

The Court may make such order in reference to payment of the costs of any proceedings before it as it thinks just:

Provided always that no costs shall be awarded to or against the Crown except in the case of an action brought under Division III of Part IV of this Act, where the Court may award costs to the Crown not exceeding ten shillings.

Section 130

Explanatory Notes:

- (i) : The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

1.164

Section 131:

Every person who, being duly summoned to attend before the Court or to produce any books, papers or documents -

- (a) fails or refuses to attend in obedience to the summons, or
(b) refuses to be sworn or affirmed or to give evidence or to answer any question relevant to the matter at issue, or
(c) fails to comply with an order of the Court requiring the production of any book, paper or document therein specified which it is in his power to produce,

shall be liable for every such default to a fine not exceeding twenty pounds and in default of payment to imprisonment for any period not exceeding three months and such fine may be imposed and imprisonment ordered by the Court without any further proceeding.

Explanatory Notes:

- (i) The general purpose of the section needs no change except the amount of the fine. It is an updating proposal.

Recommendation:

Increase fine to \$100.

1.165

Section 132:

The sittings of the Court shall be held in the Supreme Court Nuku'alofa but sittings of the Court may be held elsewhere:

Provided always that reasonable notice of the time and place of such sitting has been given to the parties and the various witnesses concerned in the cases that are to be heard at such sitting.

Section J

Explanatory Notes:

- (1) The proposed rewording is an improvement to cover current practice and to achieve flexibility.

Recommendation:

The sittings of the Court shall be held at Nuku'alofa and such other places as the Court shall determine.

1.1.136 Section 133:

The sittings of the Court shall be open to the general public so far as they can be conveniently accommodated in the Court.

Explanatory Notes:

- (1) The proposed amendment is necessary in order to state the position clearly and in accordance with judicial practice.

Recommendation:

The sittings of the Court shall be open to the general public unless decided by the Judge to be in camera.

1.1.137 Section 134:

Any party or person entitled to appear in any proceedings may conduct his case in person or by a lawyer duly licensed under the provisions of any Tongan law now in force or hereafter passed.

Explanatory Notes:

- (1) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

1.1.138 Section 135:

Every affidavit declaration or affirmation for use in any proceedings in the Court may be made before any person lawfully empowered to take affidavits.

Explanatory Notes:

- (1) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

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1.1.169 Section 136:

The Minister may sue or be sued by his official designation in respect of any claim to any lands made by or against the Government.

Explanatory Notes:

(i) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

1.1.170 Section 137:

Whenever either the Minister or the assessor is personally concerned in any claim regarding any lands or in any proceedings pending in the Court, it shall be lawful for the Privy Council to appoint some other person to discharge for the time being the duties of the Minister or the assessor as the case may be in reference to such claim or proceedings.

Explanatory Notes:

(1) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

1.1.171 Section 138:

Whenever by any judgment of the Court from which no appeal has been taken any person is adjudged entitled to any lands the Judge shall forward to the Minister a copy of such judgment under his hand and the Seal of the Court.

Explanatory Notes:

(1) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

1.1.172 Section 139:

(1) The Minister shall on receipt of such copy of a judgment as is mentioned in section one hundred and thirty-eight hereof and on payment of the fees prescribed by law prepare in duplicate a tofi'a,

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certificate or a deed of grant as the case requires in favour of the person entitled to the lands specified in the judgment.

- (2) Such certificate or deed shall be in the prescribed form and shall be duly registered.

Explanatory Notes:

- (i) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

DIVISION II

APPEALS

1.1.173 Section 140:

Any party may appeal from any order or judgment of the Court to the Privy Council:

Provided that he shall within sixty days after such order or judgment -

- (a) deliver to the Clerk of the Court and to the other party written notice of appeal stating the general grounds of his appeal; and
(b) pay to the clerk the appeal fee.

Explanatory Notes:

- (1) Refer to the designation under Section 126 and explanatory notes thereunder.

Recommendation:

Change "Clerk" to "Registrar".

1.1.174 Section 141:

On compliance by the appellant with the provisions of section one hundred and forty the clerk shall forward to the clerk of the Privy Council -

- (a) the appellant's notice of appeal,
(b) a correct transcript of the proceedings and judgment in the Court.

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Explanatory Notes: (i) Refer to Sections 126 and 140 and notes thereunder.

Recommendation: Change "Clerk" to "Registrar".

.1.175 Section 142: The clerk of the Privy Council shall as soon as possible give written notice to the parties of the date fixed by the Privy Council for the hearing of the appeal which shall be held at a meeting of the Privy Council at which the Chief Justice a judge nominated by the Privy Council is present.

Explanatory Notes: (i) The general purpose of this section needs no change or further explanation.

Recommendation: No change.

.1.176 Section 143: Upon good cause shown by either party fresh evidence may in the discretion of the Privy Council be admitted at the hearing of the appeal and the hearing may if necessary be adjourned to enable such evidence to be produced.

Explanatory Notes: (i) This section requires tying up with Section 146 and rules made thereunder.

Recommendation: No change: procedure regarding fresh evidence may be set out in rules of court under Section 146.

.1.177 Section 144: (1) On the hearing of an appeal the Privy Council may -
(a) rehear the case; or
(b) give its decision on the evidence taken in the Court; and in the latter case it may in its discretion recall for further examination all or any of the witnesses examined in the Court.

Section 143

- (2) The Privy Council may adjourn the hearing of the appeal and may either affirm reverse or vary the decision of the Court or make such order (including any order as to the payment of costs by either party) as it thinks just and may by its order exercise any power which the Court might have exercised.

