



SAMOA

Arrangement of Provisions

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2020, No. 22

**AN ACT to amend the Constitution on matters relating to the
Civil and Criminal Courts and the Land and Titles Court,
and related purposes.** *[5th January 2021]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement:

- (1) This Act may be cited as the Constitution Amendment Act 2020.
- (2) This Act commences on a date to be nominated by the Prime Minister by Notice except for section 3.

2. Article 4 amended:

Clause (1) of Article 4 is amended by substituting “Any person” with the following:

“Except for a judicial review matters arising from the proceedings in Part IX Land and Titles Courts, any person”.

3. Article 32 amended:

- (1) In Article 32 of the Constitution, in clause (2)(b), substitute “twelve” with “fourteen”.
- (2) This amendment to Article 32 commences on the first day of the meeting of the 17th Parliament of Samoa.

4. Part VI substituted:

Part VI of the Constitution is substituted as follows:

“PART VI - JUDICIARY

Division 1 - Supreme Court

65. Establishment of the Supreme Court:

There shall be a Supreme Court of Samoa which, is a superior Court of record and shall consist of a Chief Justice, and such number of other Judges as may be determined by the Judicial Service Commission.

66. Constitution of the Supreme Court:

- (1) The Chief Justice of the Supreme Court shall be appointed by the Head of State, acting on the advice of the Prime Minister.
- (2) A person shall not be qualified for appointment as a Judge of the Supreme Court unless the person:
 - (a) possesses such qualifications as the Head of State, acting on the advice of the Judicial Service Commission, may prescribe; and
 - (b) has been in practice as a barrister in Samoa, or in an approved country, or partly in the one and partly in the other, for a period of, or periods amounting in the aggregate to, not less than 10 years for a person to work as a lawyer in

order to be eligible to be appointed as a Judge of the Supreme Court.

- (3) In computing, for the purposes of sub-clause (b) of clause (2), the period or periods during which any person has been in practice as a barrister, any period or periods during which the person has held judicial office in a Court of superior or subordinate jurisdiction in Samoa or an approved country shall be included.
- (4) For the purposes of clause (2) of this Article, the Head of State, acting on the advice of the Judicial Service Commission, may designate as an approved country any country which, in the opinion of the Commission, has a legal system similar to that existing in Samoa.

67. Tenure, suspension and removal of office:

- (1) Except in the case of an appointment made under the provisions of clause (2), a Judge of the Supreme Court shall hold office until the Judge reaches the age of 68 years:
PROVIDED THAT the Head of State, acting (in the case of the Chief Justice) on the advice of the Prime Minister or (in the

case of any other Judge of the Supreme Court) on the advice of the Judicial Service Commission, may extend the period of office of a Judge who has reached the age of 68 years.

- (2) A person of any age who is not a citizen of Samoa and who is qualified for appointment under the provisions of clause (2)(d) of Article 73 may be appointed to hold office as a Judge of the Supreme Court for a term of years.
- (3) Nothing done by a Judge of the Supreme Court in the performance of his or her functions shall be deemed to be invalid by reason only that the Judge has reached the age at which he or she is required by this Article to retire or that his or her term of office has expired, as the case may be.
- (4) The Chief Justice or a Judge of the Supreme Court may resign from his or her office in writing addressed to the Head of State.
- (5) The Head of State, acting on the advice of the Prime Minister may at any time when the Legislative Assembly is not meeting suspend the Chief Justice from his or her office and such suspension shall continue in force until the end of the next ensuing session and no longer.

- (6) The Chief Justice shall not be removed from office, except by the Head of State on an address of the Legislative Assembly carried by not less than two-thirds of the total number of Members of Parliament (including vacancies), praying for his or her removal from office on the grounds of 'stated misbehaviour' or infirmity of mind or physical and mental disability or as prescribed by Act.
- (7) Conditions for tenure, suspension and removal of a Judge of the Supreme Court from office is provided for in Article 79.

