

LAND AND TITLES BILL 2020

SAMOA

Explanatory Memorandum

Object and reasons:

- a) The Bill replaces the current Land and Titles Act 1981 to update the law regulating the work of the Land and Titles Court, and to support the Constitution Amendment Bill 2020 which sets up a more autonomous Land and Titles Court framework.
- b) While the Constitution sets out the new framework, the Bill details the running of the courts, and provides helpful guidance for all potential users of the Court, which is the Samoan population. This includes provisions on the processes of each of the three (3) courts in the framework, administration and the general daily operation of the courts.
- c) Through the new framework, Samoa attempts to further emphasize the importance and uniqueness of Samoa's *tu ma aganuu* and her customary land and Matai titles, by affording it the specialist nature it was intended to have.

Clauses:

PART 1

PRELIMINARY

- Clause 1: - provides for the short title and commencement.
- Clause 2: - provides for the definitions of the terms 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 of the Land and Titles Court.
- Clause 5:** - provides for the appointment of other officers and 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.
- Clause 7:** - provides for the Seal of the Courts.

PART 3
CUSTOMARY LAND

Division 1 - Land deemed or declared Customary land

- Clause 8:** - provides for land deemed or declared as customary land.
- Clause 9:** - provides for the declaration of land to be customary land.
- Clause 10:** - provides for the Registrar of the Courts to refer to the Land Registrar any judgments of the Court concerning customary land.

Division 2 - Surveys and sketch-plans

- Clause 11:** - provides for the use of surveys and sketch plans concerning customary land and its boundaries.

PART 4
MATAI TITLES

Division 1 - Eligibility and Removal of Matai Title

- Clause 12:** - provides for the eligibility and qualifications of a person to hold a Matai Title.
- Clause 13:** - provides for the criteria to register a Matai Sa'o.
- Clause 14:** - provides for the removal of a Matai Title.

Division 2 - Validity of Matai Title bestowed

- Clause 15:** - provides for the validity of bestowment of a Matai Title.

Division 3 - Matai Title Register

- Clause 16:** - provides for the Registrar's duties regarding the maintenance of the Matai Title Register to continue.
- Clause 17:** - states that a person may object or file a petition in Court objecting to the Registrar's decision not to enter or delete a Matai Title.

Division 4 - Notification before Matai Title is bestowed

- Clause 18:** - provides that a faapogai Samoan who intends to bestow a title to a Samoan may give notice of such intention to the Registrar and of which must be accompanied by the prescribed fee. The notice must be published by the Registrar in five (5) consecutive issues of the Savali issued monthly.

- Clause 19:** - provides that a person may file an objection petition to the Court for the determination against the notice published in the Savali under clause 18.
- Clause 20:** - provides for the procedure where no objection to a proposed appointment is filed.
- Clause 21:** - provides for jurisdiction where there is no objection.

Division 5 - Notification after bestowment of Matai Title

- Clause 22:** - 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 23:** - states that a person may object or file a petition in Court objecting to the Matai title bestowed as set out in a Notice published under clause 22.

Division 6 - Procedure after bestowment of Matai Title

- Clause 24:** - 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 7 - Offences relating to Matai titles

- Clause 25:** - provides for the offence of providing false or misleading information to the Registrar, Sui-o-le-Nuu, or a person approved for the purpose of clause 24(4).

- Clause 26:** - provides that it is an offence for a person to wrongfully use a Matai Title as allowed under the Bill once enacted.

Division 8 - Interim Orders

- Clause 27:** - provides that the Registrar may reject the filing of a petition on which the final Judgment of the Court has been made.
- Clause 28:** - provides for the Interim Orders of the President or Deputy President.
- Clause 29:** - provides that the Registrar may issue interim orders in certain situations.
- Clause 30:** - 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 the Deputy President.

Division 9 - Conciliation and Resolution

- Clause 31:** - provides that parties are obligated to make a genuine effort to resolve a dispute by participating in dispute resolution avenues and other options for dispute settlement.
- Clause 32:** - provides for the Registrar to conduct Samoan conciliation in relation to any proceedings and for the process of Samoan conciliation which are to be prescribed under this Bill.
- Clause 33:** - provides for judicial settlement conferences where a judge appointed by the President is the mediator and facilitator.
- Clause 34:** - provides for dispute resolution processes.

