

LAND AND TITLES BILL 2019

SAMOA

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2019, No.

A BILL INTITULED

AN ACT to provide for the establishment of the Land and Titles Court and other related purposes.

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

**PART 1
PRELIMINARY**

1. Short title and commencement:

- (1) This Act may be cited as the Land and Titles Act 2019.
- (2) This Act commences on a date nominated by the Minister.

2. Interpretation:

In this Act, unless the context otherwise requires:

“accredited mediator” is a mediator accredited as such by a recognised mediation association in Samoa;

“Assistant President” means an Assistant President appointed under an enactment of Parliament;

“Court” means the Land and Titles Court continued under this Act;

“custom and usage” or **“Samoa custom and usage”** means the customs and usages of Samoa accepted as being in force at the relevant time and includes:

- (a) the principles of custom usage accepted by the people of Samoa in general; and

(b) the customs and usages accepted as being in force in respect of a particular place or matter.

“Deputy President” means a Deputy President of the Court appointed under an enactment of Parliament;

“document” includes any notice, petition, objection, summons, judgment, order, declaration, or other form of communication in writing;

“Judicial Service Commission” means the Judicial Service Commission constituted by Article 72 of the Constitution;

“Judge” means a person appointed as such for the purpose of this Act under an enactment of Parliament;

“land” means customary land;

“Land Registrar” means the Registrar defined in section 2 of the Land Titles Registration Act 2008;

“lawyer” has the meaning given it under the Lawyers and Legal Practice Act 2014;

“matai” means a person whose title has been registered under this Act;

“Matai Title Register” means the Register of Matai continued under section 12;

“member of the Court” includes the President, Assistant President, Deputy President, Samoan Land and Titles Court Judge or member of the Court of Final Appeal who constitute the Court in respect of any matter;

“Minister” means the Minister responsible for Justice and Courts Administration;

“Ministry” means the Ministry responsible for Justice and Courts Administration;

“officer” in relation to the Court includes any Registrar, clerk, bailiff, usher or messenger in the service of the Court, and **“Staff”** in relation to the Court includes all officers of the Court;

“party” includes every person who takes part as claimant, objector, petitioner, respondent or applicant in any proceedings under this Act (other than as a witness) whether or not named as a party to any such proceedings, and, in any proceedings to appoint a matai, includes the pule and the proposed appointee;

“President” means the President of the Court appointed under an enactment;

“record of customary land” has the meaning given in the Land Titles Registration Act 2008;

“Registrar” means the Registrar referred to in section 4 also known as the Court Registrar;

“repealed Act” means the Land and Titles Act 1981;

“rules” means any rules of Court made pursuant to this Act;

“Samoan” has the same meaning given to that term under the Samoan Status Act 1963;

“Samoan conciliation” means the process by which the parties to a dispute, with the assistance of the Registrar and in accordance with Samoan custom and usage, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement and in which the Registrar may make suggestions for terms of settlement and actively encourage the participants to reach an agreement which accords with Samoan custom and usage and the requirements of this Act;

“Sui o le Nuu” means a person appointed as such under section 14(1)(a) of the Internal Affairs Act 1995.

PART 2

ADMINISTRATION OF ACT

3. **Ministry responsible for administration of this Act:**

- (1) The Ministry responsible for Justice and Courts Administration is responsible for the administration of this Act.

- (2) Subject to any direction from the Minister, the Registrar shall keep or cause to be kept proper records in relation to the Ministry.

4. Registrar:

- (1) The person appointed as the Chief Executive Officer of the Ministry also known as the Court Registrar shall be the Registrar of the Land and Titles Court.
- (2) A suitable qualified person may be appointed under the Public Service Act 2004 as an Assistant Registrar.
- (3) In respect of the Court and subject to the control of the Registrar, each Assistant Registrar must possess, exercise and perform the same powers, functions and duties as the Registrar, and any reference in this Act to the Registrar, unless the context otherwise requires, includes a reference to each Assistant Registrar.

5. Appointment of other officers and employees:

The Public Service Commission may appoint other officers and employees of the Ministry as may be necessary.

6. Records of the Court:

- (1) The Registrar shall keep or cause to be kept records of or in relation to the Court, and of every proceeding before the Court, as required by this Act, or as may be prescribed by Rules, or by the President.
- (2) No person shall have access to the records of the Court except with the permission of the President, or the Registrar.

PART 3
CUSTOMARY LAND

Division 1 - Land deemed or declared Customary Land

7. Land deemed or declared customary land:

- (1) Land deemed or declared as customary land and saved as such under the Repealed Act is regarded as customary land under this Act.
- (2) In accordance with the Constitution, “customary land” means land held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.

