

# LAND AND TITLES BILL 2019

## SAMOA

### Explanatory Memorandum

#### **1.0 Object and reasons:**

- 1.1 The Bill seeks to repeal the Land and Titles Act 1981 (“Act”). In June 2016, the Legislative Assembly passed a resolution to establish a Special Inquiry Committee (“Committee”) to consider the rules and procedures of the Lands and Titles Court (“LTC”) and to make recommendations to improve the Lands and Titles Court, specifically, rules and procedures of the LTC to be transparent and accountable. The process should be designed to discourage the adjournment of cases and to establish guidelines and transparent processes to appoint Lands and Titles Court Judges on periodic terms.
- 1.2 In response to the recommendations of the Committee the Government has drafted the Land and Titles Bill 2019 (“Bill”) to repeal and reform the Act. Other recommendations of the Committee will be addressed in separate Bills to follow, regulations, and rules of procedures which will be drafted and made after this Bill has been passed.

#### **2.0 The objects of the Bill are:**

- 2.1 to revise the Act and modify it to address some of the recommendations made by the Committee;
- 2.2 to establish a new three (3) tier Court which:
  - 2.2.1 comprises of the Court of First Instance, Court of First Appeal and Court of Final Appeal; and

- 2.2.2 will be presided over by a legally qualified professional appointed as the President, Assistant President, Deputy President or the Presiding member of the Final Court of Appeal bench. In summary, each tier of the Land and Titles Court will be presided over by a legal professional.

**Clauses:**

**PART 1 - PRELIMINARY**

- Clause 1:** - provides for the short title and commencement.  
**Clause 2:** - provides for the definition of certain terms used in the Bill.

**PART 2 - ADMINISTRATION OF ACT**

- Clause 3:** - provides for the Ministry responsible for the administration of the Bill when enacted.  
**Clause 4:** - provides for the appointment of the Registrar and Assistant Registrars.  
**Clause 5:** - provides for the appointment of other employees to assist the Registrar in the administration of the Act.  
**Clause 6:** - provides for the records of the Court and how such records are to be kept.

**PART 3 - CUSTOMARY LAND**

*Division 1 - Land deemed or declared Customary Land*

- Clause 7:** - continues land deemed or declared as customary land under the current legislation which will be repealed once this Bill is passed.

*Division 2 - Surveys and Sketchplans*

- Clause 8:** - provides for the use of surveys and sketchplans in cases in the Land and Titles Court.

*Division 3 - Record of decisions dealing with customary land*

- Clause 9:** - provides that the Registrar of the Court must upon request of the Land Registrar transmit judgements of the Court concerning the pule or status of customary land.

**PART 4 - MATAI TITLES**

*Division 1 - Eligibility and validity*

- Clause 10:** - provides for the qualifications of a person to hold a Matai Title.
- Clause 11:** - provides the criteria to be considered in order to recognise the validity of the bestowment of a Matai Title.

*Division 2 - Matai Title Register*

- Clause 12:** - provides for the Registrar's duties regarding the maintenance of the Matai Title Register continued from the current Act.
- Clause 13:** - provides that a person may object to the Registrar's decision not to enter onto the Register or delete a person's name from the Register.

*Division 3 - Notification before a Matai Title is bestowed*

- Clause 14:** - provides for an optional procedure of notification when there is an intention to bestow a Matai Title.
- Clause 15:** - provides for an opportunity by a person to file an objection petition against a notice published under clause 14.
- Clause 16:** - provides for the procedure to be undertaken when no objection to a notice published.
- Clause 17:** - provides for the continued jurisdiction of the Court where no objections are filed. This is currently provided for under the current Act and will continue once the Act is repealed.

*Division 4 - Notification after bestowment of Matai Title*

- Clause 18:** - provides for the process to be undertaken when the publication of a notice of a Matai Title, is made after the bestowment of such Matai Title.
- Clause 19:** - provides for the procedure to be undertaken when an objection to a Matai Title bestowed is received under this Division.