PART 5
PROCEEDINGS

Division 1 - Land and Titles Court

- Clause 35:** - provides for the time and place of sittings of the Court which are determined by the Registrar after consulting the President.
- Clause 36:** - provides for the functions and powers on conciliation and hearings of the court, which may be exercised by the Registrar upon direction of the President, Deputy President or Vice President.
- Clause 37:** - provides that it is an additional jurisdiction of the Land and Titles Court to determine claims and disputes involving access roads on customary land.
- Clause 38:** - provides for the institution of proceedings under the Land and Titles Court.
- Clause 39:** - provides for the discontinuance of proceedings on the consent of all parties.

Division 2 - Leave to Appeal to High Court

- Clause 40:** - provides for the President or the Deputy President to preside in leave to appeal application.
- Clause 41:** - provides for the hearing of an application for leave to appeal which shall be heard before the President or Deputy President sitting alone.

Division 3 - Land and Titles High Court

- Clause 42:** - provides for the limitation period in which an application for an appeal is to be filed.

- Clause 43:** - provides for the grounds in which an appeal may be made.
- Clause 44:** - provides for the procedure to be followed by a party in opposition of an application for leave to appeal.
- Clause 45:** - provides for the procedure for the hearing of an application for leave to appeal.
- Clause 46:** - provides for the conditions by which special leave may be granted by the President.

Division 4 - Leave to Appeal to the Court of Appeal and Review

- Clause 47:** - provides that an appeal cannot be lodged without the leave of the Chairperson of the Court of Final Appeal and Review.
- Clause 48:** - provides for the procedure for filing a notice of appeal.
- Clause 49:** - provides for the time limitation for filing for leave to appeal.
- Clause 50:** - provides for the hearing of an application for leave to appeal.

Division 5 - Court of Final Appeal and Review

- Clause 51:** - provides that an application for appeal or review must be filed within two (2) months from the date leave is granted together with the prescribed security for costs.
- Clause 52:** - provides for grounds for appeal.
- Clause 53:** - provides that the grounds for review.
- Clause 54:** - provides for notice of hearing of appeal and review.

- Clause 55:** - 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.

Division 6 - Decision of the Court

- Clause 56:** - provides that the provisions of this Division applies to the Court of First Instance, Court of First Appeal and Court of Final Appeal.

- Clause 57:** - provides for the process by which the Court of First Instance, Court of First Appeal and Court of Final Appeal delivers its decisions.

- Clause 58:** - provides that the Court must provide reasons for its judgments.

- Clause 59:** - provides that the decisions and orders of this Court are not reviewable by other Courts.

Division 7 - Orders of the Court

- Clause 60:** - provides that the Court of First Instance, Court of First Appeal and Court of Final Appeal may make orders as to costs.

Division 8 - Enforcement

- Clause 61:** - provides that the enforcement of decisions and order of the Court are to be made through the Supreme Court or District Court.

Division 9 - Offences

- Clause 62:** - provides for general offences under the Act.

PART 6

RULES OF PROCEDURE OF THE COURTS

- Clause 63:** - provides that the Head of State acting on the advice of the Komisi may make Rules regulating the practice and procedure of the Courts.

- Clause 64:** - provides for the procedure for service of application on other parties.

- Clause 65:** - states that a lawyer may be engaged to represent any party to a proceedings before the Court of Appeal and review.

PART 7

VILLAGE FONON ACT MATTERS

- Clause 66:** - provides that the rules of procedure provides for the process of appeals from the Village Fono, under the Village Fono Act 1990.

PART 8
MISCELLANEOUS

- Clause 67:** - provides for the repeal of the Land and Titles Act 1981.
Clause 68: - provides for savings and transitional provisions.
Clause 69: - provides for consequential amendments to the Village Fono Act 1990.

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(Hon FAAOLESA Katopau T. Ainuu)

MINISTER FOR JUSTICE AND
COURTS ADMINISTRATION