

ACT OF THE CONSTITUTION (AMENDMENT) BILL 2012

Explanatory Notes

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

These amendments are mainly consequential on the transfer of the executive powers of Cabinet and Privy Council over land matters to the Minister of Lands. In particular, all the authority over leases is now vested with the Minister of Lands, which he will exercise on the advice of the Independent Land Commission.

The amendment to clause 67 of the Constitution proposes use of the proper translation of “inheritances”, which should be “tukufakaholo” instead of “tofi’a”. The current Tongan version of this clause translates the word “inheritances” as “tofi’a”. This would give the unrealistic effect of having only the 9 noble members of the Legislative Assembly the right to discuss and pass almost all laws regarding land in Tonga. The proper translation should be “tukufakaholo”. A proviso is also added to clause 67 to limit the application of that clause.

The amendment to clause 109 of the Constitution is to make the provision consistent with section 113 of the Land Act. This will allow for the present practice by the Minister of Lands of leasing the beach frontage for residential purposes.

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**ACT OF CONSTITUTION OF TONGA
(AMENDMENT) BILL 2012**

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ACT OF CONSTITUTION OF TONGA (AMENDMENT) BILL 2012

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

Commencement []

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 Act of Constitution of Tonga (Amendment) Act 2012.
- (2) In this Act, the Act of Constitution of Tonga, as amended, is referred to as “the Constitution”.

2 Commencement

This Act shall come into force on such date as the Cabinet may provide by Notice in the Gazette, and different sections may be commenced upon different dates.

3 Clause 67 amended - Privilege of Nobles

Clause 67 of the Constitution is amended by –

- (a) by deleting the word “tofi’a” and replacing it with “tukufakaholo”, in the Tongan version only; and
- (b) adding the following proviso at the end of the clause –
“Provided that this clause shall not apply to laws concerning the granting of allotments or the leasing of land from the estates of Nobles and any other dealings with land allowed under the Land Act.”

4 Clause 105 amended – Terms of Leases

Clause 105 of the Constitution is deleted and replaced with the following -

“105 Terms of Leases

The Minister of Lands shall determine the terms for which leases shall be granted and he shall determine the amount of rent for all Government lands.”

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5 Clause 106 amended – Form of deed

Clause 106 of the Constitution is amended by deleting “His Majesty in Privy Council” and replacing with “the Minister of Lands”.

6 Clause 108 amended – Church lands not to be sub-let without permission

Clause 108 of the Constitution is amended by deleting “Cabinet” and replacing with “the Minister of Lands”.

7 Clause 109 amended – Beach frontage

Clause 109 of the Constitution is deleted and replaced with the following –

“109 All the beach frontage of this Kingdom belongs to the Crown from 15.24 metres 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 thereon or to reside on any portion thereof with the consent of the Minister of Lands.”.

8 Clause 110 amended – Registration of deeds

Clause 110 of the Constitution is deleted and replaced with the following –

“110 All leases of Crown land shall be signed by the Minister of Lands and sealed with the seal of his office and also signed by the Lessee. All other leases shall be signed by the Lessor and the Lessee. No lease or transfer will be considered valid or recognised by the Government unless registered in the office of the Minister of Lands.”.

9 Clause 113 amended – Right to allotments

Clause 113 of the Constitution is deleted and replaced with the following –

“113 Tongan male subjects by birth of or over the age of 21 years may be granted town allotments and tax allotments out of estates granted in pursuance of this Constitution with the consent of or upon consultation as required by law with the estate holder and out of the lands of the Crown, by the Minister of Lands. Tongan female subjects by birth of or over the age of 21 years may be granted town allotments in the same manner as Tongan male subjects. Such allotments shall be hereditary and shall be of such size and at an annual rent as may be determined by law. A widow shall have the right to succeed according to law, to her deceased husband's tax and town allotments.”.

10 Clause 114 amended – No lease etc without consent

Clause 114 of the Constitution is deleted and replaced with the following –

“114 No lease, sub-lease, transfer of a lease or of a sub-lease shall be granted without the prior consent of the Minister of Lands,

Provided that no consent shall be granted to a lease by a widow of the land of her deceased husband unless the heir has consented or that land was newly acquired under the Land Act.”

Passed in the Legislative Assembly this day of 2012.

to