

AGRICULTURE AND FISHERIES SECTOR BILL 2019

SAMOA

Explanatory Memorandum

Object and reasons:

The purpose of the Bill is to guide and facilitate the management and development of a sustainable agriculture and fisheries sector.

The Bill will repeal and replace the Agriculture and Fisheries Ordinance 1959.

Clauses:

PART 1 - PRELIMINARY

- Clause 1:** - states that when enacted, the Bill will be called the Agriculture and Fisheries Sector Act 2019, and it will commence on the date of assent by the Head of State.
- Clause 2:** - provides for the definitions of terms used within the Bill.
- Clause 3:** - provides that the Bill will bind the Government.
- Clause 4:** - sets out the guiding principles of management and development measures to be taken into account when carrying out any functions, duty or power under the Bill.

PART 2 - FUNCTIONS AND POWERS OF MINISTER AND CHIEF EXECUTIVE OFFICER

Division 1 - Minister

- Clause 5:** - sets out the functions and powers of the Minister.
- Clause 6:** - empowers the Minister to delegate his or her functions or the Ministry's functions to the Chief Executive Officer ("CEO") or other Ministry's personnel.

Division 2 - Chief Executive Officer

- Clause 7:** - provides that the CEO is the Head of Department of the Ministry.
- Clause 8:** - sets out the functions of the CEO.
- Clause 9:** - empowers the CEO or other personnel authorised by the CEO to conduct an investigation for breach of the Bill and the result of the investigation must be referred to the Samoa Police Service.
- Clause 10:** - empowers the CEO to conduct inquiries on any matter connected with the functions of the Ministry.
- Clause 11:** - empowers the CEO to delegate his or her functions and powers under the Act to any other Ministry's personnel.

PART 3 - ADMINISTRATION AND FUNCTIONS OF MINISTRY

- Clause 12:** - provides for the purpose of the Ministry which is to guide and facilitate the management and development of a sustainable agriculture and fisheries sector in Samoa.
- Clause 13:** - provides for the continuation of the Ministry of Agriculture and Fisheries as the Ministry under Schedule 1 of the Ministerial and Departmental Arrangements Act 2003.
- Clause 14:** - provides for divisions, units or other sections under the Ministry which is approved under the Public Service Act 2004 (“PSC Act”).
- Clause 15:** - provides for personnel to be employed as public servants pursuant to the PSC Act and under the direction of the CEO.
- Clause 16:** - sets out the functions of the Ministry.
- Clause 17:** - provides that the Ministry is responsible for the administration of the enactments listed in the Schedule.
- Clause 18:** - provides that the Ministry may cooperate with agriculture and fisheries associations in managing and developing agriculture and fisheries.
- Clause 19:** - provides for the Ministry’s annual reports under the PSC Act to include the administration and operation of the Bill.

PART 4 - COMMITTEES

- Clause 20:** - empowers the Minister to establish committees.
- Clause 21:** - empowers the Minister with the approval of Cabinet to determine the functions and to appoint members of the committee.

- Clause 22:** - provides for remuneration for committee members to be approved by Cabinet.
- Clause 23:** - provides for publication of a notice to establish or dissolve a committee.

PART 5 - MISCELLANEOUS

- Clause 24:** - provides for a certificate of evidence authorised by the CEO or any other personnel for any court or tribunal.
- Clause 25:** - provides protection from personal liability for a person carrying out in good faith a function, duty or power under the Bill or any other enactment listed under the Schedule.
- Clause 26:** - empowers the Head of State acting on the advice of Cabinet to make regulations.
- Clause 27:** - repeals the Agriculture and Fisheries Ordinance 1959.
- Clause 28:** - deals with transitional and saving matters.
- Schedule:** - lists the Acts administered by the Ministry.



(Hon LOPAO'O Natanielu Mu'a)

MINISTER FOR AGRICULTURE AND FISHERIES

AGRICULTURE AND FISHERIES SECTOR BILL 2019

SAMOA

Arrangement of Provisions

PART 1

PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Act binds Government
4. Guiding principles

PART 2

FUNCTIONS AND POWERS OF MINISTER AND CHIEF EXECUTIVE OFFICER

Division 1 - Minister

5. Functions and powers

6. Delegation by Minister

Division 2 - Chief Executive Officer

7. Chief Executive Officer
8. Functions
9. Power to investigate
10. Power to conduct inquiries
11. Delegation

PART 3

ADMINISTRATION AND FUNCTIONS OF MINISTRY

12. Purpose of the Ministry
13. Continuation of Ministry
14. Divisions, units or other sections
15. Personnel
16. Functions
17. Enactments administered
18. Cooperation with agricultural and fisheries associations
19. Annual reports

PART 4

COMMITTEES

20. Establishment
21. Appointments
22. Remuneration
23. Notice of establishment and dissolution

**PART 5
MISCELLANEOUS**

- 24. Evidence by certificate
- 25. Protection from personal liability
- 26. Regulations
- 27. Repeal
- 28. Savings and transitional provisions

Schedule

2019, No.

A BILL INTITULED

AN ACT to guide and facilitate the management and development of a sustainable agriculture and fisheries sector and for 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 Agriculture and Fisheries Sector Act 2019.
- (2) This Act commences on the date of assent by the Head of State.

