

CONSTITUTION AMENDMENT BILL 2020

SAMOA

Explanatory Memorandum

1.0 Object and reasons:

- 1.1 The Bill seeks to amend the Constitution of the Independent State of Samoa 1960 (“Constitution”).
- 1.2 The object of the Bill is to give effect to a Term of Reference given to the three (3) Offices; the Office of the Attorney General, the Ministry of Justice and Courts Administration and the Samoa Law Reform Commission, ‘to review and research the laws of Samoa on how the Land and Titles Court can be an independent setup from the courts of civil and criminal jurisdictions, within the ambits of the Constitution’. The only way is to have the Land and Titles Court framework, within the provisions of the Constitution of the Independent State of Samoa.
- 1.3 The Bill attempts to reflect more of the Samoan context inside Samoa’s supreme law, the Constitution, to ‘make the Constitution a Samoan Constitution’ in light of today’s context.
- 1.4 This Bill is a response by Samoa to respond to the challenges of ‘legal pluralism’, a legal theoretical framework with features prevalent in most post-colonial societies. A review of all other Pacific Islands Constitutions show that since gaining political independence, the Pacific Islands had expressly aspired to **adopt in their Constitution and laws the context of their cultures, custom, and traditions to which they belong**. However, to date many countries have applied caution, and the express establishment of systems to accommodate both their customary systems with the modern western system in their supreme laws has not been pursued.

- 1.5 At the start of this XVIth Parliamentary term of Samoa's Parliament in March 2016, Samoa's newly elected members sat through a Parliament Symposium. It was here that the notion of reflecting ourselves in our laws was brought back to the forefront for necessary action. The challenges and the conflicts between modern laws and the custom and usages of the Samoan people were highlighted. The question was posed - Why is the Samoan Constitution more protective of the introduced modern principles such as individual rights, as compared to the Samoan custom and usages, the way of life of the Samoan people? In a court room, why are individual rights more powerful than Village Fono decisions? The answer is, because the Constitution says so.
- 1.6 In response to these challenges, Samoa, through this **Constitution Amendment Bill 2020** has opted to give more recognition of Samoa in our own Samoan Constitution. This is without removing our current rights and freedoms. In this **Constitution Amendment Bill**, we adopt the best of both the modern principles **and** the customary values in moving forward, so that Samoan customs and usages are not lost, not now, not in the near future, and it is hoped for a very long time to come.

Clauses:

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - amends Article 4(1) of the Constitution to expressly provide that any application by any person to enforce their fundamental rights under Part II of the Constitution, are subject to judicial review matters arising from proceedings under Part IX – Land and Titles Court.

- Clause 3:** - amends Article 32(2) (b) of the Constitution to provide for the increase in the number of Members of Parliament who may be appointed by the Head of State as Ministers, by replacing the term “twelve” with the term “fourteen”. This amendment will commence and take effect on the first day of the meeting of the 17th Parliament of Samoa.
- Clause 4:** - provides for the substitution of Part VI of the Constitution. The new Part VI provides for the set-up of the “**Civil and Criminal Courts**” system of Samoa, comprising of the Supreme Court, Court of Appeal, Subordinate Courts and its Judicial Service Commission. Provisions under this part pertain to the establishment, composition, jurisdiction and powers of the respective Courts.
- Clause 5:** - provides for the substitution of Article 103 of the Constitution. The new Article 103 clarifies that subject to any Act, all land lying below the line of high-water mark shall be public land.
- Clause 6:** - provides for the substitution of Article 104 of the Constitution. The new Article 104 provides for the establishment of the Land and Titles Court and its jurisdiction in relation to Matai titles and customary land.
- Clause 7:** - provides for the insertion of New Articles 104A, 104B, 104C, 104D, 104E, 104F, 104G into the Constitution. These Articles provide for the continuation of the Land and Titles Court, and for the establishment of the new Land and Titles Court system/hierarchy comprising of a new Land and Titles High Court, Land and Titles Court of Appeal and Review and a Komisi o Auaunaga a le Faamasinoga o Fanua ma Suafa. The same Articles provide for matters relating to composition, jurisdiction, oaths, salaries and allowances and other related matters.

- Clause 8:** - provides for consequential amendments to Article 94(4)(a) of the Constitution to correct reference to relevant Articles on Treasury Fund matters, by substituting “69” with “82”.
- Clause 9:** - provides for savings and transitional provision to allow any rights or liabilities made under the amended provisions to continue until they are completed or ended; for any provisions of the Constitution or Act impacted by these amendments to also continue and perfect any matter in progress under them if there is no substituting provisions; and for any power necessary to complete any matter made before the commencement of this Act, to be performed and exercised to complete any such matter.

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(Hon TUILAEPA Auelua Fatialofa Lupesoliai Lolofietele
Neioti Aiono Galumalemana Dr. Sailele Malielegaoi)
PRIME MINISTER