



REPORT TO THE LEGISLATIVE ASSEMBLY

“District Courts Bill 2015”

Justice, Police and Prisons & Land and Titles Committee

1. RECOMMENDATION:

The Justice, Police and Prisons & Lands and Titles Committee recommends that the Assembly take note of its report.

2. BILL CONSIDERED:

(Referred 22/3/2015)
District Courts Bill 2015.

The Justice, Police & Prisons and Lands & Titles Committee¹ considered the District Courts Bill 2015 pursuant to the instructions by the Legislative Assembly on 22 April 2015.

3. PROCEEDINGS:

The Committee called for oral and/or written public submissions on the Bill through a public notice broadcast on the Samoa Quality Broadcasting (TV1) and 2AP radio. However, no submissions pertaining to this Bill were submitted to the Committee.

The Committee sought assistance from the following officials during the course of its deliberations.

ASSISTANCE (S.O.156)**Office of the Attorney General**

Tuatagaloa Aumua Ming C Leung Wai - Attorney General

Siovia Liu - State Solicitor

Ministry of Justice and Courts Administration

Masinalupe Tusipa Masinalupe - CEO

Li'o Heinrich.W. Siemsen - ACEO

¹ Standing Order 173, TUISA Tasi Patea, AFOAFOUVALE John Moors, LAFATELE Patrick Leiataualesa, LENATAI Victor Faafoi Tamapua, PAPALII Li'o Taeu Faavaivaionu Masipau, LEFAU Harry Schuster ma TAPUAI Toese Ah Sam.

Samoa Law Society:

Savalenoa Mareva Betham-Annandale	-	President
Rosella Viane Papalii	-	Vice-President
Leota Ray Schuster	-	Member of SLS
Leota Tima Leavai	-	Member of SLS
Edelma Niumata	-	Member of SLS

4. FINDINGS:

The Committee discussed the District Courts Bill 2015 with the Ministry of Justice and Courts Administration and the Attorney Generals Office on 14 July 2015. The Attorney Generals Office explained and clarified each aspect of the Bill. It was submitted that this Bill seeks to repeal and replace the District Courts Act 1969. It is noted that the Principal Act has been in place for 46 years and many of the provisions therein are outdated and no longer applicable today. This Bill will also simplify the language used and the intention is that the Bill will change and modernise the Principal Act.

The Bill will apply reformed arrangements relating to the Constitution, powers and procedures of Samoa and the Division of the Courts. These changes are designed to enhance the administration of the District Courts and procedures with regard to proceedings heard and determined in it.

One important aspect the Attorney Generals Office emphasized was criminal jurisdiction. It was submitted that the criminal jurisdiction of district court judges is for offences with a term of imprisonment of 7 year which is an increase in the current provision of 5 years. The Committee queried this and it was clarified that this was to ensure consistency with the Crimes Act 2013. As is known, the Crimes Act 2013 increased penalties for many criminal offences such as intentional damage. The Ministry clarified that the cases referred to the Supreme Court from the District Courts continuously increases however, when this Bill is passed, all these referred cases will be returned to the District Courts. The

Committee pursued this matter by submitting a query whether the provisions to readjust penalties and transfer cases will ensure efficient implementation of the judiciaries responsibilities? The Ministry stated that there is an opportunity to transfer cases as a result of these changes within the Bill. In addition, the Criminal Procedures Bill now with the Parliamentary Committee provides for this specific matter. The Ministry believes that the two bills are inter-dependent.

The Ministry and the Attorney Generals Office also clarified the matter of civil jurisdiction. The Committee noted that a judge has the authority to hear civil cases for amounts claimed in action not exceeding \$20,000 which has been increased from \$10,000. Also increased is sums claimed for cases to be heard by the Faamasino Fesoasoani from \$1,000 to \$2,000.

In addition to the assistance provided, the Committee sought the views of other stakeholders and witnesses. There was a recommendation put forward to the Committee for further consideration of the eligibility criteria for judges. The reason for this view was to ensure consistency with eligibility provisions for the Supreme Court judges. The Committee believes that this is an appropriate recommendation.

The Committee thoroughly considered and reviewed the Bill in its entirety and it believes that all the aspects are relevant except for minor amendments to certain provisions.

5. CONSIDERATION IN DETAIL OF THE BILL:

The Committee considered the Bill in detail and was satisfied with all the provisions therein except for the following clauses:

A. Clause 6(3):

For subclause(3), substitute;

Clause 6(3)

(3) A person is not eligible to be appointed as a Judge unless the person has been admitted and practised as a barrister in Samoa or in an approved country for a period of, or for periods amounting in the aggregate to, not less than 8 years.

B. Clause 10(2):

For subclause (2), substitute;

Clause 10(2)

(2) A district Court Judge or Faamasino Fesoasoanni holds office until he or she reaches the age of 68 years unless extended by the Head of State, acting on the advice of the Judicial Service Commission.