Division 2 - Surveys and sketch-plans

8. Surveys and sketch-plans:

- (1) A party to a petition involving boundaries of customary land must ensure that a sketch plan of the customary land and its boundaries is carried out by a licensed surveyor before filing a petition.
- (2) The sketch plan undertaken pursuant to subsection (1) must be filed together with a petition or a response to a petition in order for the matter to be heard before the Court.
- (3) It is the duty of the licensed surveyor making the sketch plan to define the land or boundary in dispute in accordance with the direction of the parties to the dispute present or represented.
- (4) Nothing in this section limits the power of the Court to order a survey to be made at any time in respect of any matter before it.

- (5) The costs of the survey ordered under subsection (4) shall be paid as ordered by the Court.
- (6) Despite subsection (1), for a matter where the *pule* is decided by the Court, the Court Registrar may request that parties to a petition survey land or boundaries.
- (7) For the purpose of this section a “licensed surveyor” is a person who holds a practicing certificate under the Survey Act 2010.

Division 3 - Record of decisions concerning customary land

9. Transmission of judgments concerning customary land:

The Registrar of the Court must upon the request of the Land Registrar transmit to the Land Registrar any judgment of the Court concerning the *pule* or status of any customary land or interest in the land, or an order or declaration made under this Act.

PART 4
MATAI TITLES

Division 1 - Eligibility and validity

10. Qualifications of Matai:

- (1) A person is not qualified to hold a Matai Title or be registered as a matai unless:
 - (a) he or she is at least 21 years of age; and
 - (b) he or she is prepared to carry out the obligations of his or her Matai Title including properly serving his or her family, village and community according to Samoan custom and usage; and
 - (c) he or she meets other criteria required by the family in accordance with their custom and usages.

- (2) A person who is convicted of an offence that holds a seven (7) years' imprisonment term or more, is disqualified from holding a Matai Title unless that person's aiga unanimously support the bestowment of that person's Matai Title.

11. Validity of the bestowment of a Matai Title:

The following requirements must be met in order for a Matai Title bestowment to be considered valid for registration under this Act:

- (a) the person is appointed the holder of a Matai Title by and in accordance with the customs and usages of the Samoan people, including appointment in pursuance of a judgment of the Court, or of an interim order made under the provisions of this Act; and
- (b) a traditional ceremony of appointment in the village to which that Matai Title belongs is held; and
- (c) that during the traditional ceremony under paragraph (b) -
 - (i) the person is physically present;
 - (ii) the village council of the village are physically present to acknowledge recognition of the bestowment of the Matai Title.

Division 2 - Matai Title Register

12. Registrar to keep Matai Title Register:

- (1) The Matai Title Register ("Register") is continued and must be maintained by the Registrar for the purpose of recording Matai Titles referred for registration under this Act.
- (2) The Registrar must register a Matai Title onto the Register:
 - (a) where for intention to bestow under Division 3 -
 - (i) no objections are made and the person meets the requirements of Division 5; or
 - (ii) objections are made and the validity of the bestowment of the Matai Title is upheld by the Court;

- (b) where for notification after bestowment of a Matai Title under Division 4 -
 - (i) no objections are made; or
 - (ii) if objections are made, the validity of the bestowment of the Matai Title is upheld by the Court.
- (3) If the Registrar is not satisfied that the requirements of section 11 are met, the Registrar must:
 - (a) not enter the Matai Title onto the Register; and
 - (b) in writing notify the Matai Title holder that his or her Matai Title has not been entered onto the Register after which the person notified is to provide a written response to the Registrar one (1) month after receiving that notice.
- (4) The Registrar must delete a Matai Title from the Register if:
 - (a) the holder or such title is the subject of an order of the Court under section 21(2); or
 - (b) the Registrar is satisfied that -
 - (i) the person has vacated the Matai Title in question; or
 - (ii) the entry was made pursuant to an incomplete or defective folio forwarded by a Sui-o-le-Nuu or a faifeau under section 20; or
 - (iii) that the entry was made in error; or
 - (c) subject to subsection, the deletion is requested in writing by the holder of the Matai Title provided that the Registrar must not delete the Matai Title of the person if the request for deletion of his or her Matai Title is for the purpose of registration under legislation governing General Elections.
- (5) The Matai Title of a person that has been deleted from the Register under:

- (a) subsection (4)(a) must not be re-registered unless the person has again been appointed the holder of such Matai Title in accordance with the customs and usage of the Samoan people under this Part; or
- (b) subsection (4)(c) must not be re-registered until a period of 5 years has passed from the date of deletion.

13. Objection to Registrar's decision not to enter or delete Matai Title:

- (1) A person may file a petition in Court objecting to the Registrar's decision made under section 12(3) or (4).
- (2) The Court may order that either:
 - (a) the Matai Title of a person be entered onto the Register by the Registrar; or
 - (b) confirm the Registrar's decision.