Explanatory Notes:

- (i) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

1.1.178

Section 145:

- (1) Immediately after any decision affecting the possession of or title to any lands has been given on appeal the clerk of the Privy Council shall transmit to the Registrar of the Court and to the Minister a copy of such decision signed by the clerk of the Privy Council and impressed with the Seal of the Privy Council. Such copy shall be a sufficient authority to the Court for the enforcement of the said decision and for the issue of such process (if any) as may be required for that purpose.
- (2) On receipt by the Minister of such copy of a decision on appeal as is specified in subsection one of this section and on payment of the fees prescribed by law he shall forthwith take such steps to give effect to the decision on appeal as he is required by section one hundred and thirty-nine to take on receipt of a copy of a judgment of the Court.

Explanatory Notes:

- (i) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

Section J

DIVISION III
PROCEDURE AND FEES

1.1.179 Section 146:

The Judge may from time to time make, revoke and alter rules for regulating the practice and procedure of the Court and may also vary or add to the list of fees and the amount thereof given in Schedule XI. Any rules or alterations in fees so made shall not come into force until approved by His Majesty and the Privy Council.

Explanatory Notes:

(i) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

1.1.180 Section 147:

The fees to be taken in the Court shall be those set forth in Schedule XI:

Provided that no fees shall be payable by the Minister in respect of any proceedings instituted by him in his official capacity.

Explanatory Notes:

(i) Amendment is necessary to enable flexibility to be achieved in setting of fees.

(ii) These fees may vary from time to time and such minor variations will require an amendment to the Schedule and the Act.

(iii) Current legislative practice here and overseas require fees to be fixed by Regulations or Orders-in-Council.

Recommendation:

The fees to be taken in the Court shall be those set by His Majesty in Council.

Section J

DIVISION IV
LIMITATION OF ACTION

1.1.181 Section 148:

No person shall bring in the Court any action but within ten years after the time at which the right to bring such action shall have first accrued to some person through whom he claims, or if such right shall not have accrued to any person through whom he claims then within ten years next after the time at which the right to bring such action shall have first accrued to the person bringing the same.

Explanatory Notes:

- (i) The general purpose of this section needs no change or further explanation.

Recommendation:

No change.

SECTION K

1.1.1 CONSTITUTION

1.1.2 Reviewing the Land Act necessarily involved reference to and consideration of the Constitution and the provisions contained thereunder as to land, protecting of existing rights and property. In referring to right under the Constitution, the Commission applied it as a guide but not any motive suggestive of review. Further these provisions are outside the Commission's term of reference.

1.1.3 The Constitutional provisions relating to land have been examined and set out hereunder in the format used for the Land Act are our comments and recommendations:

1. Section 104:

1.1.4 All the land is the property of the King and he may at pleasure grant to the nobles and titular chiefs or outabules one or more estates to become their hereditary estates. It is hereby declared by this Constitution that it shall not be lawful for anyone at any time hereafter whether he be the King or any one of the chiefs or the people of this country to sell any land whatever in the Kingdom of Tonga but they may lease it only in accordance with this Constitution and mortgage it in accordance with the Land Act. And this declaration shall become a covenant binding on the King and chiefs of this Kingdom for themselves and their heirs and successors for ever.

Explanatory Notes:

(i) In the explanatory notes and recommendations to Section 2, 3

and 11 of the Land Act the considerations applicable to this section were referred to therein.

(ii) There is no real or apparent need to alter the general purpose and declarations contained in this section.

(iii) The options contained in the recommendation below affects the first part of the section only and is a suggested improvement to tie in with the Land Act.

Recommendation: All land of the Kingdom is the property of the King and he may grant to the nobles and matabules one or more estates to become their hereditary estates and the remainder of the land no so granted shall become and from Crown lands, etc

OR

All the land of the Kingdom is the property of the Crown from which the King may grant to the nobles and matapules one or more estates to become their hereditary estates etc.

Section 105

1.1.5 The Cabinet shall determine the terms for which leases shall be granted and the Cabinet shall determine the amount of rent for all Government lands but no longer than 99 years without consent of the His Majesty in Council.

Explanatory Notes:

(i) The general purpose of this section which has already been amended does not warrant any further attention.

Recommendation:

No change.

Section 106

Section 106

- 1.1.6 The forms of deed transfer and permit which shall from time to time be sanctioned by His Majesty in Privy Council are hereby appointed to be the forms according to which all deeds of leases transfers and permits shall be made. (Law No.25 of 1916)

Explanatory Notes :

- (i) The existence of this provision has created problems.
- (ii) Any variation from specified forms would render the lease or the transaction in question null and void.
- (iii) It is too rigid and such a procedural provision should not be enacted in the Constitution.

Recommendation:

Repeal

Section 107:

- 1.1.7 This Constitution shall not affect any leases which have been granted by the Government or any leases which have been promised whether leases of land in the interior or of town allotments. Such leases will be recognised by the Government but this exception shall not refer to any leases which may be granted after the granting of this Constitution.

Explanatory Notes :

- (i) The general purpose of this section does not need any change.

Recommendation :

No change

Section 108 :

- 1.1.8 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 other person without the prior consent of Cabinet, 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 may be.

Explanatory Notes :

- (i) The general purpose of the section is not being departed from except the age of the adherents. It should be reduced from 18 years to 16 years to correspond with the age limit imposed by section 17 of the Land Act. The other alternative is not to vary the age under this section but arrange for the age limit under section 17 to be increased. One of these two sections must be amended otherwise section 17 is void because it is at variance with the Constitution.
- (ii) The Commission has been persuaded to propose a reduction of age as a measure of assistance to religious organisations.
- (iii) The rewording of this section is considered to be an improvement.

Recommendation:

- (i) No lease of any town site shall be granted to any religious body unless

Section 108 :

there are at least thirty adherents of such religious body resident in such town each having attained the age of 16 years.

- (ii) It shall not be lawful for any religious body to use such leased lands for any other than the purposes stated in its original application unless prior approval for such use has been given by Cabinet.
- (iii) It shall not be lawful for any religious body to sub-let any leased land without the prior consent of Cabinet and upon satisfactory proof before the land Court that any such land has been sub-let without consent such land shall revert the lessor.

