

## Chapter 1

### INTRODUCTION

#### 1.1 APPOINTMENT

The Royal Land Commission was established under a Commission issued by His Majesty, King George Tupou V on 9 October 2008 and confirmed by the King in Privy Council on 10 October 2008 (Privy Council Decision No.168 of 2008) under the powers given by Section 2(1) of the Royal Commissions Act (Cap. 41), which empowers the appointment of Commissioners “to inquire into any matter in which an inquiry would in his opinion be for the public welfare”. The commission of the Royal Land Commission and the Privy Council decision confirming the appointments are attached to this Report respectively as Appendix 1 and Appendix 2.

#### 1.2 ROYAL COMMISSIONERS AND SECRETARY

The Commissioners and Secretary appointed were:

Baron Fielakepa GCQS	Chairman
Lord Tupou KGCQS KC	Commissioner
Kahungunu Barron-Afeaki CRH SC	Commissioner
Robina Nakao	Commissioner
Gloria Pole’o MRH	Secretary

For personal reasons Commissioner, Robina Nakao resigned in 2009.

#### 1.3 TERMS OF REFERENCE

The Royal Land Commission was empowered “to inquire (without changing the basic land tenure of our Kingdom) into all matters

whatsoever concerning the land laws and practices of our Kingdom with a view to providing more effective and efficient practices” and to report to Privy Council on or before 30 November 2011 with recommendations including legislations to give effect to those recommendations. The Commission sought and obtained an extension of its term of appointment until 30 March 2012 by Privy Council decision No. 56 of 2011 on 28 November 2011. This was to allow for more time for the Commission to consider the many proposals received and draft legislative amendments required to implement recommendations made in this Report. Official notification of the extension of the due date of the Commission’s final report is attached to this Report in Appendix 3.

The Commissioners were directed, *inter alia*, to “consult widely and publicly concerning the matters to be inquired into...in Tongatapu or elsewhere and at such time, date and place as the Commissioners shall determine”.

#### **1.4 BASIC LAND TENURE**

The terms of reference for the Commission requires an inquiry into all matters concerning land law and practices **without changing the basic land tenure of our Kingdom**. Questions were asked at public meetings and in written submissions as to what ‘the basic land tenure’ was, that could not be changed. At the same time it was important for the Commission to define the basic land tenure of Tonga in order to conduct its inquiries within the framework of the terms of reference.

In history, the basic land tenure of Tonga that we have today began with the directions and land laws made during the reign of King George Tupou I after his visit to Sydney, Australia in 1853. This was continued through

the reign of Queen Salote Tupou III. An excellent account of this part of Tongan history in relation to land can be seen in the submission by Dr. Elizabeth Wood-Ellem, which is attached to this Report as Appendix 4. In a desire to give the people land to grow crops for their sustenance and have a home, the land laws required estate holders to grant a piece of land to a Tongan subject on application. Land so granted was registered in the landholder's name and would devolve in the landholder's family in accordance with the laws of inheritance. The sale of land was forbidden. A small rent was given to the estate holder for the grant and the landholder continued his customary obligations to the estate holder. Estate holders were also allowed to lease a small part of his total estate for financial reward.

Subject to some changes through the years, this basic land tenure continues today. We retain today what began during the reign of King George Tupou I, where town and tax allotments are granted by estate holders to a Tongan male subject at the age of 16 years. Estate holders are allowed to lease only 5 percent of their total estates, but under present law this does not include lease to religious bodies and charitable institutions. The sale of land is forbidden.

For the purpose of its inquiries, the Commission has taken the view that part of the basic land tenure that it is not allowed to change is the free distribution of land through the grant of a town and a tax allotment to a male Tongan subject, the prohibition on the sale of land, and the estate holder's right to lease only 5 percent of his total estate. The Commission was directed in its terms of reference to "consult widely and publicly" and having done so, a number of the people's concerns were so consistently and strongly expressed that the Commission has deemed it

appropriate to give consideration to these issues of major public welfare and importance. Examples of such concerns included women's rights to land and succession to land. The Commission was also conscious of the changes over time and the different needs of today in contrast to the basic land tenure when it was first created. These important public concerns would be taken into account to provide "more effective and efficient practices" as required by the terms of reference.

### **1.5 WORK PROGRAMME AND LAYOUT OF REPORT**

As outlined in the Executive Summary, the Commission divided its work programme into three phases after careful consideration of possible subject areas of its inquiries.

Phase One inquired into the internal workings of the Ministry of Lands, Survey and Natural Resources. The Phase One Interim Report discussed the findings of that part of the inquiry, which is also dealt with in Chapter 5 of this Report. The Phase One Interim Report is attached to this Report in Appendix 5.