Division 3 - Notification before a Matai Title is bestowed

14. Intention to bestow title:

- (1) A Samoan who intends to bestow a title to a Samoan may give notice of such intention to the Registrar which must be accompanied by the prescribed fee, at the office of the Court in Savaii or Upolu.
- (2) A person the subject of a notice under subsection (1) must meet the qualifications set out under section 10.
- (3) Upon receiving a notice under subsection (1), the Registrar must publish the particulars of the notice provided in two (2) consecutive issues of the *Savali* issued monthly.

- (4) The Registrar must ensure the notice specifies:
 - (a) the time limitation of three (3) months from the date of publication of a notice is specified in the notice to inform that a person with a may file an objection petition relating to the notice; and
 - (b) the place for an objection petition to be filed.

15. Objection may be filed against Notice of intention to bestow title:

A person may file an objection petition to the Court for determination against the notice published under section 14.

16. Procedure where no objection is filed:

- (1) If there is no objection to the proposed appointment, the Registrar shall, as soon as practicable after the time fixed for lodging objections, prepare, sign and file a petition to the Court for confirmation.
- (2) Upon receipt of the Court's confirmation under this section, the person the subject of a notice under section 14 must undergo the traditional ceremony for bestowment of a Matai Title.

17. Jurisdiction where there is no objection:

- (1) The Court, sitting without Samoan Judges, has jurisdiction, *ex parte*, to confirm wholly or in part, and with or without modification, any claim for the bestowment of any title for a notice in which an objection has not been filed.
- (2) A proposed bestowment of title confirmed under this section may be set aside, in prescribed proceedings, for reason of error, misconduct or bad faith.
- (3) For all purposes any confirmation is regarded as a decision of the Court.

- (4) A confirmation by the Court under subsection (1) does not remove the requirement for a person to meet the requirements of Division 5.

Division 4 - Notification after bestowment of Matai Title

18. Notification after bestowment of Matai Title:

Where the Registrar receives for registration record for a Matai Title after the Title has been bestowed, the Registrar must before registration cause a Notice of the information provided pursuant to section 20 to be published:

- (a) in two (2) consecutive issues of the monthly issue of the *Savali*; and
- (b) setting out -
 - (i) the name of the Matai Title holder;
 - (ii) the Matai Title and the village where the Title was bestowed;
 - (iii) the time limitation of three (3) months from the date of publication of a notice to inform that an objection may be made against the Matai Title bestowed.

19. Objection to the Matai Title bestowed:

- (1) A person may file a petition in Court objecting to the Matai Title bestowed as set out in a Notice published under section 18.
- (2) Where the Registrar is satisfied that the bestowment of a Matai Title has not been made in accordance with the Act, the Registrar must prepare, sign and file a petition for the Court to determine whether or not the Matai Title in question should be entered onto the Register.
- (3) The Court may either confirm the Matai Title bestowed or declare that the Matai Title bestowed is not valid under this Act.

*Division 5 - Procedure after bestowment of Matai Title***20. Procedure after bestowment of Matai Title:**

- (1) This section applies to matai titles bestowed after notification pursuant to Division 3, or before notification pursuant to Division 4.
- (2) A Sui-o-le-Nuu must within 14 days after a Matai Title is bestowed, do the following:
 - (a) ascertain whether or not that village is the village to which that title belongs;
 - (b) enter and sign in triplicate in a book approved by the Registrar to be kept by the Sui-o-le-Nuu, the particulars of the traditional ceremony of appointment to the title, including whether the requirements of section 11 are met;
 - (c) forward to the Registrar from the book the original record containing those particulars;
 - (d) hand or forward to the new Matai Title holder from the book the duplicate record containing those particulars; and
 - (e) retain in the book the triplicate record containing those particulars until the book is full after which it must be returned to the Registrar for the issuance of a new book.
- (3) Despite subsection (2)(c), the duplicate record provided by a Sui-o-le-Nuu to the new Matai Title holder under subsection (2)(d) may be provided by the Matai Title holder to the Registrar for the Court's confirmation and Registration.
- (4) If a Matai Title is bestowed in a village without a Sui-o le-Nuu, the Registrar may approved that the member of the clergy who officiated the bestowment ceremony confirm details required for confirmation under this section.

Division 6 - Removal of Matai Titles

21. Removal of Matai Title:

- (1) The Court on petition of a Sa'o or a Suli may hear and determine whether to remove a Matai Title if any of the following occurs:
 - (a) where the holder of that Title has acted in a manner that brings disrepute to the family, village or community of the Matai; or
 - (b) where the holder of that Title has failed to properly perform the duties of a Matai; or
 - (c) where the holder of that Title has been convicted of a crime that is punishable by imprisonment for 7 years or more.
- (2) The Court may order the removal of a Matai Title or confirm the retention of a Matai Title that is the subject of a petition under this section.
- (3) For the purpose of this section a petition to:
 - (a) remove a Matai Title from a suli may only be made by the Sa'o with *pule* over that Matai Title; and
 - (b) remove a Matai Title of a Sa'o may be made by any suli.