Section 109 :

1.1.9

All the beach frontage of this Kingdom belongs to the Crown from fifty feet above high-water mark and it shall be lawful for the Government to lease any portion of the beach frontage for erecting a store jetty or wharf and the Minister of Lands with the consent of the Cabinet shall have power to grant such lease.

Explanatory Notes:

- (i) The proposed recommendation is based on clarity and better draftsmanship.

Recommendation:

All the beach frontage of this Kingdom from 50 feet above high water mark is the property of the Crown and it shall be lawful for the Government to grant a lease over any portion of the beach frontage.

Section 110 :

1.1.10

All leases unless signed by the King shall be

Section 111

signed by the Minister of Lands and sealed with the seal of his office and countersigned by one of the Cabinet ministers who shall affix the seal of his office and no lease or transfer will be considered valid or recognised by the Government unless registered in the office and no lease or transfer will be considered valid or recognised by the Government unless registered in the office of the Minister of Lands.

Explanatory Notes:

- (i) This proposal for amendment should be taken in conjunction with section 106 and explanatory notes thereunder. The requirement for the King or the Minister of Lands and another Minister to sign every lease is unnecessary and outdated. With amendments to the Land Act, holders signing mortgages, etc the time has arrived for the holder personally to execute the lease. Appropriate recommendations have been similarly made under the Land Act.
- (ii) Amend this section as recommended below.

Recommendation:

No lease or transfer will be considered valid or recognised by the Government unless recognised by the Government unless registered in the office of the Minister of Lands.

Section 111:

1.1.11

The following is the law of succession to hereditary estates and titles: Children lawfully born in wedlock only may inherit and the eldest male child shall succeed and the

Section K

heirs of his body but if he have no descendants then the second male child and the heirs of his body and so on until all the male line is ended. Should there be no male child the eldest female child shall succeed and the heirs of her body and if she should have no descendants the second female child and the heirs of her body and so on until the female line is ended. And failing direct heirs the property beginning with the eldest and his heirs in succession to the youngest and their heirs in accordance with the law of inheritance. And if the brothers have no descendants it shall descend to the eldest sister and the female line as provided in the case of the male line. And if these should have no descendants and there should be no legitimate heir it shall revert to the Crown in accordance with the one hundred and twelfth clause. But should a female be next in succession to the title of a noble or of an hereditary chief the next male heir shall inherit the title and estates. But should such female afterwards have a legitimate male issue the title and estates shall revert to the male issue of the female upon the death of the male in possession of the estate:

Provided that the female that is the heir shall occupy the town allotment and the plantation lands appertaining to such title but the hereditary estates that is the lands occupied by the people shall be held by the inheritor of the title.

Whereas by Tongan custom provision has always been made that an adopted child

Section 7

child might succeed to the estates and titles of his adoptive father now therefore it is decreed that upon the death of the holder of an estate or title who has inherited such estate or title by virtue of his blood descent from such adopted child the estate and title shall revert to the descendant by blood of the original holder of the estate and title in accordance with the provisions of this clause and should there be alive no such descendant by blood the provisions of the one hundred and twelfth clause shall apply. (Added by Act No.15 of 1953).

Explanatory Notes :

- (i) The words "or legitimated" are recommended for addition.
- (ii) For the reasons appertaining thereto please refer to Section 4(c) of the Legitimacy Act, and note under Sections 41 and 76 of the Land Act.

Recommendation :

Children born in wedlock or legitimated...

Section 112 :

1.1.12

Should there be no legitimate heirs to an estate such estate shall revert to the King. But the King may confer the title and estate upon any other person and the person so appointed and his heirs shall possess such title and estates for ever.

Explanatory Notes :

- (i) The general purpose of this section is not being altered. The proposal is a tidying up measure to improve it.

Section E

Recommendations :

Should there be no lawful heir to an estate such estate shall revert to the Crown. But the King may confer the title and estate upon any other person and the person so appointed and his heirs shall possess such title and estates for ever.

or

should there be no lawful heir to an estate such estate shall revert to the King. But the King etc ...

Section 113 :

1.1.13 A widow shall have the right to succeed to her deceased husband's tax and town allotment. Every person who holds a tax and town allotment shall pay such rents therefore as may be determined by the Legislature. Every taxpayer shall have the right to hold an hereditary tax and town allotment upon and subject to such conditions as to the area thereof and the rent to be paid therefore as may be determined from time to time by the Legislature. (Act No.19 of 1927).

Explanatory Notes:

- (i) The proposed amendment contained in the recommendation is a tidying up exercise.

Recommendation:

Change "Every taxpayer" to - "Every male Tongan subject by birth of sixteen years of age who has not acquired the nationality of another country ...". Change Legislature to Land Act.

Section K

Section 114 :

1.1.14 No lease, sublease, transfer of a lease or of a sub-lease shall be granted:

- (a) without the prior consent of Cabinet where the term is 99 yrs, or less, or
- (b) without the consent of Privy Council where the term is over 99 years.

Provided that no consent shall be granted to a lease by a widow of the land of her deceased husband.

Explanatory Notes:

- (i) No change required

Recommendation:

No change

Section 115:

1.1.15 This Constitution may be cited as The Act of Constitution of Tonga.

Explanatory Notes:

- (i) No change required.

Recommendation:

No change

SECTION

L. RECOMMENDATIONS

- 1.1.1 That the recommendations contained in Section B of this report be adopted.
- 1.1.2 That the recommendations contained in Section E of this report be adopted.
- 1.1.3 That the recommendations contained in Section H of this report be adopted.
- 1.1.4 That the recommendations contained in Section J of this report be adopted.
- 1.1.5. That the recommendations contained in Section K of this report be adopted.
- 1.1.6 That the form shown in this report as attachment C be adopted.
- 1.1.7 That it be now recognised and made known that the land policy of granting to every male Tongan aged 16 years is no longer capable of complete fulfilment owing to our population growth and increasing shortage of land.

