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- (c) if no land is available in any hereditary estate held by the noble or matapule in one of whose estates the applicant is resident then the allotment shall be taken out of the hereditary estate of any other noble who is willing to provide such allotment;
- (d) if no land is available under rule (c) then the applicant may have his allotment from Crown Land;
- (e) an applicant for an allotment to be granted out of Crown and shall have his tax and town allotments from such particular portion of Crown Land as the Minister may decide:

Provided that an applicant already resident on Crown Land shall where possible be granted the allotments from the particular area of Crown Land in which the applicant is resident.

Explanatory Notes:

- (i) The rule of practice laid down by this section is inapplicable under today's condition. Its deletion will be in line with the requirement to conform with current practices.

Recommendation:

Repeal.

1.1.52 Section 51:

- (1) Where a town allotment is not less than 1600 square metres in area the holder thereof may apply to the Minister requesting him to subdivide the allotment between such sons, grandsons, brothers or nephews, of the applicant, being more than sixteen years of age, as the applicant shall appoint, but the Minister shall not grant an allotment less than 759 square metres in area.
- (2) Where the holder of an allotment as in subsection one hereof set out has no relatives as aforesaid he may apply to the Minister for permission to surrender a part, or the whole of so much of his allotment as exceeds the statutory

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area, and the land so surrendered shall be available for subdivision at the discretion of the Minister.

Explanatory Notes:

- (1) Minor change from 1600 sq. m to 1 rood 20 perches.

Recommendation:

Change 1600 sq. m. to 1 rood 20 perches.

1.1.63

Section 52:

- (1) The Minister upon the application of the Minister of Education shall make provision for an allotment of $3\frac{1}{2}$ hectares of land for the use of the Head Teacher of any Government Primary School who is a male Tongan subject.
- (2) Such provision may be made from Crown land or from land in an hereditary estate.
- (3) Any allotment granted under this section if forming part of Crown land shall be denominated and registered as the Teacher's allotment and shall be held by the Teacher during his term of office and thereafter by his successors and on failure of successors shall revert to the Crown.
- (4) Whenever it shall be necessary for the Minister to make provision for a Teacher's allotment from land forming part of an hereditary estate the holder of such hereditary estate shall lease an area of $3\frac{1}{2}$ hectares to the Minister at a nominal rental for a period of ninety-nine years to be held by the Minister for the use of the teacher during his term of office and thereafter by his successors and on failure of successors or on the expiration of the term of lease the land shall revert to the holder of the hereditary estate.

Explanatory Notes:

- (1) This provision is outdated and has been inoperative for sometime. Its deletion will be in line with the requirement to conform with current practices.

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Recommendation:

Repeal.

1.1.64 Section 53:

- (1) Whenever the Cabinet is satisfied that it is possible so to do the Minister shall arrange for the subdivision of land into rectangular tax allotments and if by reason of such subdivision the holder of a tax allotment is deprived of the whole or part of his allotment he shall in addition to receiving other land in lieu therefore be entitled to the produce of the coconut trees growing on the land of which he has been deprived for a period not exceeding six years from the date on which he has been deprived of the whole or part of his tax allotment as aforesaid and the period for which he shall be so entitled shall be determined by the Minister.
- (2) The road access to any such allotment shall not be of less width than 4 metres.

Explanatory Notes:

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

Recommendation:

No change.

1.1.65 Section 54:

Whenever the holder of a tax or town allotment desires to surrender such allotment or any part thereof it shall be lawful for such holder with the consent of the Cabinet to surrender the said allotment or any part thereof as aforesaid, and any allotment or any part thereof so surrendered shall, subject to the provision of this Act, immediately devolve upon the person who would be the heir of the holder if such holder had died; and if there be no person on whom the allotment or any part thereof can so devolve the allotment or any part thereof if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder thereof.

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Explanatory Notes:

- (i) The general purpose of this needs further elaboration.
- (ii) The proposed additions thereto are self explanatory.

Recommendation:

- (1) No change.
- (2) No surrender shall be effective unless consented to by the holder's wife and the heir (if any).
- (3) If the purpose of the surrender is to give the whole or a part of the allotment to a third party then the consent of the holder's wife and the heir (if any) shall be sufficient to effectively revert the allotment or part thereof surrendered to the estate holder for allocation to such third party.

"DIVISION IA
LEASE OF ALLOTMENTS

1.1.66

Section 55A:

The registered holder of a town or tax allotment may grant a lease over the whole or part of his town or tax allotment, provided that:

- (i) the consent of Cabinet has been obtained in the manner provided in this Act;
- (ii) the holder is not a widow holding the tax or town allotment of her deceased husband;
- (iii) the holder is not the Head Teacher of a Government Primary School holding a tax allotment in terms of Section 52 of this Act;

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- (iv) if the lease is in respect of the whole or part of a tax allotment the period shall not exceed 20 years;
- (v) no mortgage is in force in respect of the allotment part thereof.

Explanatory Notes:

- (i) Several alterations are necessary to this section:
- (ii) (a) Subsections (1) and (2) need no change.
- (iii) Subsections 3 and 4 are not necessary.
- (iv) Subsection 5 needs no change.
- (v) A new subsection is to be added and its purpose is self-explanatory.

Recommendation:

- (1) No change
- (2) No change.
- (3) Repeal.
- (4) Repeal.
- (5) No change.

Add new paragraph -

"The holder retains an area of his town allotment of a size sufficient on which to live or appropriate provision is made in the lease for the holder having a right to live on the town allotment."

1.1.57

Section 55B:

- (1) The amount of rental which shall be payable in respect of a lease of a tax allotment or any part thereof shall be as agreed between the parties, DECLARING that His Majesty in Council may from time to time by Order alter the said rate.

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- (2) The amount of rental which shall be payable in respect of a lease of a town allotment shall be as agreed between the parties thereto.
- (3) The Minister shall collect the rents for all allotment or part or parts thereof leased in terms of the foregoing section and shall pay the same into the Treasury and shall issue a voucher in favour of the holder of the tax or town allotment for that amount of rent less ten per centum thereof.
- (4) The registered holder of a tax allotment leased in terms of the foregoing section shall remain personally liable for the rental payable in terms of Section 57 of this Act to the holder of the hereditary estate or to the Minister as the case may be.

Explanatory Notes:

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

Recommendation:

No change.