Division 7 - Offences

22. False information and misleading:

A person:

- (a) who wilfully gives false information to the Registrar, Sui-o-le-nuu or person approved for the purpose of section 20(4); or
- (b) who intentionally misleads the Registrar, Sui-o-le-nuu or person approved for the purpose of section 20(4); and

(c) including any Sui-o-le-nuu, who, without lawful excuse, breaches any duty required under section 20, commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months.

23. Wrongful user of a Matai Title:

A person other than the rightful holder who uses a Matai Title, or permits himself or herself to be addressed by a Matai Title, or acts as the holder of a Matai Title he or she has not been bestowed, commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 12 months.

PART 5

**LAND AND TITLES COURT CONTINUED AND
PRELIMINARY PROCEDURAL PROVISIONS**

Division 1 - Continuation and constitution of Court

24. Land and Titles Court continued:

- (1) The Land and Titles Court ("Court") continues under this Act to be a Court of record and is established as if it was established under this Act.
- (2) In addition to the jurisdiction and powers expressly conferred on it by this Act, the Court shall have all the powers that are inherent in a Court of record.
- (3) The Court shall comprise of:
 - (a) Court of First Instance; and
 - (b) Court of First Appeal; and
 - (c) Court of Final Appeal.

*Division 2 - Sittings and Procedure***25. Jurisdiction of the Court:**

- (1) The Court shall continue to have all the jurisdiction it exercised prior to this Act coming into force.
- (2) In particular the Court shall have exclusive jurisdiction:
 - (a) in all matters relating to Matai Titles;
 - (b) to make orders or declarations in respect of Matai Titles as may be necessary to preserve or define the same, or the rights or obligations attaching to those Titles in accordance with the customs and usages of the Samoan people and all laws in force in Samoa with reference to customs and usages;
 - (c) to make orders holding a person in contempt of court for an act done when Court is in session or during the court's site visit that the Court considers disrespectful or amounts to obstruction of the Court's process;
 - (d) in all claims and disputes between Samoans relating to customary land in accordance with the customs and usages of the Samoan people.
- (3) The Court also has the jurisdiction conferred by this Act.
- (4) The Court must not consider a matter for which a decision has been made.

26. Law to be applied:

- (1) 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 Act and any other enactment expressed to apply to the Court.
- (2) Subject to subsection (1), the Court shall decide all matters in accordance with what it considers to be fair and just between the parties.
- (3) Without limiting this section, the following principles shall be used by the Court as a guide for a dispute regarding conflict over a Matai Title:
 - (a) the opinion of the majority of the suli to the Matai Title as to who should hold the Matai Title;
 - (b) the eligibility of a person claiming right to a Matai Title such as -
 - (i) good character;
 - (ii) appropriate understanding of the customs and traditions of Samoa;
 - (iii) rendering of appropriate tautua in the village to which the Matai Title belongs.

27. Sittings of the Court:

- (1) The time and places of sittings of the Court are determined by the Registrar after consulting the President.
- (2) The Court while sitting to hear any matter, may adjourn the hearing to any other time or venue.
- (3) A matter adjourned under subsection (2) must not be unreasonably delayed.
- (4) Two (2) or more Courts constituted under this Act:
 - (a) may sit at the same time in the same or different appointed venues; and
 - (b) have all the powers and jurisdiction of the Land and Titles Court.

28. Rules for the procedures of the Court:

- (1) The Head of State acting on the advice of the Judicial Service Commission may make rules for the purpose of regulating the practice and procedure of the Court in all matters within its jurisdiction.
- (2) The rules of Court made under subsection (1) shall be referred to as the “Land and Title Court Procedure Rules”.
- (3) The Rules of Court may make provision for:
 - (a) filing of petitions required under this Act;
 - (b) notification process for petitions filed under this Act;
 - (c) trial management, including -
 - (i) that the Court must allow a right of response or question by any party to an issue arising from matters raised before it; and
 - (ii) not consider any matter that is not part of any evidence presented before it;
 - (iii) follow precedent set in other matters already decided by it, if it is relevant; and
 - (d) evidence;
 - (e) the adjournment of proceedings; and
 - (f) mediation and preliminary conferences prior to a hearing; and
 - (g) the prevention or termination of frivolous or vexatious proceedings; and
 - (h) the summary disposal of proceedings; and
 - (i) how a person makes a submission to the Court; and

- (j) dispute resolution processes and the procedure to be followed when any dispute resolution process ends; and
 - (k) consent orders where parties have reached agreement about a matter in dispute in the proceedings; and
 - (l) such other matters as the Court thinks appropriate.
- (4) In any matter of practice or procedure not provided for, or where the strict compliance with any rule of practice or procedure may be inequitable or inconvenient, the Court may act in each case in such manner as it considers most consistent with natural fairness and justice.