Attachments

- A. Report on the Samoan Land System
- B. Report on the Ministry of Lands,
its staff structure and Office
Procedures
- C. Amended form of lease under Schedule VIII
Form 3 of Land Act.

LAND SYSTEM OF WESTERN SAMOA

Introduction

We were given an assignment to look into and report back on the land system of Western Samoa. This assignment was to be carried out during the time of the South Pacific Games when David Tupou would be in Apia as General Team Manager of the Tongan Team to the Games.

History

During the time of rivalry amongst the Governments of Britain, United States and Germany over Samoa an agreement was reached and the Final Act of the Berlin Conference on Samoan Affairs was made in 1889. This Act prohibited the sale of any more land to Europeans and established a fact finding Commission of three competent and impartial persons. King Malietoa Laupepa ruled at the time and quarrells amongst the chiefs were increasing. United States took over what is now known as American Samoa while Germany controlled the affairs of Western Samoa. The Commission was given two years to complete their investigations and file their reports with the Supreme Court which made the final decision. All claims to land required adequate proof of money or goods compensation for land other than liquor, nails or firearms. The claims filed with the Commission were more than the total area to be validly claimed and the Supreme Court confirmed most of the Commissions findings. These were then registered as freehold titles under what is known as COURT GRANTS.

All Court Grants were registered in Western Samoa for both Samoas and most were done before 1900. These Court Grants originate freehold titles to land in both Samoas.

After the First World War during the New Zealand administration of Western Samoa provision was made for certain CROWN GRANTS under the Samoa Act 1921 (N.Z.) to the Government of New Zealand, the Government of Western Samoa and for public purposes.

This Act also confirmed the existence of freehold titles under the Court Grants and also of Samoan land or what is now known as Customary land held according to Samoan Customs and usage.

Land Tenure

As might be seen from the brief historical outline above the land tenure that evolved in Western Samoa consisted of three types -

1. Customary land held in accordance with Samoan custom and usage,
2. Freehold land held in fee simple,
3. Public land held by the Government.

This is confirmed by Article 101 of the Constitution of Western Samoa which states -

- (1) All land in Western Samoa is customary land, freehold land or public land.
- (2) Customary land means land held from Western Samoa in accordance with Samoan custom and usage.
- (3) Freehold land means land held from Western Samoa for an estate in fee simple.
- (4) Public land means land vested in Western Samoa being land that is free from customary title and from any estate in fee simple.

Customary land

As defined by Article 101 of the Constitution, these are land held in accordance with Samoan custom and usage. Such land comprise over 80% of the total area of Western Samoa.

All Samoan customary land is held as appurtenant to a particular title or titles. The control of such land is vested in the holder of a MATAI title. Such control or holding by a Matai is not as a beneficial owner but more in the capacity of a trustee for the family.

He has almost unlimited powers of administration of the land subject to his "pule", but he must exercise that power not for his personal benefit but for the benefit of the family. He has no power to transfer the fee simple or indeed to alienate the land in any manner unless authorised to do so by an Act of Parliament. The Matai title is not hereditary but a successor is chosen usually from a member of the family of the deceased. Although not common, a woman can be the holder of a Matai title.

There are usually two types of land which a Matai controls -

- (1) House sites in the village, and
- (2) Plantation lands.

Every man of the family who has a wife is entitled to put up his house on the family lands if the lands are sufficient for the purpose. The Matai must allocate such land. If there is insufficient land then the Matai must indicate where they must live.

Plantation lands may similarly be allocated by the Matai to individual members of the family for the purpose of cultivation and growing crops subject to the rendering of homage (tautua) to the Matai. The Matai may for special purposes take over the yield of such plantations e.g. for a family wedding, but after such purpose, the land and its fruits are returned to the individual.

The Matai may have direct control of a plantation which is cultivated and cared for by the young men of the village under the order of the Matai.

On the death of the Matai or the original cultivator of the land, the widow and family are usually allowed to enjoy the fruits of the land provided they acknowledge the "pule" of the Matai and render him proper "tautua".

One case that should be noted concern virgin bush lands lying behind a village, and recognised as belonging to the village,

but yet not allocated to any particular title. Any person of the village may enter such virgin bush lands and carve a section for himself and cultivate it for his own use. Once this is done however, the land will become appurtenant to the title of the Matai whom the individual is at the time serving.

Under Article 102 of the Constitution no customary land may be alienated in any manner nor shall it be taken in execution or be assets for the payment of debts of any person on his decease or insolvency. An Act of Parliament may however authorise -

- (a) The granting of a lease or licence of any customary land or of any lease therein;
- (b) The taking of any customary land or any interest therein for public purposes.

The Alienation of Customary Land Act 1965 provide for the leasing and licencing of customary land for certain purposes.

Customary land may not be leased or licenced to a Samoan who is not the holder of a Matai title. The Minister of Lands has powers under section 4 to grant a lease or licence of any customary land if in his opinion -

- (a) it is in accordance with Samoan custom and usage, and
- (b) it is in accordance with the desires and interests of the beneficial owners of the land and the public interest.

If the lease or licence is for a hotel or an industrial purpose, the term would be 30 years with or without a right of renewal for an additional term not exceeding 30 years. If the lease or licence is for other purposes, the term would be 20 years with or without a right of renewal for an additional term not exceeding 20 years. The Minister would be making the lease or licence as trustee for the beneficial owners. There is provision in the Act for publication of all applications for such

leases allowing objections to be lodged and dealt with before the actual grant is made.

Over the years specific legislations have been enacted to take over land, including customary land, for public purposes e.g. water supply, education, quarantine, radio station, electricity.

Freehold land

As mentioned above, freehold ownership of land in Western Samoa had its origins from Court Grants made prior to 1900 and also by certain Crown Grants under the Samoa Act 1921 (N.Z.) The total area held as freehold is approximately 10% of the total area of Western Samoa.

