

ACTS INTERPRETATION BILL 2015

SAMOA

Explanatory Memorandum

Introduction

The Bill seeks to repeal and replace the current Act. The purposes of the Bill are:

- (a) to provide basic rules for interpreting a provision of an Act; and
- (b) to provide definition of words commonly used in Acts so that they are not repeated; and
- (c) to provide rules which regulate operations of Acts; and
- (d) to provide standard provisions commonly used in Acts.

Clauses:

PART 1 - PRELIMINARY

Clause 1: - states that, when enacted, the Bill will be called the Acts Interpretation Act 2015. It will commence on the date it is assented to by the Head of State.

Clause 2: - provides that it applies to the interpretation of all Acts, including its application on the Government.

PART 2 - DEFINITIONS AND INTERPRETATION OF ACTS

Clause 3: - provides for definitions of words that are normally used in Acts and definitions of official titles and names of persons and other institution of the State and the Government.

Clause 4: - provides that definitions in an Act apply to its subsidiary legislation (regulations, rules, orders, etc).

Clause 5: - provides that when a word is used it refers to all its grammatical forms and roots, including singular and plural and gender.

- Clause 6:** - clarifies that reference in an Act to “Gazette” includes reference to the Savali and publication in either of them satisfies the requirement of publication. It also clarifies that the non-publication does not affect the validity of the things required to be published.
- Clause 7:** - provides for the principles or rules that are to apply when interpreting a provision of any Act. It does not limit the power of the courts to use other principles or rules of interpretation that are not covered.
- Clause 8:** - provides for the definition of “shall”, “must” and “may” as enacting verbs of a provision of an Act.

PART 3 - GENERAL, COMMENCEMENT AND CITATION

Division 1 - General matters

- Clause 9:** - provides that Acts are to be judicially noticed (i.e. the courts will recognize an Act without requiring for its proof to be made), how Acts are to be numbered and divided into sections, parts and other units.
- Clause 10:** - provides that when a provision does not specify which Act, section, etc., is the provision for, then the provision is the provision of that Act, section, etc.
- Clause 11:** - provides that the English and Samoan versions of an Act have equal authority but if there is a conflict, the English version prevails.

Division 2 - Assent and commencement

- Clause 12:** - obligates the Clerk of Parliament to insert the date of Assent immediately after the long title to an Act, which will become part of the Act.
- Clause 13:** - provides for the rules about commencement of an Act, including making an Act to commence on a date before its assent (rule on retrospective commencement of an Act).

Clause 14: - provides for the difference in the time of commencement, normally called the “mid-night rule”. If the word “on” is used the Act commences on 12am beginning that day. If the word “from” is used, then the Act commences on 12am beginning the following day.

Clause 15: - provides that it is not necessary for an Act to be Gazetted, but a person can buy a copy from the office of the Clerk or other places authorised by the Clerk.

Division 3 - Citation

Clause 16: - provides the rules about citing or naming an Act. If no short title is provided, then it can be cited by reference to the year. The year is the year in which the Act is passed.

Clause 17: - provides that reference to an Act is reference to the copy published by the Government Printer, Legislative Assembly of the Speaker.

Clause 18: - provides that reference to an Act includes any amendment or later Act that substitutes that Act.

PART 4 - AMENDMENTS AND REPEALS

Division 1 - Amendments

Clause 19: - provides that an amendment Act is to be read and construed according to the definitions of the principal Act and the amendments will become part of the principal Act.

Clause 20: - sets out the effect of an amendment, including the rule that an amendment Act becomes spent when it commences except its transitional provisions.

Division 2 - Repeals

Clause 21: - provides the effect of a repealed Act. It does not affect any transitional or saving provision in the repealed Act or revive any Act that was repealed by the repealed Act or revive a thing existing at the time the repealed Act commences.

- Clause 22:** - provides for the application of repeal to any Act referred to in it or things done under the repeal provision.
- Clause 23:** - provides saving provisions for any investigation, proceedings, liability for penalties before the repeal commences.
- Clause 24:** - provides that if Acts are consolidated, then certain powers can continue to be exercised under the consolidating Act if they substantially correspond to the powers in the repealed Acts.
- Clause 25:** - provides for the effect of repeal on things already done under the repealed Act, including the power to complete things before the commencement of the repealed Act.
- Clause 26:** - provides that if an Act is repealed and replaced, then reference in any other Act to the repealed Act will be reference to the replacement Act.