29. Registrar's functions and powers:

- (1) The following functions of the Court may, if the President, Assistant President or Deputy President directs, be exercised by the Registrar:
 - (a) in proceedings in the Court, the function of making an order adjourning the hearing of the proceedings; and
 - (b) the function of Samoan conciliation.
- (2) An order made by the Registrar in relation to a power provided for under this Act, is regarded an order of the Court.

30. Role of Samoan Land and Titles Court Judges:

Samoan Land and Titles Court Judges appointed for the purpose of this Act are to advise the President, Assistant President or Deputy President only on matters of Samoan custom and usage.

31. Institution of proceedings:

- (1) All proceedings may be instituted in the Court by written notice of the matter in dispute given by any interested party to the Registrar.
- (2) On receiving notice under subsection (1), the Registrar must prepare a petition in the prescribed form showing:
 - (a) the nature and particulars of the claim or dispute;
 - (b) the relief sought; and
 - (c) the name of the petitioner, the respondent and his or her village.
- (3) A petition must be signed and sworn before the Registrar by the petitioner or his or her lawyer appearing pursuant to section 34.
- (4) The petition, if filed in the office of the Court in Savaii, must as soon as practicable be transmitted to the Registrar in Apia.
- (5) Subject to subsection (6), upon the filing of a petition the Registrar must set it down for hearing at the next available sitting of the Court.
- (6) A petition filed under subsection (5) must be published by the Registrar in three (3) consecutive issues of the monthly issue of the *Savali*.
- (7) The Registrar can stay setting down a matter for hearing until the parties to that matter have undertaken Samoan conciliation or otherwise attempted reconciliation according to Samoan custom and usage.

32. Conflict of interest:

- (1) A Judge shall disqualify him or herself to sit in for a hearing in a matter before the Court if a conflict of interest exists by any reasons as follows:
 - (a) marriage; or
 - (b) connection through parents.

- (2) Despite subsection (1), parties may in agreement waive the requirement for disqualification of a Samoan Land and Titles Court Judge in which case that Judge may continue in his or her involvement in the matter.

33. Seal:

- (1) The seal of the:
 - (a) Court of First Instance;
 - (b) Court of First Appeal; and
 - (c) Court of Final Appeal,must be in the custody of the Registrar.
- (2) The seal in use at the commencement of this Act must continue to be the seal of the Courts under subsection (1) until the seal for each Court is ready to be used.
- (3) The form of the seal may be determined by the Registrar, with the approval of the Minister.

34. Engaging a lawyer:

- (1) A lawyer may be engaged by any party to a proceeding to:
 - (a) prepare and file a petition or other document in connection with the proceeding before the Court; or
 - (b) appear before the Court,on behalf of the party.
- (2) For the purpose of this section “appear” means appearance in the Court of First Appeal or Final Appeal.

*Division 3 - Interim Orders***35. Interim orders by President or Assistant President:**

- (1) Upon the commencement of any proceedings and pending the final determination of the petition by the Court, the President or Assistant President, sitting alone may make, either ex parte or otherwise, such interim orders as the President or Assistant President thinks fit as to the possession of the land, or the use of the title, or the exercise of the right to which the petition relates.
- (2) An order made under this section is taken as an order of the Court, and is enforceable accordingly.

36. Interim orders by Registrar:

- (1) If the Registrar is satisfied that a dispute has arisen between any person which is within the jurisdiction of the Court, and is likely to be the subject matter of proceedings under this Act, the Registrar may, with the concurrence of the President, Assistant President, Deputy President or Samoan Land and Titles Court Judges before the commencement of proceedings, make an order as the Registrar regards necessary to restrain any person from:
 - (a) remaining in possession of or entering upon any land;
 - (b) holding or using any Matai Title; or
 - (c) exercising any right or doing any act matter or things concerning or affecting any land or any Matai Title.
- (2) An order made under this section is taken as an order of the Court, and is enforceable accordingly.

37. Duration of interim order by Registrar:

- (1) An order under section 36 may be made *ex parte* or otherwise, and remains in force until the final judgment of the Court.
- (2) The President or Assistant President may after the commencement of proceedings, upon the application of any party affected by an order made under section 36, modify, vary or rescind the order.
- (3) The Registrar may before the commencement of proceedings, upon the application of any person affected by an order made under section 36, modify, vary or rescind the order.

*Division 4 - Conciliation and Resolution***38. Genuine effort to resolve the dispute:**

Each party to a matter in the Court is required to make a genuine effort to resolve the dispute before the commencement of a case by:

- (a) participating in dispute resolution, such as mediation or Samoan conciliation; and
- (b) exchanging a notice of intention to claim and exploring options for settlement by correspondence.

39. Registrar's powers in connection with resolution of dispute:

- (1) The Registrar may:
 - (a) conduct Samoan conciliation; or
 - (b) refer Samoan conciliation or mediation to an accredited mediator,
 in relation to any proceedings, any dispute prior to a petition being filed under this Act in relation to that dispute with a view to resolving that dispute.
- (2) The Registrar may make suggestions and provide advice and assistance to parties to a dispute concerning customary land or titles with a view to resolving that dispute despite that no petition has been filed in respect of that dispute.