1.1.68 Section 55C:

If the registered holder of a tax or town allotment who has granted a lease in terms of this Part of this Act dies before the expiry of the period of the lease, then -

- (1) Where there is a widow entitled to a life estate, she shall for such remaining period of the lease as she is entitled to the life estate -
 - (a) be bound by the terms of the lease;
 - (b) receive the rental due as provided by this Part of this Act; and
 - (c) be personally liable, in the case of a tax allotment, to the holder of the hereditary estate or to the Minister as the case may be for the rental payable in terms of Section 57 of this Act

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- (ii) Where there is no widow entitled to a life estate, but where there is an heir entitled to succeed in terms of the Act, the allotment shall devolve upon him in the manner provided by this Act, except that -
 - (a) he shall be bound by the terms of the lease;
 - (b) he shall receive the rental due as provided by this Part of this Act;
 - (c) be personally liable, in the case of a tax allotment to the holder of the hereditary estate or to the Minister, as the case may be, for the rental payable in terms of Section 57 of this Act.
- (iii) Where there is no heir and where the allotment reverts to the holder or the hereditary estate or to the Crown as the case may be, then the holder of the hereditary estate or the Minister, as the case may be, shall -
 - (a) be bound by the terms of the lease;
 - (b) receive the rental due as provided by this Part of this Act.

Explanatory Notes:

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

Recommendation:

No change.

1.1.69 Section 55E:

No lease granted in terms of this Part of this Act shall contain any clause conferring an automatic right of renewal or an option to renew, and any renewal of any lease granted in terms of this part of this Act shall be subject to the consent of Cabinet and shall be for a period not exceeding 10 years.

Explanatory Notes:

- (i) Delete the existing provision and substitute clause contained in the recommendation below.

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(ii) The proposed new clause is intended to provide uniformity on the provisions relating to renewal of leases.

(iii) It is hoped that in some ways it will make holders more careful and perhaps less inclined to lease their estates or allotments.

Recommendation:

Unless the parties otherwise agree the right of renewal of a lease shall be governed by Section 36 of this Act.

1.1.70 Section 55F:

(1) No person may, at any given time, be the lessee of more than ten leases of tax allotments.

(2) No person may, at any given time, be the lessee of more than five town allotments.

(Note: a person may, at any given time be the lessee of not more than five tax allotments and five town allotments).

Explanatory Notes:

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

Recommendation:

No change.

1.1.71 Section 55G:

(1) During the period of lease of a tax allotment the lessee shall be responsible for any requirements of this or any other Act in relation to planting and upkeep of the allotment.

(2) In the event of the lessee being convicted of an offence under Section 58 of this Act in respect of the allotment leased, the lessee shall automatically forfeit the lease but shall remain liable for the amount of rental eligible in respect thereof until expiry of the original term of lease.

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Explanatory Notes:

- (i) Subsection 1 requires no amendment.
- (ii) Subsection 2 is to be repealed as it is unduly harsh and serve no useful purpose. The lease is terminated and a lessee is still liable for rental for balance of the term of the lease is most unusual and punitive.

Recommendation:

- (1) No change.
- (2) Repeal.

DIVISION II

RENT OF ALLOTMENTS

1.1.72 Section 56:

Where a person elects to take a 5 hectare lot in accordance with Section 46 he shall pay an annual rent of four shillings therefore to the holder of the hereditary estate if the allotment is situate in an hereditary estate or to the Minister if the allotment is situate in Crown Land.

1.1.73 Section 57:

The holder of a tax allotment shall pay an annual rent of eight shillings to the holder of the hereditary estate in which the allotment is situated or to the Minister where the allotment is situate in Crown Lands:

Provided that where a tax allotment is situated partly on Crown land and partly on hereditary estate the holder shall pay four shillings as annual rent to the Crown and four shillings as annual rent to the holder of the hereditary estate.

Explanatory Notes:

- (i) Both the above sections should be replaced and consolidated into one section.

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- (ii) The suggested rearrangement would constitute an improvement.
- (iii) The general purpose of the two sections are not repealed but require updating.
- (iv) Holders of tax allotments have been paying the same rate of 80 seniti for over a century and no adjustments made with depreciation in the value of money - a packet of cigarettes costs more than 80 seniti today.
- (v) Town allotments holders will now pay a rent of \$3 per annum.

Recommendation:

Sections 56 and 57: Repeal and replace with the following:

Section 56 (1) The holder of an allotment shall pay the following annual rent to the estate holder or to the Minister in the case of Crown land:

- \$1 per acre or part thereof per annum for a tax allotment,
- \$3 per annum for a town allotment.

(2) Where an allotment is situated partly on Crown land and partly on hereditary estate the holder shall pay a half of the rent to the Crown and a half to the estate holder.

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1.1.74 Section 58:

- (1) Every holder of an hereditary estate shall keep a rent roll. The rent roll shall contain a list of all persons holding tax or town allotments on the hereditary estate and the holder shall enter therein at the time of payment every payment of rent made by an allotment holder. Upon receiving such rent the holder of the hereditary estate shall deliver a receipt to the allotment holder.
- (2) Every holder of an hereditary estate who fails to deliver a receipt for the payment of rent as aforesaid shall be liable on conviction to a fine of two pounds.

Explanatory Notes:

- (1) The general purpose of this section is not being altered except the amount of the fine is being updated.

Recommendation:

No change except fines in subsection (2) to go up to \$10.00.

1.1.75 Section 59:

During the continuance of their respective life estates the widow or any daughter succeeding to an allotment shall pay the rent for such allotment and shall comply with all town regulations and where two or more daughters succeed as heirs they shall be jointly and severally liable for the rent but no daughter shall be liable for any rent accruing after the determination of her life estate.

Explanatory Notes:

- (1) The general purpose of this section is not altered except the amount of the fine which should be updated to fall in line with today's conditions.

Recommendation:

No change.

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1.1.77 Section 60:

Where the rent of a tax allotment is unpaid the estate holder or where the tax allotment is situate on Crown Land the Minister may sue the holder of the allotment in the Magistrates Court of the district in which such allotment is situate and may recover the said rent by civil proceedings. No claim shall be made for the recovery of any allotment rent which has been unpaid for more than three years.

Explanatory Notes:

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

Recommendation:

No change.

DIVISION III

EJECTMENT

1.1.78 Section 61:

A holder of an allotment may be ejected therefrom upon proof in an action brought against him by the Minister in the Land Court of any of the following grounds -

- (a) that the holder has failed to satisfy a judgment given in an action for the recovery of rent within three months from the date of such judgment or
- (b) that during a period of five years next preceding an action for ejectment three judgments have been given against him in action for the recovery of rent; or
- (c) that during a period of three years next preceding an action for ejectment the holder has not maintained the allotment in the average state of cultivation for tax allotments in the district where the land in respect of which the action is brought is situate; or
- (d) that during a period of three years next preceding an action for ejectment the holder has been convicted more than twice for an offence against section sixty-eight;

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(e) that any rent is two years in arrear.

Explanatory Notes:

(i) The general purpose of this section is to be preserved.

(ii) Subsection (b) and (d) are to be repealed on grounds that they are unnecessary.

Recommendation:

Repeal paragraphs (b) and (d).