Phase Two inquired into land dealings through the internet mainly in Vava'u which were suspected of being contrary to the Land Laws of Tonga. The Phase Two Interim Report discussed the findings of that part of the inquiry which is also dealt with in Chapter 6 of this Report. The Phase Two Interim Report is attached to this report in Appendix 6.

Both the interim reports were available for viewing in the Commission's website [www.tongaroyallandcommission.com](http://www.tongaroyallandcommission.com).

Phase Three involved wide public consultations in Tonga, Australia, New Zealand and the United States of America where there were large Tongan

populations. The proposals received by the Commission are summarized in a report compiled by the Commission's Secretary. These proposals have been dealt with throughout all chapters of this Report.

### **1.6 PHASE THREE - PUBLIC MEETINGS**

All public meetings for Phase Three were held mainly in church, community or school halls. Before each meeting, notice of meeting dates and venues were communicated to the public in the districts concerned through the radio, local news papers and leading community members. All were welcome to attend. Written flyers were also distributed to members of the public before and during the meetings. A sample of these flyers is attached to Report in Appendix 7. Meetings were normally held during the evenings to allow maximum attendances and were normally run for two hours. There were always more male than female attendances at the public meetings.

The purpose of these meetings was to gauge the views of Tongans on any matter, including the law concerning land and land practices. Specific land problems were raised by individuals and suggestions for changes were also made. Questions were raised and answers given by the Commissioners. In most meetings, the general after-meeting feedback from those who attended was that they were happy with the meetings and had learnt a lot from the discussions and answers given by the Commissioners on land issues in Tonga.

The dates and venues of all the public meetings and special interest group meetings conducted by the Commission are listed in Appendix 8 of this Report.

### **1.7 AREAS OF INTEREST EXPRESSED IN THE PUBLIC MEETINGS**

All main areas of interest which arose from the public meetings have been set out in the Executive Summary. They have also been recorded in a summary of proposals from the public compiled by the Commission's Secretary from transcripts of the audio recordings and written submissions. This useful document records a thorough account of the public's views and is attached to this Report in Appendix 9.

### **1.8 WRITTEN SUBMISSIONS**

Written submissions were also received from both Tongans and non-Tongans, including some who had specialized knowledge of Tongan land law and practices. A list of written submissions is attached to this Report in Appendix 10. All these written submissions were acknowledged by the Commission and have been taken into account in its final recommendations. The Commission is grateful to all who have taken the time to make these written submissions.

### **1.9 OTHER TOPICS OF INTEREST IDENTIFIED BY THE COMMISSION**

In addition to the identifying areas of public interest that were expressed by the public, the Commission has also considered and made recommendations to modernize and improve sections of the Land Act. Legislative amendments have been recommended to archaic and outdated aspects of the land laws and to reflect current land practices and the needs of Tonga under its unique land tenure system. Other proposed amendments reflect the major changes to Tonga's political and more democratic system.

### **1.10 PROPOSED AMENDMENTS BY THE NOBLES**

The Nobles submitted the Land (Amendment) Bill 2010 to the Legislative Assembly in 2010, together with consequential amendments. This Bill was referred by the Legislative Assembly to the Royal Land Commission. The Commission had held meetings with representatives of the Nobles, discussed these matters at public meetings, taken note of their proposals and views and made recommendations in this Report. A copy of the Land (Amendment) Bill 2010 and other consequential amendments are attached to this Report in Appendix 11.

### **1.11 FORMER LAND COMMISSIONS**

This is the Land Commission appointed in Tonga. The first was in 1918 which was a forum for hearing and adjudicating land dispute and was the forerunner of the Land Court. The second was in 1983 which was set up and dealt with a similar type of review as presently undertaken by the current 2008 Royal Land Commission.

The Commission took the opportunity to study the report of the 1983 Royal Land Commission because of the similarities in the nature of the

inquiries undertaken. Some of the recommendations of that report have been taken into account by the Commission and have been included as part of its recommendations. A copy of the 1983 Royal Land Commission's report is attached to this Report in Appendix 12.

#### **1.12 LEGISLATION**

In its terms of reference, the Commission was required to draft legislation in support of its recommendations. This legislation would be in respect of all three phases of the work completed and also with respect of other matters, which the Commission deemed necessary, that had come to its attention. This has included modernizing and updating the Land Act to be in line with modern and current land practices.

#### **1.13 TRANSCRIPTS**

All hearings from the three phases were recorded on audio. Transcripts of these audio recordings are available upon request, from the Commission's office or from such office designated by the Government for their storage.