PART 5 - APPOINTMENTS, DUTIES AND POWERS

Division 1 - Appointment and powers

- Clause 27:** - provides for the powers that may be carried out before the commencement of an Act, but they are to take effect on the commencement of the Act.
- Clause 28:** - provides for the extent to which statutory powers are to be exercised.
- Clause 29:** - provides for the implied powers.
- Clause 30:** - provides power to make appointments including the power to appoint a person by name or by office which the person holds.
- Clause 31:** - provides for the implied powers of appointment, such as power to suspend, remove, etc.
- Clause 32:** - provides that if an office is abolished or no person has been appointed to carry the power or duty, then the power or duty can be carried out by the Head of State or a holder of another office ordered by the Head of State.

- Clause 33:** - provides that the power of a Minister can be signed by another Minister.
- Clause 34:** - provides that if a person is empowered to hear and determine an appeal, the person can appoint a qualified person or a panel of two (2) or three (3) members to hear the appeal and make recommendations to the person.
- Clause 35:** - provides that if an Act gives duty or power to Cabinet, the exercise of the duty or power can be signed on behalf of Cabinet by the Secretary to Cabinet.
- Clause 36:** - provides that the power to do a thing can be exercised again to correct an error.

Division 2 - Corporate and unincorporated bodies

- Clause 37:** - provides for the normal powers of a corporate body.
- Clause 38:** - provides for the power to appoint alternate or acting member for members of a body corporate.
- Clause 39:** - provides for the appointment of chairperson, etc and secretary of members of a body corporate.
- Clause 40:** - provides for the rules about signing of documents, etc.
- Clause 41:** - provides for the general rules for meetings of a body corporate.
- Clause 42:** - clarifies that carrying of the powers of a body corporate is not affected by any vacancy in the membership.

Division 3 - Delegation

- Clause 43:** - provides for powers of delegation.
- Clause 44:** - provides for the extent of delegation.

PART 6 - TIME AND DISTANCE

- Clause 45:** - provides for the standard time, which is the standard time set out in section 4 of the International Date Line Act 2011.
- Clause 46:** - provides for the rules for determining time in which things may be required to be done under an Act.

Clause 47: - provides for the rule where time is not provided to do a thing.

Clause 48: - provides for the rule for measuring distances.

PART 7 - SUBSIDIARY LEGISLATION

Clause 49: - provides that subsidiary legislation is to be judicially noticed.

Clause 50: - provides that reference to a subsidiary legislation is a reference to the principal subsidiary legislation, including amendments.

Clause 51: - provides for the general provisions relating to subsidiary legislation.

Clause 52: - provides for the extent of the power to prescribe or determine fees and charges.

Clause 53: - provides for the extent of power to make rules of courts.

PART 8 - OFFENCES, PENALTIES, PROCEEDINGS AND EVIDENCE

Division 1 - Offences and penalties

Clause 54: - provides that the penalties are maxima and can be imposed cumulatively.

Clause 55: - provides that penalties can simply be stated at the foot of a provision.

Clause 56: - provides for the rule for offences against body corporate.

Clause 57: - provides for that fines and penalties are to be paid into the Treasury Fund.

Division 2 - Proceedings and evidence

Clause 58: - provides that a proceeding is not discontinued or abated if the holder of an office resigns, dies or is removed from office.

Clause 59: - provides that the imposition of a fine does not affect civil action.

Clause 60: - provides that a thing forfeited is forfeited to the State.

Clause 61: - provides for evidentiary rules for documents as evidence of facts in the documents.

Clause 62: - authorises a person given power under an Act to hear and determine a matter to administer oath.

PART 9 - MISCELLANEOUS

- Clause 63:** - provides substantial compliance with a form, and minor changes may be made in a form.
- Clause 64:** - provides for rules of service of documents.
- Clause 65:** - provides for the rules to make corrections.
- Clause 66:** - provides for rules about using examples in Acts.
- Clause 67:** - provides that an Act does not bind the Government unless expressed or implied in an Act.
- Clause 68:** - repeals the Acts Interpretation Act 1974.

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(Hon TUILAEPA Fatialofa Lupesoliai Aiono Neioti Sailele Malielegaoi)

PRIME MINISTER