1.1.79 Section 62:

A holder of an estate who shall have reason to believe that any of the grounds set out in section sixty-one exist in respect of any holder of a tax allotment situate on his estate shall inform the Minister thereof in writing.

Explanatory Notes:

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

Recommendation:

No change.

1.1.80 Section 63:

Any person from whom possession of a tax allotment shall have been recovered by an action for ejectment who without lawful authority re-enters upon and takes possession of such tax allotment shall be liable on conviction to a fine of five pounds or in default of payment to imprisonment for three months.

Explanatory Notes:

(i) The general purpose of this section requires no change except the amount of the fine which should be updated to fall in line with today's conditions.

Recommendation:

Increase fine to \$50 or in default of payment to 6 months imprisonment.

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1.1.81 Section 64:

When the Court is satisfied that the grounds for ejection have been proved it shall make an order accordingly, and the tax allotment shall revert to the holder of the estate or to the Crown as the case may be and in the case of an allotment reverting to the Crown shall be regranted in accordance with regulations made under this Act.

Explanatory Notes:

- (i) Two amendments are necessary to update this section in line with the other proposals contained in this part of the report.
- (ii) The word tax is to be deleted as town allotments will have a rental payable in respect thereof. Refer to explanatory notes and recommendations under Sections 56 and 57.
- (iii) The wording of the section requires improvement by the additions of the words referred to in the recommendation.

Recommendation:

Delete the word "tax".
Last line to read "in accordance with the provisions of this Act."

DIVISION IV

SURRENDER OF ALLOTMENTS

1.1.82 Section 65:

A registered holder of an allotment who desires to remove permanently from the district in which his allotment is situated to another district may apply in writing to the Minister in the district to which the holder desires to remove for a tax and town allotment to be granted to him out of an hereditary estate or out of Crown Lands in that district and the Minister may upon the conditions hereinafter set forth grant to such applicant an allotment.

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Explanatory Notes:

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

Recommendation:

No change.

1.1.83 Section 66:

- (1) Every application made under section sixty-five shall be subject to the rules governing the grant of allotments (Part IV: Division I) so far as the same are applicable and the applicant shall forward the deed of grant of the allotment he already holds, to the Minister in the district to which he desires to remove and shall pay to the Minister the prescribed fees.
- (2) The Minister shall thereupon, if land in the estate or Crown Land specified as aforesaid is available, grant to the applicant an allotment and shall forward the deed of grant delivered up by the applicant to the Minister in the district in which the allotment surrendered is situate and the Minister shall cause such deed of grant to be cancelled and shall rectify his register of allotments accordingly and the land described in such deed shall revert to the holder of the hereditary estate or to the Crown as the case may be.

Explanatory Notes:

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

Recommendation:

No change.

1.1.84 Section 67:

Section 67 of the Principal Act is repealed.

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Explanatory Notes:

- (1) This section has already been repealed.
- (ii) It is inserted here to complete sequence under the Act and to avoid misunderstanding that an omission has occurred.

Recommendation:

Nil.

DIVISION V

PLANTING OF TAX ALLOTMENTS

1.1.85 Section 68:

- (1) Every male Tongan subject who has been granted a tax allotment by the Minister shall within one year from the date of the grant have growing on such allotment two hundred coconut trees planted in rows and so arranged that the trees are 9 metres apart or $4\frac{1}{2}$ metres apart in rows 18 metres distant from each other.
- (2) Every holder of a tax allotment shall carefully attend to the coconut trees growing thereon and keep them reasonably clean and free from weeds.
- (3) Any holder who shall neglect or omit to comply with any of the requirements of this section shall be liable on conviction to a fine not exceeding five pa'anga.

1.1.86 Section 69:

All prosecutions for offences against section sixty-eight shall be brought in the Magistrates Court. Such prosecutions in the island of Tongatapu shall be at the suit of the Director an Inspector of Agriculture and in any other island shall be at the suit of the police until such time as an Inspector of Agriculture shall be appointed for any such island and from and after the date of his appointment shall be at the suit of such Inspector.

1.1.87 Section 70:

On the hearing of any charge brought against a holder under section sixty-eight the magistrate after hearing the evidence shall if the evidence supports the charge make an order directing the defendant to comply with the requirements of the said section within a time specified in the order and shall adjourn the hearing until some day after the time so specified and on such adjourned hearing shall not convict the defendant unless he has wilfully failed to comply with the said order.

1.1.88 Section 71:

If at the hearing of any prosecution for an offence under section sixty-eight it is made to appear to the satisfaction of the magistrate that the neglect or omission in respect of which such prosecution is brought was due to the illness or physical incapacity of the defendant it shall be lawful for the magistrate to grant to the defendant such exemption from the requirements of section sixty-eight or such extension of time for compliance therewith as having regard to all the circumstances of the case appears just and reasonable.

1.1.89 Section 72:

The Minister as regards tax allotments in Tongatapu district and each Deputy Minister or other officer acting for the Minister as regards tax allotments in his district shall draw up not later than the thirty-first day of January in each year an annual return for the twelve months ended on the preceding thirty-first day of December. Such return shall state -

- (a) the names of all persons (specifying whether male or female) who have succeeded to tax allotments or to whom tax allotments have been granted during the year in that district to which the return relates;
- (b) the date of the grant or the succession in each case;
- (c) the area and situation of each such allotment.

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1.1.90 Section 73:

The Minister and each Deputy Minister or other officer acting for the Minister shall forthwith cause a copy of such return certified under his signature and official seal to be a true copy to be forwarded to the person authorised by section sixty-nine to prosecute for that district to which such return relates and such copy shall in all proceedings for offences against section sixty-eight be admissible as evidenced of the holder's responsibility for any tax allotment therein specified as well as of the date of the grant or succession to such allotment.

Explanatory Notes:

- (i) These provisions in the Act are not strictly necessary. They are inoperative and outmoded.

Recommendation:

Repeal.

DIVISION VI

DEVOLUTION OF ALLOTMENTS

1.1.91 Section 74:

On the death of the lawful male holder of any tax or town allotment his widow shall be entitled to a life estate in such allotment which estate shall terminate on her re-marriage or upon proof in legal proceedings (as provided by section seventy-five of her having committed fornication or adultery:

Provided always that the failure of the deceased lawful male holder of any tax allotment to register the same under the provisions of Division II of Part VII of this Act shall not of itself be a bar to the grant to his widow of a life estate under this section, and that provided the Minister of Lands is satisfied upon enquiry that the deceased person was the lawful holder of the said allotment shall be lawful for him to effect posthumous registration at the request of the widow.