68. Senior Judge of the Supreme Court:

- (1) The Head of State acting on the advice of the Chief Justice, may appoint a Judge of the Supreme Court as a Senior Judge of the Supreme Court.
- (2) Conditions for tenure, suspension and removal of a Judge of the Supreme Court from office is provided for in Article 79.
- (3) While any vacancy exists in the office of the Chief Justice, or during any absence from Samoa of the Chief Justice due to illness or any other reason, the Head of State, acting on the advice of the Prime Minister, may authorize the senior Judges

of the Supreme Court, to act and perform the functions of the office of Chief Justice, until the Chief Justice resumes his or her duties.

69. Acting Judge of the Supreme Court:

- (1) If the office of any Judge of the Supreme Court (other than the Chief Justice) is vacant or if any such Judge is unable to perform the functions of his or her office, the Head of State, acting on the advice of the Judicial Service Commission, may appoint a person qualified under clause (2) of Article 66 to be temporarily a Judge of the Supreme Court:

PROVIDED THAT a person may be so appointed notwithstanding that the person has attained the age of 68 years.

- (2) A person appointed under the provisions of clause (1) to be temporarily a Judge of the Supreme Court shall hold office for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Head of State, acting on the advice of the Judicial Service Commission:

PROVIDED THAT the person may at any time resign his or her office by writing under his or her hand addressed to the Head of State.

70. Jurisdiction of the Supreme Court:

- (1) Except for Part IX Land and Titles Court and the laws administered thereunder, the Supreme Court shall:
 - (a) have such original, appellate and, revisional jurisdiction; and
 - (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws of Samoa.
- (2) Except for Part IX Land and Titles Court and without prejudice to any appellate or revisional jurisdiction of the Supreme Court, where in any proceedings before another Court (except the Court of Appeal) a question arises as to the interpretation or effect of any provision of this Constitution, the Supreme Court may, on the application of any party to the proceedings, determine that question and either dispose of the case or remit it to that other Court to be disposed of in accordance with the determination.
- (3) Except for Part IX Land and Titles Court, the Head of State, acting on the advice of the Prime Minister, may refer to the Supreme Court for its opinion any question as to the interpretation or effect

of any provision of this Constitution which has arisen or appears likely to arise, and the Court shall pronounce its opinion on any question so referred to it.

71. Judicial Guidance:

Subject to the provisions of this Constitution, customs may be taken into account in all courts under this Part.

72. Powers of Judges of the Supreme Court:

Each Judge of the Supreme Court or any two (2) or more Judges may, in any part of Samoa and at any time or place, exercise all the powers of the Supreme Court.

Division 2 - Court of Appeal

73. Establishment and constitution of Court of Appeal:

- (1) There shall be a Court of Appeal of Samoa, which for this Part, shall be a superior Court of record.
- (2) Subject to the provisions of this Part, the Judges of the Court of Appeal shall be:
 - (a) the Chief Justice of Samoa;
 - (b) Judges of the Supreme Court;
 - (c) Retired Judge of the Supreme Court of Samoa;

- (d) such persons possessing similar qualifications as those persons under clause (2) of Article 66, as may be appointed by the Head of State from time to time, acting on the advice of the Judicial Service Commission.
- (3) Judges of the Court of Appeal shall take seniority according to the respective dates of their first appointment as Judges of a superior Court in Samoa or in any approved country.
- (4) The Chief Justice, and in his absence, the most senior Judge of the Court of Appeal shall be President of the Court of Appeal, but, in his or her absence, the senior Judge of the Court present at the appeal or, if the Judges so present are of the same seniority, a Judge designated by the Chief Justice shall preside.
- (5) An appointment under the provisions of sub-clause (c) and (d) of clause (2) shall be for a period of time or for the trial or hearing of particular causes or matters, as may be specified in the instrument of appointment.

74. Number of Judges:

- (1) Any three (3) Judges of the Court of Appeal may exercise all the powers of the Court:

PROVIDED THAT:

- (a) for every sitting of the Court of Appeal, the majority of Judges shall be retired Supreme Court Judges or Supreme Court Judges; and
- (b) in the interest of justice, one of the three (3) Court of Appeal Judges may be an overseas non Samoan Court of Appeal Judge appointed under sub-clause (2)(c) of Article 74; and
- (c) the Court may have its judgment delivered by any one of its members, and if there is no such member then through the Registrar of the Court of Appeal.
- (2) The Judgment of the Court of Appeal shall be in accordance with the opinion of the majority of the Judges present.
- (3) A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by the Judge or by a Court on which the Judge sat as a member.

