



LAND (AMENDMENT) ACT (NO. 2) 1991

No. 23 of 1991

AN ACT TO AMEND THE LAND ACT

I assent,
TAUFA'AHAU TUPOU IV.
4th February 1992.

[5th November, 1991]

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

1.
 - (1) This Act may be cited as the Land (Amendment) Act (No. 2) 1991.
 - (2) The Land Act (Cap 132), as amended, is in this Act referred to as the Principal Act.
2. Section 19 of the Principal Act is amended by inserting after sub-section (10) the following new subsection:

“(11) He shall have the power to compel any holder of land to grant an easement to the Crown and he shall approve all easements whether they involve the Crown as a party or not.”
3. The Principal Act is amended by inserting immediately after the end of Part VI the following new Part VIA —

Signature of Minister.

- (4)
 - (a) No easement shall be effective until it has been registered.
 - (b) A registration fee the same as that payable on the registration of a mortgage shall be paid.
- (5) No easement shall be registered unless it is certified by the grantee or his solicitor as being correct for the purposes of this Act.
- (6) If within 14 days after the service of the decision pursuant to subsection (3) of section 112C on him a holder refuses to execute an instrument as set out in Schedule XV the Registrar of the Land Court may execute such an instrument on his behalf.

112C.

- (1) The Minister shall, when exercising the power conferred on him by section 19 (11) to compel the granting of an easement, give written notice to the holder specifying the following:
 - (i) The type of easement required; and
 - (ii) That the holder has 28 days after receipt of the notice to object to such easement.
- (2) The notice from the Minister shall be accompanied by a plan prepared by a surveyor which plan shall detail the line and dimensions of the proposed easement with reference to the boundaries of the holders estate or allotment.
- (3) If a holder wishes to object to the easement required by the Crown he shall do so in writing within 28 days of receipt of the Notice referred to in subsection (1) hereof and such objection, with reasons therefore, shall be lodged with the Land Court and heard by a judge, sitting as an expert and not in his judicial capacity, and whose decision shall be final.
- (4) A holder shall be entitled to compensation from the Crown for any reduction in value of his estate or allotment by virtue of the Crown compulsorily acquiring the right to an easement.
- (5) In order to claim compensation the holder must within 28 days of either the receipt of notice under section 112C (1) or the receipt of the decision declining his objection under subsection (3) hereof file with the Land Court and serve on the Minister and any mortgagee a notice in writing stating:

- (a) Each matter on account of which he claims compensation with full particulars of the nature and extent of the claim.
 - (b) The amount which he claims respectively for the loss of use of land or for land injuriously affected giving in both cases the amount for each item of such claim separately.
 - (c) If the land is mortgaged particulars of such mortgage including the name and address of the mortgagee.
- (6)
- (a) As soon as practicable thereafter a Judge will hear the parties and determine the holder's claim for compensation which shall be final, and in so doing he will be sitting as an expert and not in his judicial capacity.
 - (b) A copy of any award will be sent to the holder and if the land is mortgaged to the mortgagee.
- (7)
- (a) If the land in respect of which compensation is awarded is subject to a mortgage such compensation or so much thereof as is required for the purpose shall upon the application for the mortgagee be paid in discharge of the mortgage debt or of part thereof.
 - (b) The mortgagee if he requires the compensation to be paid to him pursuant to subsection (7) (a) hereof must advise the court in writing within 28 days of receipt by him of the Court's award pursuant to subsection (6) (b) hereof.

112D.

Every instrument creating an easement shall be in the form contained in Schedule XV to this Act with such variations as the circumstances may require”.