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Explanatory Notes:

- (i) The Commission has been in conflict over this section as to the course to adopt over the widow's life interest. It is a moral question which terminates the widow's life interest. Both the male holder and widow have a life interest in respect of tax and town allotments yet a male who is guilty of adultery or fornication will suffer no disability during the subsistence of the marriage or after death of wife. However a woman whose husband is deceased is penalised for her frailties and indiscretions.
- (ii) With the freehold proposals and rearrangement of Section 76 on succession it is considered that the reference as to adultery and fornication should be deleted. This would be a fair and equitable measure on behalf of the women in this Kingdom.
- (iii) If holder during his lifetime makes a grant the issue of the widow's interest does not arise.
- (iv) If widow remarries her life interest is terminated.

Recommendation:

Remove reference to fornication or adultery.

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1.1.92 Section 75:

Where it is sought to recover any tax or town allotment from a widow on the ground that she has committed fornication or adultery it shall be lawful for the person claiming such allotment to bring proceedings in the Land Court for the recovery thereof and upon proof of such fornication or adultery to the satisfaction of the Court the Court shall declare that the widow's estate is terminated and shall forthwith forward a certificate of such finding to the Minister.

Explanatory Notes:

(i) Refer explanatory notes to Section 74 for recommendation below.

Recommendation:

Repeal.

1.1.93 Section 76:

Subject to the life estate of the widow the succession to tax or town allotment shall be as follows:

- (a) a descent shall be traced from the last lawful male holder;
- (b) only person born in wedlock may inherit;
- (c) the inheritance shall descend in the first place to the eldest son of the deceased holder or if such son is dead to the eldest male heir of the body of such son. If the eldest son of the deceased holder be dead without leaving any male heir of his body the succession shall devolve upon the next eldest son of the holder or if such son is dead to the eldest male heir of such son's body. If the second son of the deceased holder be dead without leaving any male heir of this body the succession shall go to the next eldest son of the deceased holder or the eldest male heir of his body and so on taking all the deceased holder's sons in succession in order of their ages;
- (d) if the holder dies without leaving any son or heir male of the body of a son him surviving then any unmarried daughter of the deceased holder shall inherit for her life and if there are two or more unmarried daughters they shall inherit all together jointly for their lives. The life estate of any daughter shall terminate on

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her marriage or upon proof in proceedings against her in the Land Court to recover such allotment (after the manner provided in section seventy-five) that she has committed fornication or adultery;

- (e) in default of any unmarried daughter of the deceased holder an allotment shall descend to the deceased holder's brother or if such brother be dead to the eldest male heir of heir of his body then the holder's next eldest brother shall succeed or if he be dead the eldest male heir of his body and so on taking the deceased holder's brothers in succession in order of their ages;
- (f) if the holder dies without leaving any brother or heir male of the body of a brother him surviving the inheritance shall go to the eldest brother of the deceased holder's father or if such brother be dead to the eldest male heir of the body of such brother. If the eldest brother of the deceased holder's father be dead leaving no male heir of his body then the next eldest brother of the deceased holder's father in succession in the order of their respective seniority;
- (g) in default of brothers of the deceased holder's father or male heir of the body of such a brother the allotment if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder thereof:

Provided always that the failure of the deceased lawful male holder of any tax or town allotment to register the same under the provisions of Division II of Part VII of this Act shall not of itself be a bar to the grant to his heir under this section, and that provided the Minister of Lands is satisfied upon enquiry that the deceased person was the lawful holder of the said allotment it shall be lawful for him to effect posthumous registration at the request of the heir.

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Explanatory Notes:

(i) The proposed rearrangement of this section is necessary to incorporate the freehold proposals. If no grant is made by the holder these provisions apply.

(ii) Legitimated person is included for the same reasons appearing under explanatory notes to Section 41.

Recommendation:

Subject to any grant made by the holder duly registered and also to the life estate of the widow the succession to the tax or town allotment shall be as follows:

- (a), (c) to (g) - No change.
- (b) only person born in wedlock or legitimated may inherit.

1.1.94 Section 77:

On the death of the lawful male holder of any tax or town allotment without leaving any person entitled to succeed thereto in accordance with the provisions of this Act such allotment shall if situate on Crown Land revert to the Crown and if situate on an hereditary estate shall revert to the holder thereof.

Explanatory Notes:

(1) This section is to be amended and made subject to grant made by holder. It is to apply only if no grant had been made. The amendment is necessary to enable the freehold concept to operate without conflict.

Recommendation:

Make reference to grant made by the holder duly registered.

1.1.95 Section 78:

Save and except a son or grandson of the deceased holder no person who already holds a tax or town allotment shall be permitted to succeed as heir to another allotment of the same kind as the allotment he already holds or to choose between an allotment already held by him and one to which he becomes entitled as heir:

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Provided always that where a son or a grandson becomes entitled to succeed to an allotment of his deceased father or grandfather and already possesses an allotment of the same kind it shall be lawful for such son or grandson to elect between the allotment already held by him and that of his deceased father or grandfather.

Explanatory Notes:

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

Recommendation:

No change.

1.1.96 Section 79:

Where the heir being the son or grandson of the deceased holder elects to retain the allotment he already holds it shall be lawful for the eldest son of a son who is the heir of the deceased holder or for the brothers of a grandson who is the heir of the deceased holder provided such eldest son or brothers of a grandson already hold a town or tax allotment to elect in succession between the allotment they already hold and that of the same kind held by the deceased holder and if all the persons aforesaid elect to retain the allotments already held by them it shall be lawful for the next son of the deceased holder if alive and provided he already possesses an allotment of the same kind to elect as aforesaid but if he be dead or if he elects to retain his own allotment it shall be lawful for his sons provided they already hold allotments of the same kind to elect in the order of their ages and if they also elect to retain their allotments it shall be lawful for the next son and his sons to elect and so on until a son or grandson elects to take the allotment of the deceased holder but if all the sons and grandsons elect to retain the allotments they already hold the allotment of the deceased holder if situate on Crown land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder provided that if any of the persons above-mentioned do not already possess an allotment of the same kind the right to elect shall pass to the next person entitled as though the person immediately preceding him had elected to retain his own allotment.

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Examples:

A the holder of a tax allotment dies and leaves two sons B and D and grandsons F and G the sons of B and H and K the sons of G (a son who predeceased A) all of whom with the exception of H already at A's death hold tax allotments: B the eldest son is entitled to elect first. If he elects to retain his allotment B's sons F and G are entitled to elect in the order of their ages but if they too elect to retain the allotments they already hold H and K the sons of the deceased son C should be eligible to elect but H not holding an allotment cannot elect. If K elects to retain his own allotment the deceased holders allotment reverts to the Crown or Tofi'a holder. If B the eldest son predeceased A B's eldest son F would if he already had an allotment of the same kind be entitled to the first election.

Explanatory Notes:

- (i) The general purpose of this section requires extension. The recommendation is self explanatory.

Recommendation:

Change provision to allow succession by next heir despite not having an allotment of the same kind.