- (4) The decision of the Court of Appeal on any appeal from the Supreme Court shall be final.
- (5) Any two (2) Judges of the Court may exercise all the powers of the Court of Appeal on the certificate of the President of the Court that it is in the interests of justice that they should do so.

75. Jurisdiction of Court of Appeal:

- (1) Except for Part IX Land and Titles Court and subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to hear and determine:
 - (a) such appeals including proceedings removed by order of the Supreme Court to the Court of Appeal; and
 - (b) all appeals from any judgment, decree, or order of the Supreme Court whether in its civil or criminal jurisdiction, under an Act; and
 - (c) an appeal from any decision of the Supreme Court in any proceedings under the provision of Article 4.

- (2) Except for Part IX Land and Titles Court, an appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceeding, if the Supreme Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution; and:
- (a) where such a certificate is given or such leave granted, any party in the case may appeal to the Court of Appeal on the ground that any such question has been wrongly decided and, with the leave of that Court, on any other ground; or
 - (b) where the Supreme Court has refused to give such a certificate, the Court of Appeal may, if it is satisfied that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution, grant special leave to appeal from that decision.

76. Powers of the Court of Appeal:

On any appeal from the Supreme Court, the Court of Appeal may:

- (a) affirm, reverse, or vary the judgment appealed from; or

- (b) order a new trial; or
- (c) dismiss the appeal; or
- (d) make any such order with respect to the appeal as the Court thinks fit; and
- (e) award such costs as it thinks fit.

77. Definition of “decision”:

In Articles 74, 75 and 119, “decision” includes judgment, decree, order, writ, declaration, conviction, sentence, opinion or other determination.

Division 3 - Subordinate Courts

78. Subordinate Courts:

There shall be such subordinate Courts possessing such jurisdiction and powers as may be provided by Act.

Division 4 - Judicial Service Commission

79. Judicial Service Commission:

- (1) There shall be a Judicial Service Commission consisting of:
 - (a) Chief Justice, as Chairman;
 - (b) Attorney General of the government;
 - (c) members of the public appointed by the Minister for Justice;

- (d) Ombudsman;
 - (e) a retired Judge of the Supreme Court appointed by the Head of State, acting on the advice from Cabinet and consultations with the Chief Justice; and
 - (f) the Registrar of the Supreme Court as the secretary of the Commission who shall have no voting rights.
- (2) No business shall be transacted by the Judicial Service Commission unless any three (3) members appointed under clause (1)(a)-(e) are present, and all questions proposed for decision by the Commission shall be decided by a majority of the votes of those members.
- (3) A meeting of the Judicial Service Commission may be called by three (3) members except the Registrar.
- (4) The Head of State may, acting on the advice of the Judiciary Service Commission and focusing on standards within the Act to provide for conditions of tenure, suspend and removal of office from:

- (a) Judge of the Supreme Court as provided for in Article 67(7); and
- (b) the Senior Judge of the Supreme Court as provided for in Article 68(2); and
- (c) a Judge of the Subordinate Court.

80. Oath of office:

- (1) The Chief Justice, Senior Supreme Court Judge and every Judge of the Supreme Court shall, before assuming the functions of his or her office take and subscribe before the Head of State an oath in the form set out in the Third Schedule.
- (2) A person appointed as a Judge of the Court of Appeal shall, on first appointment, take and subscribe before the Head of State an oath in the form set out in the Third Schedule.

81. Remunerations, salaries and allowances:

Salaries, allowances or any other benefits that the Chief Justice and Judges of the Supreme Court is entitled to, expenses as provided for in the Act and these funds shall be paid as appropriated by the Legislative Assembly, as provided for in the Act.”.