4. The Principal Act is amended by inserting the following new Schedule XIV and Schedule XV:

“SCHEDULE XIV

(Section 112A)

RIGHTS AND POWERS OF GRANTEEES IMPLIED

IN CERTAIN EASEMENTS

1. RIGHT OF WAY

The full, free, uninterrupted, and unrestricted rights, liberty, and privilege for the grantee, his servants, tenants, agents, workmen, licences and invitees (in

common with the grantor, his tenants, and any other person lawfully entitled so to do) from time to time and at all times by day and by night to go pass and repass, with or without horses and domestic animals of any kind and with or without carriages, vehicles, motor vehicles, machinery, and implements of any kind, over and along the land over which the right of way is granted or created.

2. RIGHT TO CONVEY WATER

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) from time to time and at all times to take, convey, and lead water in a free and unimpeded flow (except when the flow is halted for any reasonable period necessary for essential repairs) and in any quantity, consistent with the rights of other persons having the same or similar rights, from the source of supply or point of entry, as the case may be, and following the stipulated course (where a course is stipulated) across the land over which the easement is granted or created, together with the additional rights incidental thereto set out in clause 5 of this Schedule.

3. RIGHT TO DRAIN WATER

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) from time to time and at all times to drain and discharge water (whether rain, tempest, spring, soakage, or seepage water) in any quantities along the stipulated course (where a course is stipulated) across the land over which the easement is granted or created, together with the additional rights incidental thereto set out in clause 5 of this Schedule (or, where open drains are provided for, similar rights in regard to those drains, with the necessary modifications as are provided for in respect of pipe lines in the additional rights so set out).

4. RIGHT TO DRAIN SEWAGE

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) from time to time and at all times to drain, discharge or convey sewage and other waste materials and fluid in any quantities along the stipulated course (where a course is stipulated) across the land over which the easement is granted or created, together with the additional rights incidental thereto set out in clause 5 of this Schedule.

5. ADDITIONAL RIGHTS ATTACHING TO EASEMENTS OF RIGHT TO CONVEY AND OF RIGHT TO DRAIN WATER AND OF RIGHT TO DRAIN SEWAGE

The full, free, uninterrupted, and unrestricted right, liberty, and privilege for the grantee and his tenants (in common with the grantor, his tenants, and any other person lawfully entitled so to do) for the purposes of the easement concerned –

- (a) To use any line of pipes already laid on the stipulated course or any pipe or pipes in replacement or in substitution for all or any of those pipes;
- (b) Where no such line of pipes exist, to lay, place, and maintain, or to have laid, placed, and maintained, a line of pipes of a sufficient internal diameter and of suitable material for the purpose under or over the surface (as the parties decide) of the land over which the easement is granted or created and along the line defined for the purpose where such a line has been so defined;
- (c) In order to construct or maintain the efficiency of any such pipe line, the full, free uninterrupted and unrestricted right, liberty, and privilege for the grantee, his tenants, servants, agents, and workmen, with any tools, implements, machinery, vehicles, or equipment of whatsoever nature necessary for the purpose, to enter upon the land over which the easement is granted or created (or where only the position of the pipe line is defined in the easement, upon such part of the land of the grantor by such route as is reasonable in the circumstances) and to remain there for any reasonable time for the purpose of laying, inspecting, cleansing, repairing, maintaining and renewing the pipe line or any part thereof and of opening up the soil of that land to such extent as may be necessary and reasonable in that regard, subject to the condition that as little disturbance as possible is caused to the surface of the land of the grantor and that the surface is restored as nearly as possible to its original condition and any other damage done by reason of the aforesaid operation is repaired.

SCHEDULE XV

(Section 112D)

Form of Instrument creating an easement

Grantor.....

Grantee.....

Type of Holding.....

Land of Grantor.....

Land of Grantee.....

Variations.....

The Grantor hereby grants to the Grantee an easement ofover that part of the Grantor's land coloured.....on the plan attached hereto and the Grantee doth hereby accept such easement

Signed by the abovenamed

Grantor in the presence of:

Signed by the abovenamed

Grantee in the presence of:

Correct for the purposes of the Land Act

Grantee/Solicitor for Grantee.”

Passed in the Legislative Assembly this 5th day of November, 1991