1.1.97

Section 80:

Where a son or grandson elects to take the allotment of his deceased father or grandfather as the case may be and to surrender the allotment of the same kind already held by him the allotment so surrendered shall be granted to any son of the person surrendering it who does not already hold an allotment of the same kind, and where such son is under sixteen years of age the allotment shall be granted to one or more trustees to be held by them for the benefit of such son until he reaches sixteen years of age whereupon the trustees shall inform the Minister who shall then grant the allotment to such son. As between two or more such sons the eldest shall be preferred. In default of any such son

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the allotment so surrendered shall be granted by the Minister to any brother of the person surrendering it provided such brother is sixteen years of age or upwards and does not already possess an allotment of the same kind. As between two or more such brothers the eldest shall be preferred. In default of any such brother the allotment if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder.

Explanatory Notes:

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

Recommendation:

No change.

1.1.98

Section 81:

If no claim to a tax or town allotment has been lodged by or on behalf of the heir or widow with the Minister or his Deputy within twelve months from the death of the last holder such allotment if situate on Crown Land shall revert to the Crown and if situate on an hereditary estate shall revert to the holder.

Explanatory Notes:

- (i) It is not proposed to alter the general purpose of this section. A procedural provision as to how the claim is to be made is to be added to conform with current practice.

Recommendation:

Claim to be made by affidavit.

1.1.99

Section 82:

Where any tax or town allotment shall revert to the Crown under the preceding provisions of this Division such allotment unless required for Government purposes shall be granted out by the Minister in accordance with such regulations as may be made under this Act.

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Explanatory Notes:

(i) The general purpose of this section is to be retained but rewording as proposed below is necessary for improvement.

Recommendation:

Second to last line after the word Minister to read "in accordance with the provisions of this Act."

1.1.100 Section 83:

No lease shall be granted except with the consent of the Cabinet, but consent shall not be granted to a lease by a widow of the land of her deceased husband.

Explanatory Notes:

(i) The general purpose of this section is to be retained but rewording is necessary for improvement.

Recommendation:

A widow shall not lease the allotment over which she holds a life interest.

1.1.101 Section 84:

Any Tongan subject of full age who does not hold a tax allotment may apply to the Minister on the prescribed form for a lease of a parcel of bush land to be granted to him. The Minister shall submit such application to the Cabinet and Cabinet may authorise the Minister to grant the lease upon such conditions and for such term and at such rent as it deems fit.

Explanatory Notes:

(i) This section is unnecessary and serves no purpose.

Recommendation:

Repeal.

1.1.102 Section 85:

A registered holder of a tax allotment of statutory area may be granted upon application in the prescribed manner a lease of a parcel of land.

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Explanatory Notes:

- (i) This section is already repealed.
- (ii) It is inserted here to complete sequence of sections under the Act and to avoid misunderstanding that an omission has occurred.

Recommendation:

Nil.

1.1.103 Section 86:

- (1) Whenever it is found that any person is holding land as a tax allotment which is of greater area than the statutory area, the Minister may give twenty-one days notice in writing to such person informing him that he intends to subdivide such land and to grant from out of the same to such person a tax allotment of the statutory area.
- (2) In any such case it shall be lawful for the person holding land in excess of a tax allotment upon which improvements have been made over a greater area than the statutory area for allotments to receive a lease for all or any part of such improved portion.

Explanatory Notes:

- (i) This section is unnecessary and serves no purpose.

Recommendation:

Repeal.

1.1.104 Section 87:

A lease granted under sections eighty-five or eighty-six shall be in the form prescribed in Schedule VIII. The term shall not exceed fifty years, and shall be renewable upon such conditions as to rent and methods of cultivation as may be ordered by regulations made under this Act.

Explanatory Notes:

- (i) Refer explanatory notes under Section 86.

Recommendation:

Repeal.

Section J

Explanatory Notes: (1) This section becomes redundant on repeal of Sections 85 and 86.

Recommendation: Repeal.

Section

PART VA - MORTGAGES

- 1.1.105 Section 91A: In this Act, unless the context otherwise requires -
"mortgage" shall mean a transfer of land as security for a debt effected as provided in this Act;
"mortgagee" shall mean the person or persons or corporate body in whose favour a mortgage has been granted, and his or their successors in title;
"mortgagor" shall mean the landholder who has granted a mortgage over the whole or part of his land, and his successors in title to the land;
"mortgage lease" shall mean the form of mortgage lease set out in Schedule VIIA to this Act with such variation as the circumstances may require.
- 1.1.106 Section 91B: It shall be lawful to grant mortgages in accordance with the provisions of this Act.
- 1.1.107 Section 91C: (1) A mortgage may be granted in favour of -
(i) the Government; and
(ii) the Bank of Tonga.
(2) His Majesty in Council may by Order-in-Council specify the names and addresses of other persons or bodies corporate or incorporate in whose favour mortgages may be granted.
(3) No mortgage may be granted in favour of any person or persons or bodies corporate or incorporate other than those which have been specified in terms of the foregoing subsection.

Section J

1.1.108 Section 91D:

A lessee of a registered lease may grant a mortgage over the whole or any part of the lands leased by him, provided that -

- (i) the approval of the Minister, has been obtained in manner provided in this Part of this Act;
- (ii) the mortgage deed is an assignation of lease in a form acceptable to the Minister;
- (iii) the mortgage is for a period not exceeding the unexpired term of the lease EXCLUDING any period of renewal to which the lessee may have an option.

1.1.109 Section 91E:

(1) The registered holder of a tax or town allotment may grant a mortgage over the whole or part of his tax and town allotment provided that -

- (i) the approval of the Minister, has been obtained in the manner provided by this Part of this Act;
- (ii) the holder is not a widow holding the tax or town allotment of her deceased husband;
- (iii) the loan or advance or consideration in respect of which the mortgage is to be granted as security, is to be used for the purposes of improvement of the allotment over which the mortgage is to be granted;
- (iv) the mortgage is for a period not exceeding 10 years;
- (v) the mortgage is created by a mortgage lease;
- (vi) in the case of a tax allotment the holder remains personally liable for the payment of annual rental and other conditions relative to tax allotments in this Act.

(2) The Minister shall in his sole discretion decide whether the use to which the loan or advance or consideration is to be put constitutes an improvement in terms of paragraph (iii) of the foregoing subsection.

Section J

1.1.110 Section 88:

No person to whom a lease has been granted under the provisions of the foregoing sections may permit any alien to occupy or reside within the area thus leased to him unless such alien has first obtained a permit to reside therein in accordance with the provisions of sections fourteen and fifteen of this Act.

Explanatory Notes:

- (i) This section is related to Sections 86 and 87 and once those sections are repealed, Section 88 becomes redundant.

Recommendation:

Repeal.

1.1.111 Section 89:

Section 89 of the Principal Act is repealed.