C. Clause 12(4):

For “70 years” substitute “68 years” thereby Clause 12(4) will read:

Clause 12(4)

(4) No qualified person is precluded from appointment as a Judge under this section by reason only of the fact that he or she has attained the age of 68 years.

D. Clause 30(2):

For “1977” substitute “2014” thereby Clause 30(2) will read;

Clause 30(2)

(2) A Judge has jurisdiction to hear and determine any proceedings commenced under the Customs Act 2014.

E. Clause 46(1)(a):

For “warrant of distress” substitute “writ of sale” thereby Clause (1)(a) will read;

Clause 46(1)(a)

(1) A judgement or order of a Judge or Faamasino Fesoasoani for the payment of sum of money may be enforced by any one (1) or more of the following types of proceedings:

(a) Execution against the goods and chattels of the judgement debtor under a writ of sale;

F. Clause 46(3):

For “warrant”, substitute “writ” thereby Clause (3) will read;

Clause 46(3)

(3) A judgement or order for the recovery of land may be enforced under a writ for the recovery of the land.

G. Clause 46(9)(a) & (d):

For “warrant of distress” substitute “writ of sale” thereby Clause 46(9)(a) & (d) will read;

Clause 46(9)(a) & (d)

i. (a) any procedure, process or requirement related to a writ of sale;

ii. (d) penalty for any unlawful inference or dealing with goods seized under a writ of sale;

H. Clause 46(9)(k) & (l):

For “warrant” substitute “writ” thereby Clause 46 (9)(k) & (l) will read;

Clause 46(9)(k) & (l)

i. (k) issues relevant to irregularities in the execution of writs for the recovery of land and liability arising from any illegal use of such a writ;

- ii.* (l) any procedure, process or requirement related to the recovery of chattels, and the right to take further proceedings if chattels are not recovered under a writ;

I. **Clause 46(9)(m):**

Add at the end of paragraph (m) “**whether or not judgment or order has been made**”, thereby Clause 46(9)(m) will read;

Clause 46(9)(m)

(m) dealing with absconding defendants whether or not judgment or order has been made; or

J. **Clause 71:**

After “**warrant**” insert “**or writ**” thereby Clause 71 will read;

Clause 71. Irregularity in executing warrants or writs - (1) No officer of the Court in executing any warrant or writ, and no person at whose instance any such warrant or writ is executed, is to be regarded a trespasser by reason of any irregularity or informality in relation to either of the following:

- (a) any proceeding on the validity of which the warrant or writ depends; or
- (b) the form of the warrant or writ or in the mode of executing it.

K. **Clause 72:**

After “**warrant**” insert “**or writ**” thereby Clause 72 will read;

Clause 72. Actions against bailiffs acting under warrants or writs - (1) No action shall be commenced against a bailiff for anything done pursuant to a warrant or writ issued under this Act, unless any or both of the following apply:

- (a) a written demand for inspection of the warrant or writ and for a copy of it, signed by the person making the demand,

is made or left at the office of the court by the party intending to bring the action, or his or her solicitor agent;

(b) the bailiff refuses or neglects to comply with the demand within six (6) days after it is made.

(2) If any action is commenced against a bailiff in a case where such a demand has been made and not complied with, judgment must be given for the bailiff if the warrant or writ is produced or proved at the trial, despite any defect of jurisdiction or other irregularity in the warrant.

(3) Despite subsection (2), the officer who issued the warrant or writ may be joined as a defendant in the action, and if the officer is so joined and judgment is given against him or her, the costs to be recovered by the plaintiff must include such costs as the plaintiff is liable to pay to the bailiff.

L. Clause 73:

After “warrant” insert “or writ” thereby Clause 73 will read;

Clause 73. Production of warrant or writ sufficient proof of Court’s authority

- In any action commenced against a person for anything done under this Act, the production of the warrant or writ of the Court is sufficient proof of the authority of the Court up to the time of the issue of the warrant or writ.

M. Clause 78(2):

After “warrant” insert “or writ” thereby Clause 78(2) will read;

Clause(2)

(2) In any action commenced against a person for anything done under this Act, the production of the warrant or writ of the Court is sufficient proof of the authority of the Court up to the time of the issue of the warrant or writ.

6. **RESOLUTION:**

At the end of the consideration in detail of the Bill, the Committee resolved;

That the District Courts Bill 2015 progress together with amendments.

COMMITTEE MEMBERS:

Tofa TUISA Tasi Patea
CHAIRPERSON

Susuga PAPALII Lio F T Masipau
MEMBER

Afioga AFOAFOUVALE John Moors
DEPUTY CHAIRPERSON

Tofa TAPUAI Toese Ah Sam
MEMBER

Tofa LENATAI Victor Faafoi Tamapua
MEMBER

Tofa LEFAU Harry Schuster
MEMBER

Afioga LAFATELE Patrick Leiatuaalesa
MEMBER