- (3) The Registrar may charge a prescribed fee when carrying out the power under this section.

40. Samoan conciliation and mediation:

- (1) The Court shall refuse to hear a matter if the parties to that matter have not undertaken Samoan conciliation or mediation.
- (2) The Court may, by order, refer proceedings or any part of them or any matter arising out of them, to an accredited mediator for mediation.
- (3) Referrals under subsection (2) to an accredited mediator may be made with or without the consent of the parties to the proceedings.
- (4) Where the Court refers any proceedings to mediation under subsection (2), that mediation must be completed within a period of 45 days.
- (5) The Court must recognize and give effect to an agreement reached at a Samoan conciliation or mediation carried out under this section.

41. Dispute resolution processes:

- (1) If the Court considers that a dispute resolution process may help the parties to a dispute resolve that dispute, the Court may advise the parties to use that dispute resolution process.
- (2) If the Court does so advise the parties, it may, if it considers it appropriate to do so, adjourn any proceedings before it to enable attendance in connection with the dispute resolution process.

PART 6
PROCEEDINGS

Division 1 - Court of First Instance

42. Constitution of the Court of First Instance:

The Court of First Instance consists of:

- (a) the Deputy President as the presiding Judge; and
- (b) two (2) Samoan Land and Titles Court Judges.

43. Commencement of proceedings:

Proceedings before the Court must commence on the filing of the petition.

44. Service of application on other parties:

- (1) The party filing a petition has the duty to serve all relevant parties a copy of his or her petition in accordance with prescribed rules.
- (2) For the purpose of subsection (1), a party with the duty to serve a copy of the application must serve on the Registrar a sworn affidavit of service attaching confirmation of service of each party referred in the affidavit.

45. Discontinuance of proceedings:

The Deputy President with the consent of all parties, may order that proceedings be discontinued.

46. Power of Court of First Instance:

The Court in determining any petition before it has the power to issue an Order in relation to any petition brought before it.

47. Decision of majority to be decision of Court:

- (1) The decision of the Court is in accordance with the opinion of the majority of the members of the Court.
- (2) The decision of the Court is subject to an appeal under this Part.

Division 2 - Leave to Appeal

48. President or Assistant President presides in leave to appeal:

The President or Assistant President shall preside over the hearing of applications for leave to appeal.

49. Right of appeal:

A party to a proceedings may appeal against a decision of the Court made under section 47.

50. Time limitation for filing of appeal:

An application for appeal must be filed within two (2) months from date of delivery of written decision of the Court.

51. Leave to appeal:

- (1) No appeal shall be lodged without the leave of the President or Assistant President.
- (2) In granting leave, the President or Assistant President may order a stay of execution of the decision or order, pending the outcome of the appeal.

52. Grounds for appeal:

Leave to appeal may be granted on any of the following grounds:

- (a) that new and material evidence had been found since the hearing of the petition of which the applicant had no knowledge, or which could not reasonably have been adduced at the hearing of the petition;
- (b) that the successful party had been guilty of such misconduct in relation to the hearing of the petition as to affect the result of the case;
- (c) that a witness had been guilty of such misconduct in relation to the hearing of the petition as to affect the result of the case;
- (d) that a member or officer of the Court had made a mistake or misconducted himself or herself in relation to the hearing of the petition as to affect the result of the case;
- (e) that the Court did not have jurisdiction to make the decision or order;
- (f) that the decision or order is wrong in law or not in accordance with custom and usage;
- (g) that the decision or order was manifestly against the weight of the evidence adduced at the hearing of the petition.

53. Service of application on other parties:

- (1) The party filing an appeal has the duty to serve all parties to the proceeding in the Court of First Instance, a copy of the application for leave to appeal.
- (2) For the purpose of subsection (1), a party with the duty to serve a copy of the application must serve on the Registrar a sworn affidavit of service attaching confirmation of service of each party referred in the affidavit.

54. Response to application for appeal:

- (1) A party in opposition of the application must, within 30 days after receiving a copy of the application under section 53, file with the Registrar an answer stating his or her opposition and the reasons for it.
- (2) The Registrar shall, as soon as practicable, prepare and serve a copy of the answer on the applicant.

55. Hearing of application for leave to appeal:

- (1) The application for leave to appeal shall be heard before the President or Assistant President on a date to be notified to each party by the Registrar in the prescribed form.
- (2) All parties may be heard and may make submissions.
- (3) The hearing shall not be open to members of the public.
- (4) The President or Assistant President may make such order on the application and as to costs or otherwise, as the President or Assistant President thinks fit.
- (5) The President or Assistant President may grant or reject the application for leave to appeal, but where leave to appeal is granted, the Registrar must comply with section 56.