Explanatory Notes:

- (i) This section is already repealed.
- (ii) It is inserted here to complete sequence of sections under the Act and to avoid misunderstandings that omission or oversight has occurred.

Recommendation:

Nil.

1.1.112 Section 90:

Upon receiving an application under sections eighty-five or eighty-six, the Minister shall furnish the Director of Agriculture with the name of the applicant the particulars of the land held by and of the land proposed to be leased by the applicant and shall request the Director to inspect the land and report -

- (a) upon the state of cultivation of the land proposed to be leased, or
- (b) upon the state of cultivation of the statutory allotment or both as the Minister may require.

Section 91F:

1.1.113 Section 91F:

(1) The registered holder of an hereditary estate may grant a mortgage over an unallocated part or unallocated parts of his hereditary estate, provided that -

(i) the approval of the Minister has been obtained in the manner provided by this Part of this Act;

(ii) the loan or advance or consideration in respect of which the mortgage is to be granted as security, is to be used for the purposes of improvement of the hereditary estate over which the mortgage is to be granted;

(iii) the mortgage is for a period not exceeding 10 years;

(iv) the mortgage is created by a mortgage lease;

(v) the total amount of all land mortgaged does not exceed five per centum of the total land comprising the hereditary estate or estates of the holder, said percentage to be in addition to the percentage of land which may be leased in terms of Section 33 of this Act.

(2) The Minister shall in his sole discretion decide whether the use to which a loan or advance or consideration constitutes an improvement in terms of paragraph (ii) of the foregoing subsection.

Section 91G:

(1) Application for the approval of the Minister shall be made by any person wishing to grant a mortgage to the Minister on the prescribed form, which shall be signed by the applicant and by the proposed mortgagee, and the applicant will furnish the following information -

(a) name and address of applicant;

(b) the location and area of the land to be mortgaged;

- (c) type of holding (i.e. hereditary estate, tax or town allotment or lease);
- (d) the name and address of the proposed mortgagee;
- (e) amount and particulars of loan;
- (f) period of mortgage;
- (g) period and details of repayment;
- (h) interest;
- (i) purpose of loan;
- (j) details of any collateral security (i.e. any other security to be granted to the mortgagee);
- (k) details of any other mortgage which has been granted by the applicant.

(2) If any person knowingly supplies wrongful information on an application form as prescribed in the foregoing subsection he shall be liable on conviction to a fine not exceeding one hundred pa'anga or in default of payment thereof to a term of imprisonment not exceeding six months, and if the Court is satisfied that wrongful information was knowingly supplied by a proposed mortgagee, the Court may declare void any mortgage registered as a result of such application.

1.1.115 Section 91H:

- (1) There shall be a Register of Mortgages which shall be kept in the Office of the Minister.
- (2) All mortgage deeds shall be signed by the mortgagor and shall be delivered together with one signed copy thereof to the Minister for registration within 30 days of the final date of signature.
- (3) Registration of mortgage deed shall be effected by the Minister filing the copy of the deed in the Register and endorsing the original with the following memorial of registration:

Section J

Registered the day of
..... 19

Register of Mortgages, Book
Folio

.....
Signature of Minister.

- (4) No mortgage shall be effective until it has been registered.
- (5) No mortgage shall be registered unless it is certified by the mortgagee or by his solicitor as being correct for the purpose of this Act.

1.1.116 Section 91J:

- (1) A mortgagee may assign the mortgage or any part thereof provided that -
 - (i) the approval of the Minister has been obtained in the manner provided by subsection (4) of this section;
 - (ii) if the mortgagor has not defaulted in his obligations to the mortgagee, either the consent of the mortgagor has been obtained or the Minister has consented to dispense with the mortgagor's consent as provided in the next following subsection;
 - (iii) the assignee is an acceptable mortgagee within the meaning of Section 91C of this Act.
- (2) Where a mortgagor refuses to consent to the assignation of a mortgage, the Minister may at the request of the mortgagee and after such enquiry as he thinks fit, dispense with consent of the mortgagor.
- (3) The assignation of a mortgage shall be in the form contained in Schedule VIIA with such variations as the circumstances may necessitate..
- (4) Application to assign a mortgage shall be made to the Minister by the mortgagee on the prescribed form which shall be signed by the applicant and by the person to whom the mortgage is to be assigned, and the applicant will furnish the following information -

Section 9

- (a) registered number of mortgage;
- (b) name and address of proposed assignee;
- (c) consideration;
- (d) details of any proposed alterations in terms of mortgage.

(5) If any person knowingly supplies wrongful information on an application form as prescribed in the foregoing subsection, he shall be liable on conviction to a fine not exceeding one hundred pa'anga or in default of payment thereof to a term of imprisonment not exceeding six months.

1.1.117 Section 91K:

- (1) All assignments shall be signed by the mortgagee (assignor) and assignee and shall be delivered together with one signed copy thereof to the Minister for registration in the Register of Mortgages within 30 days of the final date of signature.
- (2) Registration of an assignemtn of a mortgage shall be effected by the Minister filing the copy of the assignment in the Register and endorsing the original with the following memorial of registration:

Register the day of
;..... 19.....

Assignment of Mortgage
Book Folio
Book Folio

.....
Signature of Minister

- (3) No assignment shall be effective until it has been registered.
- (4) No assignment of a mortgage shall be registered unless it is certified by the assignee or by his solicitor as being correct for the purposes of this Act.

Section J

1.1.118 Section 91L:

- (1) The registration of the following documents affecting mortgages shall be compulsory:
 - (a) assignments;
 - (b) assignments for the benefit of creditors;
 - (c) grants of Letters of Administration;
 - (d) grants of probate;
 - (e) injunctions affecting land and releases of such injunctions;
 - (f) memorials of pending suits affecting lands;
 - (g) orders of Court appointing a trustee or trustees or an official receiver;
 - (h) powers of attorney;
 - (i) discharge granted in terms of Section 91M hereof;
 - (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.
- (2) The registration of any document required by the foregoing subsection to be registered shall be effected in the following manner -
 - (i) such document together with a true copy thereof shall be delivered to the Minister together with the original mortgage deed or any assignation thereof;

Article J

- (ii) 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 mortgages) and shall endorse the original with the following memorial of registration:

Registered the day of
 19

Register of Documents affecting
 Mortgages.

Book Folio
 Mortgage No.

.....
 Signature of Minister

- (iii) the Minister shall endorse the original mortgages deed or any assignation thereof together with the duplicate of the same on file in his office with a memorial of registration as the nature of the case requires, and shall return such deeds to the person entitled thereto.

1.111 Section 91M:

- (1) When a mortgagor has discharged his obligations to the mortgagee prior to the expiry of the period of the mortgage deed, the mortgagee shall grant in favour of the mortgagor a discharge of the mortgage, which discharge shall be in the form set out in Schedule VIIA with such variations as the circumstances may necessitate.
- (2) On the expiry of the period of the mortgage deed and in the event of no discharge having been granted in terms of the foregoing subsection obligations of the mortgagor to the mortgagee shall be deemed to have been discharged and the mortgagee shall give to the mortgagor the mortgage deed and a discharge thereof for the purpose of registration.