Prior to 1972 freehold land could be brought and sold by anyone. In 1972 the Alienation of Freehold Land Act was passed to control the alienation of freehold land to persons who are not resident citizens and to overseas corporations. For the purposes of that Act a resident citizen means a citizen of Western Samoa who is ordinarily resident in Western Samoa. A person is deemed to be ordinarily resident in Western Samoa on any date if -

- (a) He has resided in Western Samoa for not less than 2½ years during the period 3 years immediately preceding that date; and
- (b) He intends to continue to reside permanently in Western Samoa.

This Act applies to the sale or transfer of any freehold estate, the leasing of a freehold estate for more than 20 years, the sale or transfer of any leasehold estate in freehold land where the unexpired term is more than 20 years and to the granting of an option to acquire the above estate or interest, where the purchaser or lessee -

- (i) is not a resident citizen, or
- (ii) is an overseas corporation, or
- (iii) is a trustee where any of the beneficiaries is not a resident citizen or is an overseas corporation.

There are certain alienations to which the Act does not apply including the sale or transfer to the Government or to the Government of any other State.

All alienations to which the Act applies require the consent of the Head of State who acts on the advice of the Minister of Lands. The following matters are taken into account -

- (a) The nature of the use proposed for the land and the ability of the purchaser to achieve that purpose:
- (b) Public interest and interests of the community generally:
- (c) Whether refusal would cause substantial hardship to the owner of the land:
- (d) All other relevant circumstances brought to notice by the parties.

American Samoa does not have the restrictions imposed in Western Samoa on the alienation of freehold land.

Public Land

This refers to land held by the Government free from customary title and from any estate in fee simple. It comprises about 10% of the total area of Western Samoa. These were formerly known as Crown land but was altered to be called public land by Article 123(2) of the Constitution.

Public land was the result of Crown Grants, Government purchases and acquisitions for public purposes. Land acquired by special legislations also became public land.

Public land is under the control of the Land Board who may sell or lease in accordance with the Land Ordinance 1959. Generally before alienation notice would be given to the public to make application. The term of lease must not exceed 20 years. The Minister of Lands may grant in fee simple any Government land in exchange for the fee simple of any other land and equalise by monetary compensation by either side.

Rules are laid down in the Land Ordinance 1959 as to who may apply for Government land. Rules for leasing Government land are also set out in this Ordinance. Except for special reasons, the lessee must reside personally on the land within 1 year of the commencement and thereafter reside continuously thereon. Leases may be forfeited on certain grounds including under Section 87(d) -

"That the lessee has left Western Samoa or cannot be found, or has abandoned the land comprised in his lease, or is deceased and no claimant for the lease can be found".

The Samoan Land and Titles Court

This Court has exclusive jurisdiction in all matters relating to Samoan names and titles and in all claims and disputes between Samoans relating to Samoan land held in accordance with the usages and customs of the Samoan race. Decisions of the Court cannot be appealed from but an application may be made for a re-hearing.

Members of the Court consist of the Chief Justice who is President, a number of assessors who are persons of standing, with a good knowledge of Samoan history, tradition and custom and Samoan Associate Judges of the High Court. A Court sitting is normally composed of the President, one Assessor and 4 Samoan Judges, or the President two Assessors and three Samoan Judges.

When petitions are filed, the Registrar and his staff endeavour to reconcile the parties. Conciliatory work by the Registrar result in the settlement of more than half of the cases brought to Court.

Ministry of Lands:

Staff Structure and Office Procedures

(Based on paper presented to the Commission under
the same heading but with more details added /
Courtesy: the Administration Division of the
Ministry of Lands.)

CONTENTS

1. Introduction
2. Staff Structure
3. Office Procedures:
 - 3.1 Town and/or Tax allotment
 - 3.2 Lease
 - 3.3 Mortgages
 - 3.4 Surrender Procedure
 - 3.5 Registers

1. INTRODUCTION

- 1.1 The Structure and the Working of the Ministry of Lands, Survey and Natural Resources.
- 1.2 The Ministry of Lands, Survey and Natural Resources is under the direction of the Minister of Lands, Survey and Natural Resources, and the Superintendent of Lands. The Ministry is organised into seven (7) main divisions. This is detailed in the Simplified Organisation Chart attached in the Appendices as Table 2.1 and Table 2.2.

According to the Civil Service List of 1984, the Ministry of Lands, Survey and Natural Resources employs 90 people, the Minister, the Superintendent, 17 staff members under Land Registry, Land Valuation and General Administration, 9 staff under Natural Resources Division, 40 staff under Survey Division, 15 staff under Draughting Division, 9 staff under the computing and Scheme Planning Division.
- 1.3 The procedures to be followed in applications for town and/or tax allotments and leases are set out in Paragraphs 3.1 and 3.2. Mortgage procedures are dealt with in Paragraph 3.31 to 3.35.

2. STAFF STRUCTURE

2.1 Table 2.1: Simplified Organisation Chart

Reference: Civil Service List 1983

ATTACHED IN THE APPENDICES.

2.2 Table 2.2: Proposed Organisation Chart

Reference: Allan Withy
ATTACHED IN THE APPENDICES.

