

LAND AND TITLES AMENDMENT BILL 2022

SAMOA

Explanatory Memorandum

1.0 **Object and reasons:**

- 1.1 The Bill seeks to amend the Land and Titles Act 2020 (“principal Act”) to address issues identified following the passing and the commencement of the principal Act, in particular the appointment of the judges of the Land and Titles Court (LTC) and the savings and transition of the Deputy Presidents and Samoan judges appointed under the Land and Titles Act 1981 (“repealed Act”) to the new LTC structure under the principal Act and the Constitution.

- 1.2 The objects of the Bill are:
 - (a) to provide for the appointment, terms and conditions, suspension and removal of the LTC judges;
 - (b) to provide for a savings and transitional provisions relating to the Deputy Presidents and Samoan judges appointed under the repealed Act;
 - (c) to correct a few references to ensure consistency between the English and Samoan versions of the principal Act.

2.0 Clauses:

- Clause 1:** - provides for the short title and commencement date for the Bill.
- Clause 2:** - amends section 2 of the principal Act by inserting new definitions for “Chairperson”, “judge” and “matai services”. It also makes amendments to some of the definitions in order to make reference to the newly inserted Part 5A to the principal Act.
- Clause 3:** - amends section 12(1)(b) of the Tulafono o Fanua ma Suafa 2020 (Samoan version of the principal Act only) by inserting “lē” after the word “ia” for consistency with the English version of the principal Act.
- Clause 4:** - amends section 43(2) of the principal Act by omitting “and review” for coherence and consistency with the jurisdiction of the LTC.
- Clause 5:** - amends section 54(1)(a) of the principal Act by substituting “Deputy President” with “Vice President” to clarify that the Vice President presides in the Land and Titles First Court not the Deputy President.
- Clause 6:** - inserts new Part 5A (proposed *sections 61A to 61J*) in the principal Act to provide for the functions of the *Komisi o le Faamasinoga o Fanua ma Suafa* (“Komisi”) and the appointment of judges for the LTC as follows:
- (a) *Section 61A* - provides for the functions of the Komisi to advise the Head of State for the appointment, terms and conditions of appointment and suspension and removal of LTC judges pursuant to Article 104E(4) of the Constitution. Furthermore it empowers the Komisi to regulate its own

procedures and make rules and guidelines for regulating and facilitating its functions under this clause;

- (b) *Section 61B* - empowers the Head of State to appoint fit and proper persons to be Deputy Presidents, Vice Presidents or judges of the Land and Titles First Court;
- (c) *Section 61C* - provides for the qualifications of a person to be appointed as Deputy President;
- (d) *Section 61D* - provides for the qualifications of a person to be appointed as Vice President. It further provides for the transition of a Deputy President appointed under the repealed Act to be appointed as Vice President under this clause but not qualified to be appointed as a member of the Land and Titles Court of Appeal and Review under Article 104C of the Constitution unless he or she satisfies the qualifications under subclause (1);
- (e) *Section 61E* - provides for the qualifications of judges of the Land and Titles First Court. It further provides for the transition of Samoan judges appointed under the repealed Act to be appointed as judges of the Land and Titles First Court;
- (f) *Section 61F* - provides for the immunity of judges of the LTC similar to the immunity of judges of the Supreme Court;

- (g) *Section 61G* - provides for the tenure of office of a LTC judge and also provisions relating to the resignation from office of LTC judges;
- (h) *Section 61H* - provides for the grounds of suspension and removal of a judge of the LTC;
- (i) *Section 61I* - provides for the grounds of removal of the President of LTC pursuant to Article 104D(3) of the Constitution;
- (j) *Section 61J* - provides for the salaries and entitlements of the President, Deputy President, Vice President and Judges of the Land and Titles First Court as well as empowering the relevant authorities responsible for determining such entitlements.

Clause 7: - amends section 67 of the principal Act to provide for a new subsection (8) to clarify the salaries that are to be received by the Deputy President and the Samoan judges that are appointed by virtue of sections 61D(3) and 61E(2).

Clause 8: - provides for a savings and transitional provisions to save and validate any decision or act that was done or purported to be done for the purpose of the principal Act from the time the principal Act commenced until the assent date of this Bill.

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(Hon MATAMUA Seumanu Vasati Sili Pulufana)

MINISTER FOR JUSTICE AND COURTS ADMINISTRATION