56. Notice of hearing of appeal:

- (1) The Registrar must give notice of the hearing of an appeal by publishing the notice in the *Savali* at least 21 days before the date of the hearing.
- (2) The notice must be in the form prescribed containing:
 - (a) the time and place of the hearing; and
 - (b) the names of the parties, nature of proceedings, and the nature of the relief sought.

*Division 3 - Court of First Appeal***57. Constitution of Court to hear appeals:**

- (1) The Court of First Appeal may hear any appeals from the Court of First Instance and consists of:
 - (a) the President as the presiding Judge or the Assistant President on the direction of the President as a presiding Judge; and
 - (b) two (2) Samoan Land and Titles Court Judges appointed by the President.
- (2) A Judge is disqualified from sitting on an appeal if he or she was a member of the Court of First Instance at the hearing of the petition in the matter on appeal.

58. Appeals to be by way of re-hearing:

- (1) An appeal must be by way of rehearing.
- (2) The Registrar must prepare and produce to the Court of Appeal the full record of the proceedings, and all evidence given at the Court of First Instance, the hearing of the petition and the hearing of the application for leave to appeal.
- (3) The Court in its discretion may re-hear the whole or any part of the evidence referred to in subsection (2).

59. Evidence:

The Court of First Appeal must:

- (a) not consider any matter not part of the petition brought before the Court of First Instance;

- (b) follow precedent set in other matters already decided by it if the Court considers the precedent relevant to the matter before it.

60. Power of Court of Appeal:

In addition to powers conferred under this Act, the Court of Appeal may:

- (a) affirm decision or orders being appealed; or
- (b) revoke decision or orders being appealed; or
- (c) vary decision and orders being appealed; or
- (d) direct re-hearing by Court of First Instance in whole or in part of the matter appealed; or
- (e) dismiss the appeal; or
- (f) exercise any power as though it were the Court of First Instance.

61. Decision of majority to be decision of Court:

- (1) The final decision of the Court is in accordance with the opinion of the majority of the members present.
- (2) A decision of the Court of First Appeal is subject to appeal under Division 4 of this Part.

Division 4 - Court of Final Appeal

62. Constitution of the Court of Final Appeal:

The Court of Final Appeal is:

- (a) presided by the Head Final Appeal Court Judge (“Head Judge”);
and
- (b) two (2) other Final Appeal Court Judges.

63. Jurisdiction:

- (1) The Court of Final Appeal has jurisdiction to hear and determine appeals from any final order or decision of the Court of First Appeal.
- (2) Any appeal may be brought by or on behalf of any party to the proceedings in which the order or decision is made.
- (3) Every appeal shall be commenced by notice of appeal given in the form and manner prescribed by the rules of Court within two (2) months after the date of the decision or order appealed from or within such further period as the Court of Final Appeal may allow.

64. Leave to appeal:

- (1) No appeal shall be lodged without the leave of the Head Judge.
- (2) In granting leave, the Head Judge may order a stay of execution of the decision or order pending the outcome of the appeal.

65. Grounds for appeal:

Leave to appeal may be granted on the ground of a question of the application of this Act.

66. Security for appeal:

The applicant on the day he or she files the application shall pay to the Registrar the prescribed fee as security for the appeal.

67. Service of application on other parties:

- (1) The Applicant shall prepare and serve on all other parties to the proceedings a copy of the application for leave to appeal.
- (2) For the purpose of subsection (1), a party with the duty to serve a copy of the application must serve on the Registrar a sworn affidavit of service attaching confirmation of service of each party referred in the affidavit.

68. Response to application for appeal:

- (1) A party in opposition of the application must, within 30 days after receiving a copy of the application under section 67, file with the Registrar an answer stating his or her opposition and the reasons for it.
- (2) The Registrar shall, as soon as practicable, prepare and serve a copy of the answer on the applicant.

69. Hearing of application for leave to appeal:

- (1) The application for leave to appeal shall be heard before any member of the Court of Final Appeal on a date to be notified to each party by the Registrar in the prescribed form.
- (2) The member presiding may grant or reject the application for leave to appeal and where the application is granted, the Registrar must comply with section 70.
- (3) All parties may be heard and may make submissions.

- (4) The hearing is not open to members of the public.
- (5) The presiding member may make such order on the application and as to costs or otherwise, as the President thinks fit.

70. Proceeding and power of the Court of Final Appeal:

- (1) Where the application for leave to appeal is granted, the Registrar must give notice of the hearing of an appeal by publishing the notice in the *Savali* at least 21 days before the date of the hearing.
- (2) The Court of Final Appeal has the power to:
 - (a) confirm, vary or reverse the decision of the Court of First Appeal; or
 - (b) order the Court of First Appeal to rehear the matter; or
 - (c) dismiss the appeal.