3. OFFICE PROCEDURES

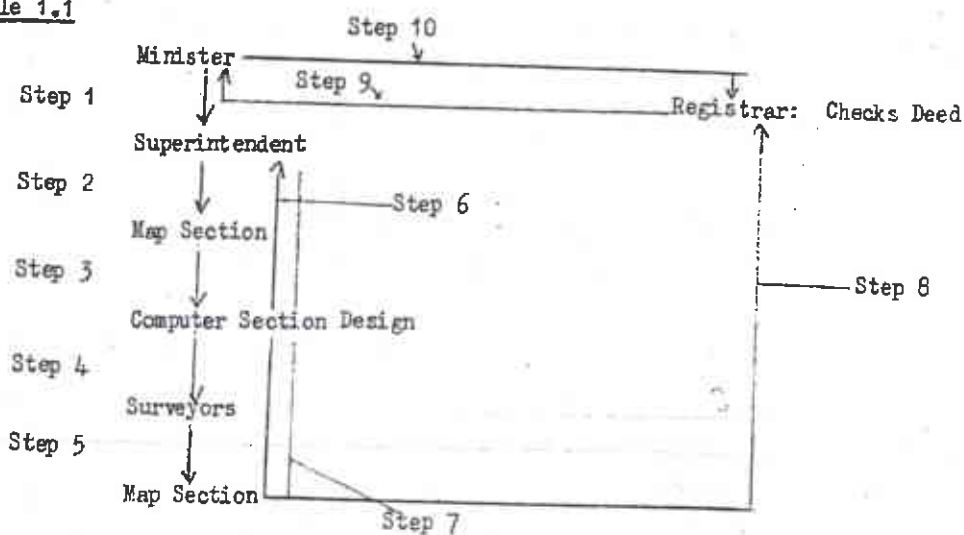
3.1 Application for a town and/or tax allotment

1. Qualification: Applicant has to be a Tongan Subject by birth and 16 years of age.
2. Applicant to fill in standard application form and comply with requirements Birth Certificate, Survey fee etc. endorsed by Estate Holder, poll tax up to 1976.
3. Minister of Lands grants the allotment.
4. The Minister instructs the surveyors to action this grant.
5. Minister's orders goes first to the Superintendent as the first step in the train of technical requirements that needs to be fulfilled:

OFFICE PROCEDURES: Application for a town and/or tax allotment

1. MINISTER 2. SUPERINTENDENT 3. Draughting Section 4. Computer Section 5. Survey Section 6. Draughting Section 7. Superintendent 8. Draughting Section 9. Administration Section 8. Minister 9. Registrar.

6. Table 1.1



Superintendent approves/Surveyor's Plan

Deed of Grant and map prepared by the Map Section.

9. Registrar checks the Deed of Grant then it goes back to the Minister so that he can put his signature to the Deed.
10. Then back to the Registrar for Registration.

(The composition and detailed description of each of the above Divisions is attached with the appendix, in the Organisation Chart and terms of Reference explained in Paragraph 3).

Administration Section will check these forms before forwarding it to the Minister.

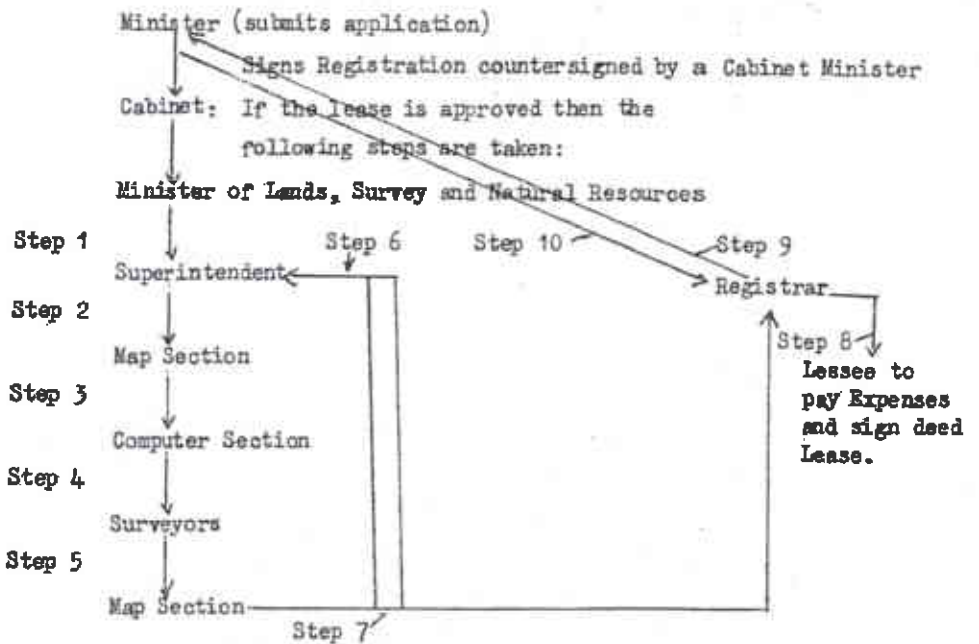
1. The Minister instructs the Superintendent that this application is entitled to a plot of land being Lot number at such a township:
The Superintendent is further informed on the same instruction to execute the survey work in order for a deed of grant to be given to the applicant.
2. The savingram is checked, signed and recorded by the Superintendent before passing it to the Draughting Section.
3. The Chief Draughtman proposes the training (map) of the applicant lot.
4. The Chief Computer calculate the proposed sub-division as will comply with that shown in the saving.
5. The Survey Section will carryout the field work. Required area as shown in the savingram is surveyed and calculated.
6. The Draughting Section rechecked this calculation and draws the Survey Plan of such survey work.
7. The Superintendent check and sign the survey Plan.
8. The Draughting Section draws the Deed of Grant of the Applicant from the Survey Plan.
9. The Administration Section submit the Deed of Grant to the Minister for his signature on such Deed. Attached to the Deed of Grant is the applicant's application form which is file in the Administration Section and a letter from the town officer which shows that the applicant resides in such a place. Forwarding of Deed of Grant for tax allotment to be signed by the Minister does not require a letter town officer.
10. The Applicant pays the registration fee. The Registrar then record the applicant's name, lot number, Area, Dates of such registration into the Registration Book.

3.2 Lease

1. Application/Requirements fulfilled
- ii. Application submitted to Ministry of Lands.
- iii. Clerical checked the application.
- iv. Minister approves the Lease Application forms to be submitted
- v. Application submitted to Cabinet.

If Cabinet approves the Lease: Cabinet Decision:- The applicants is informed (the same procedure outlined in Table 1.1 applies following through from Step 1 to Step 10. A Deed of Lease is executed).

Table 1.2



A Standard Application form is checked in the Administration Section. It should be signed by both parties who will be known as the lessee/lessor. The lessee is the land owner/land holder whose registered allotment is under his name, and the lessor the person leasing the land. A survey fee is to be paid.