*Division 5 - Procedure after bestowment of Matai Title*

- Clause 20:** - provides for the duties and obligations of a Sui-o-le-Nuu after the bestowment of a Matai Title is complete. It also provides that in the event that a Sui-o-le-Nuu has not been appointed for a particular village as required, the Registrar may request that the member of the clergy that officiated the ceremony - confirm the details required under this clause.

*Division 6 - Removal of Matai Title*

- Clause 21:** - provides that a Matai Title may be removed from the holder of such title, on a determination by the Court of a petition filed for such removal. This process is further clarified by providing that a Matai Title may only be removed on the petition of a Sa'o with the pule over that Matai Title. With regard to the holder of a Sa'o title, such titles may be removed on the petition of any suli on the grounds provided in this clause.

*Division 7 - Offences*

- Clause 22:** - provides for the offence of providing false or misleading information to a Sui-o-le-Nuu.
- Clause 23:** - provides that it is an offence for a person to wrongfully use a Matai Title as allowed under the Bill once enacted.

**PART 5 - LAND AND TITLES COURT CONTINUED AND  
PRELIMINARY PROCEDURAL PROVISIONS**

*Division 1 - Continuation and constitution of Court*

- Clause 24:** - provides for the continuation of the Land and Titles Court and that it constitutes of the Court of First Instance, Court of First Appeal and Court of Final Appeal.

*Division 2 - Sittings and Procedure*

- Clause 25:** - provides for the jurisdiction of the Court.
- Clause 26:** - provides that the law to be applied in the Court which includes custom and usage of the Samoan people, law relating to custom and usage, any other law that expressly states that it shall apply to the Court.
- Clause 27:** - provides that the Registrar after consulting with the President may determine the time and places for the sitting of the Court.
- Clause 28:** - provides for the making of the rules for the procedures of the Court.
- Clause 29:** - provides for the functions and powers of the Registrar.
- Clause 30:** - provides for the role of Samoan Land and Titles Court Judges in the implementation of the Bill when enacted.
- Clause 31:** - provides for the requirements to be met in order for proceedings to be instituted under the Bill once enacted.
- Clause 32:** - provides what amounts to a conflict of interest for the purpose of the Bill once enacted.
- Clause 33:** - provides for the Seal of the Court.
- Clause 34:** - provides that a party may engage a lawyer to prepare submissions, petitions and other documents on behalf of a party, and that lawyer may also be engaged to appear on behalf of any party in a proceeding in the Court of First Appeal, and Court of Final Appeal.

*Division 3 - Interim Orders*

- Clause 35:** - provides for the Interim Orders of a President or Assistant President.
- Clause 36:** - provides that the Registrar may issue interim orders in certain situations.
- Clause 37:** - provides for the duration of an order issued by the Registrar and provides that such order may not only be varied or set aside by the Registrar, but it may also be varied or set aside by the President or Assistant President.

*Division 4 - Conciliation and Resolution*

- Clause 38:** - provides that parties are obligated to make a genuine effort to resolve a dispute by participating in dispute resolution avenues and other options for settlement.
- Clause 39:** - provides for the Registrar's powers in connection with resolution of a dispute.
- Clause 40:** - provides that the Court will not hear or determine a matter if the parties have not undertaken the required conciliation of mediation under this Act.
- Clause 41:** - provides that the Court may during any court procedure advise for parties to use an alternative dispute resolution avenue.

**PART 6 - PROCEEDINGS***Division 1 - Court of First Instance*

- Clause 42:** - provides for the constitution of the Court of First Instance which comprise of the Deputy President as the presiding Judge, and two (2) other Samoan Land and Titles Court Judges.

- Clause 43:** - provides that proceedings before the Court of First Instance commence on the filing of the petition.
- Clause 44:** - provides that it is an obligation of the petitioner to serve on all relevant parties a copy of his or her petition in accordance with prescribed rules.
- Clause 45:** - provides the power of the Deputy President to discontinue any proceeding on the consent of all parties.
- Clause 46:** - provides for the power of the Court to issue an order in relation to any petition before the Court.
- Clause 47:** - provides that a decision of Court is by majority of the Court and such decision is subject to an appeal under this Part.