Section J

(3) A discharge granted in terms of this section shall be registered as provided in the foregoing section.

(4) No discharge of a mortgage shall be registered unless it is certified by the mortgagor or by his solicitor as being correct for the purposes of this Act.

1.1.3 Section 91N:

(1) In the event of the mortgagee wishing to take possession of the lands mortgaged following default by the mortgagor of any of the obligations to the mortgagee set out in the mortgage deed or in any other document lodged with the Minister in terms of the next succeeding section the mortgagee shall give notification both to the mortgagor and to the Minister his intention to take possession of the lands mortgaged and may thereafter take possession at any time after the expiry of 14 days from the date of said notification.

(2) After a mortgagee has taken possession, in terms of the foregoing subsection of the land mortgaged, he may either retain possession for the unexpired term of the mortgage lease or he may sub-lease the lands for the unexpired term of the mortgage lease.

1.1.4 Section 91P:

Except as provided by this or any other Act a mortgage deed (or any agreement or bond relative thereto) is effective according to its terms between the parties to it.

1.1.5 Section 91Q:

Sections 3 to 7 of the Contract Act shall have no application to mortgages registered under this Act.

1.1.6 Section 91R:

(1) All applications for a mortgage, mortgage leases and assignments of mortgages, shall consist of two original documents and in the respective forms thereof contained in Schedule VIIA with such variations as the circumstances may require.

(2) All discharges of mortgages shall be in the form contained in Schedule VIIA with such variations as the circumstances may require."

Explanatory Notes:

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

Recommendation:

No change.

Section 91:

Upon receiving the report of the Director the Minister shall submit the same with the application to the Cabinet in order that it may consent to the grant of the lease; and the Cabinet, if satisfied as to the ability and character of the applicant, and that he has complied with section sixty-eight relating to planting, shall authorise the Minister to grant to the applicant a Tongan lease of the land proposed to be leased or such portion thereof as it may deem fit.

Explanatory Notes:

- (1) This section becomes redundant on the repeal of Section 68.

Recommendation:

Repeal.

PART VI

THE FORESHORE

Section 92:

The foreshore is the property of the Crown and the Minister may with the consent of the Cabinet grant permits to erect stores or wharves or jetties thereon or to reside on any portion thereof or he may with the like consent grant a lease for any of the purposes aforesaid.

Explanatory Notes:

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

Recommendation:

No change.

Section 93

1.1.125 Section 93:

- (1) The Minister may with the consent of the Cabinet and upon payment of the prescribed royalty grant to any person permission in writing to cut and remove stone from the foreshore not being part of a harbour.
- (2) All stone cut under such permission shall be removed from the foreshore within fourteen days after the same has been cut and if not so removed shall become the property of the Crown.
- (3) Any person who shall cut and remove any stone from the foreshore without having previously obtained such permission as aforesaid shall be liable on conviction therefore to a fine not exceeding five pounds and in default of payment to imprisonment for any term not exceeding two months and the Court by which any conviction under this section is pronounced may declare such stone forfeited to the Crown.

Explanatory Notes:

- (1) The general purpose of this section is to be retained but the amount of the fine is to be increased as part of the updating procedure to bring the Act into line with present day conditions.

Recommendation:

Fine up to \$500.

PART VII - REGISTRATION OF TITLE

DIVISION I

HEREDITARY ESTATES

1.1.127 Section 94:

Every tofi'a certificate shall be made out in duplicate in the form contained in Schedule VI and shall contain in addition to the words of grant a description and diagram of the land comprised in the hereditary estate.

Section J

Explanatory Notes:

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

Recommendation:

No change.

1.1.128 Section 95:

One copy of the certificate shall be delivered to the holder and the Minister shall bind up the other in a book to be called the register of tofi'as, which shall be kept by the Minister in his office at Nuku'alofa.

Explanatory Notes:

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

Recommendation:

No change.

1.1.129 Section 96:

A successor to an hereditary estate shall within three days of taking the oath of allegiance as provided by section thirty-eight register himself as the person duly entitled to the estate in the manner following -

- (a) the successor shall present the tofi'a certificate relating to the estate to the Minister and, if demanded by the Minister, shall produce a certificate from the clerk of the Privy Council to the effect that he has duly taken the oath as aforesaid and shall pay the prescribed fees;
- (b) if the tofi'a certificate is lost or has been destroyed the successor shall inform the Minister of the facts of such loss or destruction verifying the same by the affidavit of himself or any other person who has a knowledge of such facts and the Minister shall then issue a new certificate;
- (c) the Minister shall endorse on the certificate presented to him or granted by him in the cases of loss or destruction and endorse on the duplicate in the register of tofi'as a memorial of registration in the following form:

Section J

Succession: Registered the
day of 19
A.B. the son of C.D etc
succeeded to the title and estates
on the day of
..... 19
Seal.

.....
Signature of Minister

Explanatory Notes:

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

Recommendation:

No change.

1.1.130 Section 97:

There shall be endorsed upon or attached
unto every tofi'a certificate a schedule
of leases and a schedule of allotments
granted out of the hereditary estate
to which the certificate relates.

Explanatory Notes:

- (i) This section required updating.
- (ii) Refer Sections 91A to 91R mortgages
which were introduced by the 1976
Amendments without this section
being amended to cover the new
situations.

Recommendation:

Schedule of other encumbrances should
also be included e.g. mortgages, caveats
etc.

1.1.131 Section 98:

Upon any lease or any allotment being
registered the Minister shall enter the
particulars of the same in the schedule
endorsed or attached to the tofi'a
certificate kept in the register of
tofi'as and shall call upon the holder
of the hereditary estate to produce to
him his tofi'a certificate and shall make
thereon a like endorsement; and where
any lease is surrendered or where any
allotment reverts the Minister shall make
appropriate endorsement in the schedules
as aforesaid.

Section J

Explanatory Notes:

- (1) Requires amendment for the same reasons under Section 97.

Recommendation:

Add other encumbrances e.g. mortgages, caveat.

DIVISION II

REGISTRATION OF ALLOTMENTS

1.1.132 Section 99:

All deeds of grants of allotments shall be in duplicate and in the form prescribed in Schedule V and in addition to proper words of description shall contain a diagram of the land.

Explanatory Notes:

- (i) The general purpose of this section is to be retained with an additional clause for deferment of registration until improvements carried out.
- (ii) There are a large number of vacant town allotments without improvement and not occupied.
- (iii) The additional clause is to encourage development and avoid people tying land up without using or occupying the same.

Recommendation:

No change.