5. Article 103 substituted:

Article 103 is substituted as follows:

“103. Land below high-water mark:

- (1) Subject to the provision of any Act, all land lying below the line of high-water mark shall be public land.
- (2) For the purposes of this Article, the term “**high-water mark**” means the line of median high tide between the spring and neap tides.”.

6. Article 104 substituted:

Article 104 is substituted as follows:

“LAND AND TITLES COURT

104. Customary Land and Titles Protection:

- (1) There shall be a Land and Titles Court that includes:
 - (a) Land and Titles First Court;
 - (b) Land and Titles High Court; and
 - (c) Land and Titles Court of Appeal and Review,and all appointments and its authority in regards to matters pertaining to matai title and customary lands provided for in ‘Part IX Lands and Titles Court’ of the Constitution; or an Act of Parliament.

- (2) The Courts in this Part IX Land and Titles Court has special jurisdiction, it governs a legal system different and separate from that of the Civil and Criminal Courts in Part VI; and has special individual jurisdiction on Samoan customs and usage matters relating to matai titles and customary lands.
- (3) All persons are entitled to the protection of their custom rights the subject of the jurisdiction of the courts in this Part.”.

7. New Articles inserted:

After Article 104, insert the following:

“104A. Land and Titles First Court:

- (1) There shall continue to be a Land and Titles First Court which shall be a court of record.
- (2) A sitting of the Land and Titles First Court consists of:
 - (a) the Vice President on behalf of the President as the presiding Judge; and
 - (b) two (2) or more Land and Titles Court Judges.

- (3) The Land and Titles First Court shall continue to have all the jurisdiction it exercised prior to this Constitution Amendment Act 2020 coming into force.
- (4) The Land and Titles First Court shall:
 - (a) have the original jurisdiction; and
 - (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws under this Part IX Land and Titles Court.
- (5) In particular the Land and Titles First Court shall have jurisdiction:
 - (a) in all matters relating to Samoan names and titles;
 - (b) to make orders or declarations in respect of Samoan names and titles as may be necessary to preserve or define the same, or the rights or obligations attaching to those names and titles in accordance with the customs and usages of the Samoan race and all laws in force in Samoa with reference to customs and usages;
 - (c) all claims and disputes between Samoans relating to customary land, and the right of succession to

- property held in accordance with the customs and usages of the Samoan race;
 - (d) in all the powers that are inherent in a Court of record; and
 - (e) as may be conferred by Act.
- (6) In all matters before it, the Court shall apply:
- (a) custom and usage of the Samoan people;
 - (b) the law relating to custom and usage;
 - (c) this Constitution and any other enactment expressed to apply to the Court.
- (7) The Court shall decide all matters in accordance with what it considers to be fair and just between the parties.
- (8) The Court in determining any petition before it has the power:
- (a) to make a decision on a petition brought before it; and
 - (b) make orders that take effect to be specified in the order or on the date on which it is made.
- (9) The decision of the Land and Titles First Court is in accordance with the opinion of the majority of the members of the Court.

- (10) The decision of the Land and Titles First Court may be reviewed through an appeal to the Land and Titles High Court.

104B. Land and Titles High Court:

- (1) There shall be a Land and Titles High Court which, for this Part is a superior court of record.
- (2) The Land and Titles High Court is constituted by:
 - (a) the President as the presiding Judge and Head of Bench or, on the direction of the President, the Deputy President as the presiding Judge; and
 - (b) the two (2) Vice Presidents of the Land and Titles Court appointed by the President and if one (1) or two (2) Vice Presidents are not present, Judges of the Land and Titles First Court may be appointed.
- (3) A Judge is disqualified from sitting on an appeal review if he or she was a member of the Land and Titles Court in the first instance hearing of the petition in the matter on appeal.