1. The Minister sign the application before the application is forward to His Majesty's Cabinet for approval/disapproval.

2. The Minister will inform the lessor of the Cabinet Decision.
3. Where the Cabinet approve the application to lease the Minister will not only inform the two parties he will also inform the Superintendent of Lands , Survey and Natural Resources of the actual Survey to be done. Steps 1, 2, 3, 4, 5, in Application for a town/tax allotment is followed.
4. The Draughting Section draws the Deed of Lease for the lessee from the Survey Plan.
5. The Registrar defines the boundary of the lease and also prepares the Deed of Lease for the Minister of Lands to sign.
6. The Minister then signed the Deed of Lease.
7. The Registrar register this lease.

3.31 MORTGAGES

There is a Mortgage Register which is open to the public at a fee.

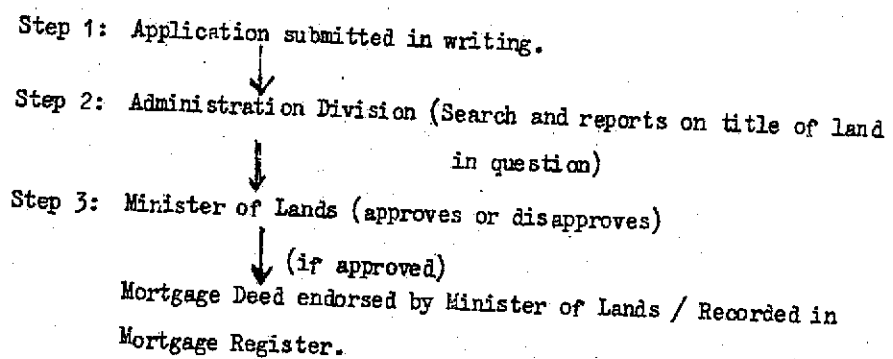
The Register records the date of registration, name and address of the Mortgagor and Mortgages, a description of the Land mortgaged, the purpose of loan principal amount and interest, application, document and registration receipt, stamp duty, period of mortgage, expiring date, registration discharge.

The Bank of Tonga and the Tonga Development Bank, the two (2) major mortgagors in Tonga, each have a mortgage standard form. Government of Tonga is permitted by law to be a Mortgagor.

3.32 Mortgage Application Procedure

1. Qualification: Applicant has to be a registered holder.
2. Applicant to make written application to the Minister of Lands for permission to mortgage land.
3. Officers of the Land Registry, search and reports to the Minister of Lands on the title of land in question.
4. Minister of Lands approves/disapproves the application.
5. If application is approved, the Mortgage Deed is endorsed by the Minister of Lands; recorded in the Mortgage Register and returned to the Mortgagee.

Table 3.32



3.33 Items to be checked an Application Form

- Date
- Address of applicant
- Description of the Land Mortgage
 - Area
 - Date Registered
 - Name of Applicant

- Location - Lot No. Blk.
- Survey fee.
- Name of address of proposed mortgagee.
- Details of any collateral security eg. House, Car etc.
- Details of other Mortgages Granted to the Applicant
 - any other mortgages
- Stamp Duty (Date and Amount paid)
Mortgage is to be paid at the Post Office prior to submission to
Land Office (75c for \$100.)
- Signature of Applicant and witnessed from Bank
- Expiring date if it is a Lease.

3.34 Minister's approval

Application forms and Deed of Grant should be submitted to the Minister with endorsement on "Deed of Grant" to be approved.

3.35 Mortgage Registration Book

Stamp Minister's Signature (Official stamp)

Enter into Registration Book

- Date of Registration
- Expiring date of mortgage.

Return the original of the application forms and Deed of Grant to the Mortgagor.

3.4 Surrender Procedure

3.41 The surrender provision has been increasingly used for the subdivision of tax and town allotments of holders who have no heir; and by holders who have agreed to surrender in favour of a particular applicant for a long term lease.

3.42 Procedure

1. Qualification: Holder have no heir / or if there is an heir, the heir consents or disclaims his rights.
2. Applicant to make written application to the Minister of Lands / Qualification in Paragraph, to be fulfilled.
3. Officers of Land Registry Office search and report to the Minister on land title concerned.
4. Application submitted to Cabinet.
5. If Cabinet approves the application, approval is conveyed to the applicant; surrender is recorded in the Register and actioned.

(NB: Any regrat of the surrendered allotment follows the procedure outlined in Paragraph 3.1:

Application for a town and/or tax allotment)

3.5 REGISTERS

3.51 Registers of Land Matters kept in the Minister's Office

Pursuant to Sections 100, 105, 107 of the Land Act which sections respectively require the Minister to keep a register of allotments, registration of leases and registration of transfer of leases, the following are a list of all the Registers of Land matters kept in the Ministry of Lands office. These registers are open to the public at a fee:-

1. REGISTER OF TOWN ALLOTMENTS dating back to 3 August 1907.
2. REGISTER OF TAX ALLOTMENTS dating back to 23 May 1898.
3. REGISTER OF LEASE AND LEASE PERMITS dating back to the 13 June 1913.
4. REGISTER OF SUBLEASE dating back to the 24 September 1917.
5. REGISTER OF TRANSFERS OF TOWN ALLOTMENTS dating back to 10 April 1916.
6. REGISTER OF TRANSFER OF TAX ALLOTMENTS dating back 24 January 1929.
7. REGISTER OF TRANSFER OF LEASE dating back to 24 July 1931.
8. REGISTER OF TRUSTEE dating back to the 21 August 1931.
9. REGISTER OF EXCHANGE OF TOWN ALLOTMENTS dating back to the 9 May 1947.
10. REGISTER OF EXCHANGE OF TAX ALLOTMENTS dating back to 12 November 1941.
11. REGISTER OF MORTGAGES dating back to the 15 November 1977, as required by Section 91 H of the Land Amendment Act (Act 18/1976)

3.52 Registers required by law but not kept in the Minister's Office

Section 95 provides that one copy of the certificate (topi'a certificate) shall be delivered to the holder and the Minister shall bind up the other in a book to be called the register of topi'as. There is no such register kept at the Minister of Lands office.