Division 5 - Decision of the Court

71. Application:

This Division applies to the Court of First Instance, Court of First Appeal and Court of Final Appeal.

72. Delivery of decisions:

- (1) A decision is to be delivered in open Court by the Presiding Member of the Court of Final Appeal, President, Assistant President or Deputy President presiding.
- (2) A decision is regarded as complete upon delivery under subsection (1).

- (3) The written decision is to be delivered 30 days from the date of the delivery of the decision under subsection (1).

73. Reasons for decisions:

The Court must in its decision on a petition give the reasons of the Court, or the majority of its members, for the decision.

74. Decision to be available to parties and the public:

Copies of all decisions entered in the records of the Court shall be available to the parties and members of the public on the payment of the prescribed fee.

75. Effect of final decision:

Subject to an appeal under Part 5, every decision of the Court on a petition is deemed to be judgment in rem and binds all people who are affected by it, whether parties to the proceedings or not.

76. Decisions and orders not reviewable by other Courts:

Subject to this Act, no decision or order of the Court shall be reviewed or questioned in any other Court by way of appeal, or prerogative writ.

Division 6 - Orders of the Court

77. Orders as to costs:

- (1) In any proceedings the Court may make such order as it thinks just, as to the payment of the costs of the proceedings, or of any matter incidental or preliminary to the proceedings, by or to any person who is a party to the proceedings.

- (2) If the Court is of the opinion:
 - (a) that any proceedings is frivolous or vexatious; or
 - (b) that any petition, claim, action, application or objection in respect of the proceedings is frivolous or vexatious,it may, if it thinks fit, irrespective of the result of the proceedings, allow any party the whole or any part of his or her costs in defending or disputing the frivolous and vexatious proceedings.
- (3) In any proceedings and at any stage of the hearing, the Court may require any party to deposit any sum of money as security for costs, and in default of making the deposit the Court may stay the proceedings either wholly or in respect of the party in default.
- (4) The sum deposited is disposed of in such manner as the Court directs.

78. Commencement of orders:

- (1) An order made by the Court shall take effect on a date or dates to be specified in the order.
- (2) In the absence of any specified date, an order takes effect on the date on which it is made.

Division 7 - Enforcement

79. Enforcement of decisions and orders of the Court:

- (1) A decision or order of the Court shall be enforced in and by the Supreme Court or, as the case may be, by the District Court.

- (2) For the purposes of subsection (1):
 - (a) a decision or order of the Court is taken to be a judgment or order of the Supreme Court or, as the case may be, of the District Court; and
 - (b) a rule of procedure of the Supreme Court or the District Court, and an enactment, with the necessary modifications, apply to a decision or order of the Court, as if the decision or order were a judgment or order of the Supreme Court or, as the case may be, the District Court.
- (3) A sealed copy of the decision or order to be enforced under this section is to be filed in the Supreme Court, or the District Court.

Division 8 - Offences

80. Offences:

- (1) A person commits an offence and is liable upon conviction to a fine of 5 penalty units or to imprisonment for six (6) months who:
 - (a) disobeys any decision or order of the Court, or any order made under section 35 or 36;
 - (b) uses any abusive, insulting, offensive or threatening words or behaviour in the presence of the Court, or writes any such words to a member or officer of the Court;
 - (c) assaults, resists, obstructs, or incites any other person to assault, resist, or obstruct, any constable, surveyor, or officer of the Court in serving any process of the Court or executing any decision or order of the Court, or any order made under section 35 or 36;

- (d) by any words or behaviour obstructs in any manner the proper and orderly administration of justice in the Court;
 - (e) fails to appear on a summons relating to the hearing of any proceedings before the Court;
 - (f) being a party to a petition, fails to be present at the time and place appointed for a survey under section 8.
- (2) Proceedings for an offence under this Act are to be commenced in the District Court.

PART 7 - MISCELLANEOUS

81. Repeal:

The Land and Titles Act 1981 is repealed.

82. Savings and transitional provisions:

- (1) The provisions of the repealed Act under which Judges of the Court were appointed are saved at the commencement of this Act, until the corresponding enactment appointing such Judges comes into effect.
- (2) All Matai Titles entered onto and deleted by the Registrar under the repealed Act is treated as having been entered onto or deleted from the Register by the Registrar under this Act, at the commencement of this Act.
- (3) The provisions of the repealed Act are saved for the purpose of determination of a petition filed before the commencement of this Act, at the commencement of this Act.
- (4) The provisions of the repealed Act are saved for the purpose of determination of proceedings that are before the court at the commencement of this Act.

- (5) The provisions of the repealed Act are saved for the purpose of determination of all orders and decisions of the Court as relevant at the commencement of this Act.
- (6) Employees employed under the repealed Act are taken to be employed under this Act, at the commencement of this Act.
- (7) The Appellate Division of the Land and Titles Court is treated as the Court of First Appeal at the commencement of this Act.