- (4) Subject to the direction of the President, a Deputy President may preside over sittings of the Land and Titles High Court, and exercise such other functions of the President as may in respect of a particular case or matter be directed by the President.
- (5) The Land and Titles High Court shall:
 - (a) have such original, appellate and, revisional jurisdiction; and
 - (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws under this Part IX Land and Titles Court.
- (6) The Land and Titles High Court shall have jurisdiction to hear any appeals from the Land and Titles Court, and has all the powers and jurisdiction of the Land and Titles Court.
- (7) The Land and Titles High Court has the power to:
 - (a) uphold the appeal; or
 - (b) set aside, vary or reverse the decision of the Land and Titles Court; or

- (c) order the Land and Titles Court to rehear the matter; or
 - (d) make any such order with respect to the appeal as the Court thinks fit; and
 - (e) award such costs as it thinks fit.
- (8) The decision of the Land and Titles High Court is subject to a further appeal to the Land and Titles Court of Appeal and Review.

104C. Land and Titles Court of Appeal and Review:

- (1) There shall be a Land and Titles Court of Appeal and Review which shall be a superior court of record.
- (2) The composition of the Land and Titles Court of Appeal and Review is as follows:
 - (a) a retired Samoan Judge of the Supreme Court or a retired President as Chairperson of the Court, to be appointed by the Head of State on the advice of Cabinet;
 - (b) one (1) Samoan Judge of the Supreme Court -
 - (i) to be appointed by the Head of State on the advice of the Chief Justice; and
 - (ii) as Chairperson in the absence of the Chairperson; and

- (c) the President or a retired Deputy President, or a retired Vice President of the Land and Titles Court to be appointed by the Head of State acting on the advice of the President; and
 - (d) a Samoan Lawyer who is a Matai and is qualified to be a Judge of the Supreme Court to be appointed by the Head of State on the advice of the President.
- (3) Any three (3) members of the Land and Titles Court of Appeal and Review may at any one (1) sitting exercise the powers of the Land and Titles Court of Appeal and Review.
- (4) A member of the Land and Titles Court of Appeal and Review is disqualified from sitting on an appeal or a review if he or she was a member of the Land and Titles High Court at the appeal hearing, or the Land and Titles Court hearing at the first instance.
- (5) The Land and Titles Court of Appeal and Review shall:
 - (a) have original, appellate and, revisional jurisdiction; and

- (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws under this Part IX Land and Titles Court.
- (6) The Land and Titles Court of Appeal and Review in particular shall have jurisdiction to hear and determine:
 - (a) an appeal from a decision of the Land and Titles High Court of managing and constitutional ground of such petition as provided in an Act; and
 - (b) an application for judicial review or a review of a decision of the Land and Titles Court or the Land and Titles High Court of managing and constitutional ground of such petition as provided in an Act.
- (7) The Court of Final Appeal and Review has the power to:
 - (a) for an appeal -
 - (i) uphold the appeal; or
 - (ii) set aside, vary or reverse the decision of the Land and Titles High Court; or
 - (iii) order the Land and Titles High Court to rehear the matter; or

- (iv) make any such order with respect to the appeal as the Court thinks fit; and
 - (b) for a review -
 - (i) grant the remedy sought; or
 - (ii) grant the prerogative writ sought (mandamus, prohibition and certiorari, and for relief in the form of an injunction); or
 - (iii) petition revoked; or
 - (iv) make relevant order to the review.
- (8) The decisions of the Land and Titles Court of Appeal and Review Court are final and no other Court may question by way of appeal, a review or investigation, or any other means.
- (9) Where in any proceedings before any Courts in this Part IX Land and Titles Court, a question arises as to the interpretation or effect of any provision of this Constitution under this Part, the Land and Titles Court of Appeal and Review may, on the application of any party to the proceedings, determine that question and either dispose of the case or remit it to that other Court to be disposed of in accordance with the determination.

- (10) The Head of State, acting on the advice of the Prime Minister, may refer to the Land and Titles Court of Appeal and Review for its opinion any question as to the interpretation on the effect of any provision of this Part which has arisen or appears likely to arise, and the Land and Titles Court of Appeal and Review Court shall pronounce its opinion on any question so referred to it.