Another register required by Law that is not kept in the Minister's office is that of Documents affecting leaseholds. Section 110 require the compulsory registration of the following documents affecting leaseholds:

- (a) assignments for the benefit of creditors
- (b) grant of letters of Administration

- (c) grants of probate
- (d) injunctions affecting land and releases of such injunctions
- (e) memorial of pending suits affecting lands.
- (f) mortgages (assignment of mortgage)
- (g) order of Court appointing a trustee or trustees (including the appointment or discharge of a trustee in bankruptcy proceedings)
- (h) orders of Court for the sale of interests in land under lease transfer or sub-lease
- (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 land.

Section 91L of the Land Amendment Act (Act No. 18/76) requires the compulsory registration of documents affecting mortgage but is not kept either. These documents are (a) assignation, (b) assignations for the benefit of creditors (c) grants of Letters of Administration (d) grants of probate (e) injunctions affecting land and releases of such injunction (f) memorials of pending suits affecting lands (g) orders of Court appointing a trustee or trustee's or an official receiver (h) powers of attorney (i) discharge granted in terms of Section 91 M (j) Gazette notice proclaiming the name of the lawful successor to an hereditary title, (k) claim by or on behalf of the heir or widow for tax or town allotment (l) notification of default (m) sub-lease (n) agreement, bond or other document in any way regulating the terms of the mortgage transaction.

FORM OF LEASE

THIS DEED OF LEASE made the day of
19

BETWEEN of
(hereinafter called the lessor) of the one part

AND of
(hereinafter called the lessee) of the other part

WITNESSETH that in consideration of the payment of the yearly
rent that is recorded in this Deed and the performance of the
covenants in this Deed by the Lessee, his heirs and representa-
tives, the Lessor leases for himself and his successors to the
Lessee, his heirs, and representatives all that piece of land

.....
in accordance with the Land Act. And the Lessee, his heirs,
and representatives, shall hold the piece of land described in
this Deed from the day of the month of
in the year of Our Lord one thousand nine hundred and
until the day of the month of
in the year of Our Lord one thousand nine hundred and

And the lessee covenants for himself, his heirs, and representa-
tives, that he will pay the sum of in legal currency
on to the Lessor or his successors because of this Lease.

And will make the first payment of the same on the execution
of this Deed. And the Lessee for himself, his heirs, and
representatives, hereby covenants that he will comply with the
regulations made by the King and the Legislative Assembly and
Government: such as the laws relative to weeding the frontage
and making the roads, and all municipal laws and ordinances
which shall be made by the King and the Legislative Assembly
and the Government. And the Lessee further covenants for
himself, his heirs and representative that he will not grant
a sub-lease of, or transfer this lease without the consent of
Cabinet beforehand obtained.

But it shall be lawful for the Lessee, his heirs or those that represent him to remove all houses and improvements which may have been built on the said land. And it is hereby agreed by these present if at the expiration of twenty-one (21) days from the day the rent becomes due by the Lessee, his heirs, or his representatives, to the Lessor or his successors because of this Lease, as is recorded in this Deed, the rent hereby reserved or any part of it should remain unpaid, it shall be lawful for the Lessor or his successors to take possession of all or parts of the lands herein leased by this Deed, or to sell by auction the houses or house or anything which may be on this land, to the amount of rent owing by the Lessee, his heirs or representatives, because of the rent of his land or to take civil proceedings in a court of competent jurisdiction of the Kingdom for the recovery of the said rent.

IN WITNESS WHEREOF the parties have set their hands the day and year first above written.

SIGNED by the said)
.....)
as Lessor in the presence of:)

SIGNED by the said)
.....)
as Lessee in the presence of:)

Registered the day of 19

Register of Leases.

Book:

Folio:

.....
Minister of Lands

STAFFED SERVICES - LIAISON CHAIR

Minister of Lands, Surveys & Natural Resources

Director of Lands, Surveys & Natural Resources

Legal Counsel
Advisory position

Chief Draughtsman	Chief Surveyor	Chief Land Valuer	Chief Environmental Officer	Energy
<p>Draughting and computing at present two separate sections and can remain so until the retirement of the Chief Computer.</p> <p>After that suggest one section under the present Chief Draughtsman</p>	<p>All surveyors Field Assistants and Trainee surveyors under the present Supervising Surveyor</p>	<p>Could supervise Land Registration valuation. Lease Inspection and personnel plus Building Inspector and assistants when appointed</p>	<p>Should be considered to co-ordinate work of Geological and Park Ranger Personnel plus the Physical Planner.</p>	

Note: It is considered highly desirable to

1. Ease the Superintendent's workload by creating sections each headed by a responsible officer;
2. Leave the Legal Counsel free of administrative responsibilities and directly available for direct legal advice to the Minister and Director;
3. Ask the appropriate officers to fill the new positions immediately but subject to assessment of salaries at the next review.

Organisation Chart Ministry of Lands, Surveys & Natural Resources

Minister

Superintendent

Land Registry, Land Valuation and General Office Survey Division Superintendent Natural Resources Division Draughting, Computings & Planning Division Energy Division

Chief Valuation Officer Supervising Surveyor Geologist Town Planner Chief Draughtsman

Land Registration Officer Inspecting Surveyor District Surveyor Geologist Trainee Laboratory Assistant National Park Rangers Chief Computer

Land Assessment Officer Accounting officer Senior Executive officer, First Class Clerk, Second Class Clerk, Junior Clerk Typist Clerk Section Draughtsman Section Computer Draughtsman

Survey Assistant Survey Trainees Field Survey Assistants Drivers Cadet Draughtsman Cadet Computer