1.1.133 Section 100:

The Minister shall sign and deliver to the grantee one duplicate and shall register the other by binding up the same in a book to be called the register of allotments.

Explanatory Notes:

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

Section J

Recommendation: No change.

1.1.134 Section 101:

Where a person is entitled to succeed to an allotment but is unable to produce to the Minister the relevant deed of grant for endorsement under the last preceding section, he shall produce such evidence as the Minister may require to prove his title, and the Minister, upon being satisfied as to the entitlement of that person, may register that person as the holder of that allotment and issue to him a new deed of grant subject to such encumbrances as may be endorsed on the duplicate deed in the register, and upon the issue of the new deed of grant the former deed of grant shall be deemed to have been duly cancelled.

Explanatory Notes:

- (i) The general purpose of this section is retained except the time period of one month is to be extended to 12 months.
- (ii) One month is too short.
- (iii) Refer Section 81 where a time period of 12 months is provided.

Recommendation: Change one month to 12 months.

1.1.135 Section 102:

- (1) Whenever any person claiming to be entitled to succeed to an allotment is unable to present to the Minister the deed of grant held by his predecessor in title he shall present an affidavit to the Minister, made by himself or some other person knowing the reasons for such failure, and setting forth such reasons as fully and completely as is possible.

Section J

(2) The Minister shall thereupon cause a notice to be published in the Gazette giving the particulars of the lost deed of grant and stating that on the fortieth day after the date of publication of the notice he intends to deliver a new grant to the person claiming to be entitled to the allotment.

(3) After the expiry of such notice the Minister may proceed to register the person claiming to be entitled to the allotment as the holder thereof and to cancel the existing deed and to deliver a new deed to the claimant.

Explanatory Notes:

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

Recommendation:

No change.

DIVISION III

REGISTRATION OF LEASEHOLD TITLE

(A) FORM OF LEASES, ETC.

1.1.156 Section 103:

(1) Except where the landholder is a person within the meaning of paragraph (1) of Section 2 of this Act, a permit issued in Form No.6, or substantially in that Form, of Schedule VIII to this Act shall not be capable of being transferred and shall cease to be valid on and after the date of the death of either the grantee of that permit or of the landholder of the day of the issue of that permit.

(2) A permit issued in Form No.2, or substantially in that Form, of Schedule VIII to this Act shall not be capable of being transferred and shall cease to be valid on and at the death of the grantee of that permit.

Explanatory Notes:

(i) This section is being updated to cater for amendments to the new form or lease and requirement for parties to execute the same.

Section 5

Recommendation:

"Such variations as the parties may agree".
Subsection (4) to read -
"Every lease shall be signed by the lessor
and the lessee".

1.1.137 Section 104:

A permit shall only be valid for the life
of the grantee and shall not be transferable.
On the death of the grantee the premises
specified in any permit if situate on
Crown Lands shall be possessed by the
Crown and if situate on the land of a
subject shall be possessed by such subject
freed from any burden or obligation imposed
by the permit.

Explanatory Notes:

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

Recommendation:

No change.

(B) REGISTRATION OF LEASES, SUB-LEASES,
TRANSFERS AND PERMITS

1.1.138 Section 105:

No lease, sub-lease, transfer or permit
until registered in the manner herein-
after prescribed shall be effectual to
pass or affected any interest in land -

Provided always that the requirements
of Division III (B) of Part VII as
to registration shall not apply to a
sub-lease not exceeding a term of
three years from the making thereof.

Explanatory Notes:

(1) The proviso is redundant and should
be repealed.

Recommendation:

Repeal proviso.

1.1.139 Section 106:

Registration of a lease or of a permit
as the case may be shall be effected by
the Minister filing one original thereof
in the register of leases in his office
and by endorsing the other with the
following memorial of registration:

Section J

Registered the day of
19.....
Register of Leases (or Register of
Permits as the case may be)
Book: Folio:

.....
Signature of Minister

The lease (or permit as the case may
be) endorsed with the memorial of
registration shall be delivered by the
Minister to the person entitled thereto.

Explanatory Notes:

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

Recommendation:

No change.

1.1.140 Section 107:

- (1) Registration of a transfer or of
a sub-lease shall be effected by
the Minister filing one original of
the document to be registered in
the register of transfers (or
register of sub-leases as the case
may be) and endorsing the other
the other original with the
following memorial of registration:

Registered the day of
..... 19

Register of Transfers (or Register
of Sub-Leases as the case may be)
Book: Folio:

.....
Signature of Minister

- (2) The Minister shall also endorse a
memorial of registration upon
both the original and the duplicate
filed in his office of that instru-
ment under which the grantee of
the transfer or sub-lease holds
the lands transferred or sub-leased.
Such memorial of registration shall
be in either of the following
forms according to the requirements
of the case:

Section 9

Transfer, registered the
day of 19
Register of Transfers: Book:
Folio: A. to B. conveying
to him this land (or acres
of this land as the case may be)
consideration

.....
Signature of Minister

Sub-lease, registered the
..... day of 19
Register of Sub-leases: Book:
Folio: X. to Y. conveying this
land (or acres of this
land as the case may be) for
..... years ending on the
..... day of
Yearly rent

.....
Signature of Minister

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

Recommendation: No change.

1.1.141 Section 108: The original of the instrument under
which the grantor of the transfer or
sub-lease holds endorsed with the memorial
of registration specified in section one
hundred and seven and the duplicate
original of the transfer (or sub-lease
as the case may be) endorsed with the
memorial of registration shall thereupon
be delivered by the Minister to the
respective persons entitled thereto.

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

Recommendation: No change.

1.1.142 Section 109: (1) The surrender of a lease or of a
sub-lease shall be effected by the
Minister endorsing upon the
duplicate lease (or sub-lease as

Section 3

the case may be) filed in his office the word "surrendered" together with the date of the surrender and such endorsement shall be signed in the presence of the Minister by the lessee and holder of the estate or allotment where the intended surrender is of a lease or by the sub-lessee and sub-lessor where the intended surrender is that of a sub-lease. The Minister shall also affix his signature and seal of office to such endorsement.

- (2) Where the intended surrender is of a lease the Minister shall likewise endorse upon the lease to be produced by the lessee for the purpose a memorandum of the fact and date of such surrender.
- (3) Where the intended surrender is that of a sub-lease the Minister in addition to the endorsement upon the duplicate sub-lease specified in subsection one of this section shall endorse upon the sub-lease to be produced by the sub-lessee for that purpose a memorandum of the fact and date of such surrender and shall make a similar memorandum upon both the duplicate originals of that instrument under which the grantor of the sub-lease holds the lands thereby sub-let and such grantor shall produce to the Minister the duplicate of such instrument in his possession for the purpose of having such memorandum endorsed thereon.

Explanatory Notes:

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

Recommendation:

No change.