104D. Appointment, removal, tenure in office:

- (1) The Head of State, acting on the advice of the Prime Minister, may appoint a President of the Court under Part IX Land and Titles Court, is known as the President of the Land and Titles Court:
- (a) a Samoan legal practitioner who has practiced under the Act for Lawyers in Samoa for a period of not less than 10 years; and
 - (b) has held a matai title and rendered matai services to his or her village for a period of not less than seven (7) years;
 - (c) he or she holds office until the age of 68 years, provided that the Head of State acting on the advice of the Judicial Service Commission of the Land and

Titles Court, may extend for not more than 12 months or for successive period each of not more than 12 months; and

- (d) no work of the President in the performance of his or her duty that could be taken as invalid for reason of attaining the retiring age under this Article.
- (2) The Head of State may, on the advice of the Prime Minister, suspend the President of the Land and Titles High Court from office when the Legislative Assembly is not meeting, and such suspension, unless previously revoked, continues in force until the end of the next ensuing session and no longer.
 - (3) The President shall not be removed from office unless it is done by the Head of State on a request by the Legislative Assembly approved by members no less than two thirds of the total number of members of Parliament (inclusive of vacant seats) that request his or her removal from office for reasons of unbecoming conduct that has been raised or physical or mental disability or as stated in the Act.

104E. Komisi o le Faamasinoga o Fanua ma Suafa:

- (1) There shall be a Komisi o le Faamasinoga o Fanua ma Suafa, which shall consist of:
 - (a) the President of the LTC, as Chairperson; and
 - (b) a Supreme Court Judge as nominated by the Chief Justice; and
 - (c) the Chairperson of the Public Service Commission;
 - (d) the Registrar of the Land and Titles Court shall be the Secretary of the Commission, who has no voting rights.
- (2) No business shall be transacted by the Komisi unless all three (3) members are present, and all questions proposed for decision by the Commission shall be decided by a majority of the votes of those members.
- (3) A meeting of the Komisi may be called by any of the two (2) members in clause (1)(a) - (c).
- (4) The power to appoint, remove, and suspend terms of appointment of any Deputy President, Vice President, and a Judge of the Land and Titles First Court,

is given to the Head of State acting on the advice of the *Komisi o le Faamasinoga o Fanua ma Suafa*, as may be provided by an Act.

- (5) In this Part, “*Komisi*” means the “*Komisi o le Faamasinoga o Fanua ma Suafa*” as provided by an Act.

104F. Oath:

- (1) The President of the Land and Titles High Court, shall, before assuming the functions of his or her office take and subscribe before the Head of State an oath in the form set out in the Third Schedule.
- (2) The Chairperson and members of the Land and Titles Court of Appeal and Review shall, before assuming the functions of office take and subscribe before the President an oath in the form set out in the Third Schedule.
- (3) A Deputy President and a Vice President, a Judge of the Land and Titles Court shall, before assuming the functions of his or her office take and subscribe before the President of the Land and Titles High Court an oath in the form set out in the Third Schedule.

104G. Salaries and entitlements:

Salaries, allowances or any other benefits for the President or the Deputy President of the Land and Titles High Court; Vice President or a Judge of the Land and Titles First Court, expenses as provided for in the Act and are to be paid out of funds appropriated by the Legislative Assembly, as provided in the Act.”.

8. Consequential amendment:

In Article 94(4)(a), substitute the number ‘69’ with ‘81’.

9. Savings and transitional:

- (1) The commencement of this Act does not affect any rights or liabilities made under the provisions amended by this Act, and such rights or liabilities shall continue to be in force until they have been completed or ended.
- (2) Any right under Part II of this Constitution that was in force before the passing of this Act, shall be recognized, implemented and continue in force.
- (3) The provisions of the Constitution or any Act impacted by this Act remain in force for the purpose of continuing and perfecting an act, matter, or thing, or any proceedings commenced or in progress under them, if there is no substituted provision adapted to the completion

of the act, matter, or thing, or proceedings commenced or in progress under those provisions.

- (4) A power or act which may be necessary to complete, carry out, or compel the performance of a subsisting contract or agreement lawfully made, entered into, or commenced under the provisions of the Constitution before this Act commences, may be exercised and performed in all respects to the completion of that contract or agreement.

The Constitution Amendment Act 2020
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