*Division 2 - Leave to Appeal*

- Clause 48:** - provides for the President or Assistant President to preside in leave to appeal application.
- Clause 49:** - provides for the right of a party to appeal against a decision of the Court of First Instance.
- Clause 50:** - provides that the time limitation for filing an appeal is within two (2) months from the delivery of the written decision of the Court.
- Clause 51:** - provides that a leave to appeal may only be lodged with approval of the President or Assistant President and the President or Assistant President may order a stay of execution of a decision or order pending the outcome of an appeal.



- Clause 52:** - provides for the grounds in which an appeal may be made from the Court of First Instance to the Court of First Appeal.
- Clause 53:** - provides that it is the duty of the party filing an appeal to serve all parties to the proceeding a copy of the leave to appeal application.
- Clause 54:** - provides for the procedure to be followed by a party in opposition of an application for leave to appeal.
- Clause 55:** - provides for the procedure for the hearing of an application for leave to appeal.
- Clause 56:** - where an application for leave to appeal has been granted, this clause provides for the Registrar to issue the notice of the day set for the appeal.

*Division 3 - Court of First Appeal*

- Clause 57:** - provides for the constitution of the Court of First Appeal which comprises of the President or Assistant President as the presiding Judge and two (2) other Samoan Land and Titles Court Judges.
- Clause 58:** - provides that the appeal must be by way of re-hearing.
- Clause 59:** - provides that the Court of First Appeal must not consider certain matters in evidence if such matters were not part of the petition heard before the Court of First Instance.

- Clause 60:** - provides for the powers of the Court of First Appeal.
- Clause 61:** - provides that a decision of the Court of First Appeal is by majority of the members of the Court.

*Division 4 - Court of Final Appeal*

- Clause 62:** - provides for the constitution of the Court of Final Appeal which comprises of the Head of Final Appeal Court Judge and two (2) other Final Appeal Court Judges.
- Clause 63:** - provides for the jurisdiction of the Court of Final Appeal.
- Clause 64:** - provides that no leave to appeal from Court of First Appeal to the Court of Final Appeal may be made without the approval of the Head Judge.
- Clause 65:** - provides that the ground of appeal may only be made on a question of the application of the Act.
- Clause 66:** - provides that an applicant must provide security for appeal to the Court of Final Appeal in the amount of \$200.00.
- Clause 67:** - provides that it is the duty of the applicant to serve all parties a copy of the application for leave to appeal.

- Clause 68:** - provides that a party in opposition of the appeal must file a response within the specified timeframe of 30 days after receiving a copy of the application.
- Clause 69:** - provides that the hearing for a leave to appeal application may be presided over by any member of the Court of Final Appeal.
- Clause 70:** - provides for the proceedings for Final Appeal.

*Division 5 - Decisions of the Court*

- Clause 71:** - provides that Division 5 applies to the Court of First Instance, Court of First Appeal and Court of Final Appeal.
- Clause 72:** - provides for the process by which the Court of First Instance, Court of First Appeal and Court of Final Appeal must deliver its decisions.
- Clause 73:** - provides that the Court must provide for its reasons for decisions.
- Clause 74:** - provides that all decisions issued by the Court must be made available to the parties as well as members of the public upon payment of the prescribed fee.
- Clause 75:** - provides that a judgment of a decision is binding in rem.
- Clause 76:** - provides that the decisions and orders of this Court are not reviewable by other Courts.

*Division 6 - Orders of the Court*

- Clause 77:** - provides that the Court of First Instance, Court of First Appeal and Court of Final Appeal may make orders as to costs.
- Clause 78:** - provides that orders issued by the Court are effective on the date specified in the order.

*Division 7 - Enforcement*

- Clause 79:** - provides that the enforcement of decisions and order of the Court are to be made through the Supreme Court or District Court.

*Division 8 - Offences*

- Clause 80:** - provides for general offences under the Act.

**PART 7 - MISCELLANEOUS**

- Clause 81:** - provides for the repeal of the Land and Titles Court Act 1981.
- Clause 82:** - provides for savings and transitional provisions.

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(Hon FAAOLESA Katopau T. Ainuu)  
**MINISTER FOR THE MINISTRY OF JUSTICE**  
**AND COURTS ADMINISTRATION**