2. Interpretation:

In this Act, unless the context otherwise requires:

“agriculture” includes the livestock industry, the apiculture industry, the horticulture industry and other forms of agriculture;

“aquaculture” has the meaning as given in the Fisheries Management Act 2016;

“Chief Executive Officer” means the person appointed under section 12 of the Public Service Act 2004 as Chief Executive Officer of the Ministry;

“committee” means a committee established under section 20;

“contractor” means a person contracted by the Ministry and does not include personnel of the Ministry;

“fisheries” includes aquaculture;

“Minister” means the Minister responsible for the Ministry;

“Ministry” means the Ministry of Agriculture and Fisheries continued and specified as such in section 13;

“personnel” means the Chief Executive Officer or “contract employees”, “officers” and “temporary employees” of the Ministry, as defined in the Public Service Act 2004;

“public body” has the meaning as defined in the Public Bodies (Performance and Accountability) Act 2001;

“public service” has the meaning as defined in the Public Service Act 2004;

“Samoa Police Service” has the same meaning given in the Police Service Act 2009.

3. Act binds Government:

This Act binds the Government.

4. Guiding principles:

When implementing this Act, the enactments listed in the Schedule and any other enactment, the Ministry is required to apply the following guiding principles:

- (a) the management and development of agriculture and fisheries must -
 - (i) contribute to improving national food and nutrition security;
 - (ii) contribute to improving livelihoods, income generation and trade;
 - (iii) be sustainable for the general benefit of Samoans, having due regard for organic farming methods, conservation and protection of natural resources relevant to agriculture and fisheries, and for its associated biological diversity and ecosystems and for ecosystem approaches for management;
 - (iv) have due regard to existing traditions, customary practices and rights, as well as human rights principles;
 - (v) be considerate of the importance of principles of equity, in particular gender equity;
 - (vi) recognise the institutions of community governance in Samoa;
 - (vii) apply good governance principles, including transparency, accountability, and non-discrimination;
 - (viii) involve those affected, including in decision making procedures;

- (b) decisions taken in managing and developing agriculture and fisheries are to be informed and -
 - (i) be based on best available data and generally accepted best practices;
 - (ii) be taken with the involvement of all relevant stakeholders, including Village Fono in relation to the conservation, management and development of fisheries, other relevant Ministries, and the private sector;
 - (iii) be considerate of advice and recommendations from committees; and
- (c) the observance of the objectives and purposes of this Act, the enactments listed in the Schedule and any other enactment.

PART 2
FUNCTIONS AND POWERS OF MINISTER
AND CHIEF EXECUTIVE OFFICER

Division 1 - Minister

5. Functions and powers:

- (1) The Minister has the following functions:
 - (a) to provide high level policy and strategic leadership of the Ministry;
 - (b) to administer the enactments listed in the Schedule;
 - (c) to oversee that the Ministry exercises its functions and powers in accordance with this Act, the enactments listed in the Schedule and any other enactment;
 - (d) to oversee that the Chief Executive Officer exercises his or her functions and powers in accordance with this Act, the enactments listed in the Schedule and any other enactment;

- (e) to require the functions of the Ministry or Chief Executive Officer under this Act to be carried out pursuant to any written policy directives issued by the Minister or Cabinet;
 - (f) to carry out any other functions as assigned by Cabinet or conferred under any other enactment.
- (2) The Minister has the following powers:
- (a) to direct the Chief Executive Officer in relation to high level outcomes, priorities, policies and performance requirements for the Ministry and the Chief Executive Officer;
 - (b) to sign any contract, agreement or other legal arrangement on behalf of the Government on matters relating to agriculture or fisheries;
 - (c) to approve the annual report of the Ministry pursuant to the Public Service Act 2004;
 - (d) to establish and appoint committees;
 - (e) to exercise any power that is necessary to carry out his or her functions under this Act, the enactments listed in the Schedule and any other enactment.

6. Delegation by Minister:

- (1) The Minister may delegate any of his or her functions and powers or the Ministry's functions under this Act to the Chief Executive Officer or other Ministry personnel.
- (2) A delegation:
 - (a) does not include delegating the power under this section; and
 - (b) may be given with or without terms and conditions; and
 - (c) may be varied, suspended or revoked; and

- (d) does not prevent the Minister from carrying out any function or power so delegated.

Division 2 - Chief Executive Officer

7. Chief Executive Officer:

The Chief Executive Officer is the Head of Department of the Ministry.

8. Functions:

The Chief Executive Officer has the following functions:

- (a) to ensure the effective and efficient operations and administration of this Act, the enactments listed in the Schedule and any other enactment;
- (b) to manage the formulation, implementation and monitoring of policies and strategies relevant to its purpose and for the purpose of this Act, and the enactments listed in the Schedule;
- (c) to advise the Minister on matters relating to the policies and strategies for this Act and the enactments listed in the Schedule;
- (d) to assist or advise the Minister when carrying out the Minister's functions and powers under this Act or any enactments listed in the Schedule or any other enactment unless the functions or powers are delegated to the Chief Executive Officer;
- (e) to provide annual reports of the Ministry for approval by the Minister;
- (f) to represent the Ministry, including on boards, councils, non-government bodies and international forums, as required by the Minister or any enactment;
- (g) to carry out any other functions of the Chief Executive Officer given under this Act, the enactments listed in the Schedule and any other enactment, or assigned or required by the Minister.

9. Power to investigate:

- (1) The Chief Executive Officer or other personnel authorised by the Chief Executive Officer may commence and conduct an investigation for a breach of this Act or any enactment listed in the Schedule.
- (2) The Chief Executive Officer or other personnel authorised by the Chief Executive Officer must refer the result of an investigation to the Samoa Police Service.

10. Power to conduct inquiries:

- (1) The Chief Executive Officer may conduct an inquiry into any matter connected with the functions of the Ministry.
- (2) For the purposes of conducting an inquiry, the Chief Executive Officer may, in writing, order a person to:
 - (a) produce for inspection by the Ministry any documents or information relevant to the matter of the inquiry; and
 - (b) permit the Ministry to make copies of any document or information produced under paragraph (a); and
 - (c) provide the Ministry with a written statement relevant to the matter of the inquiry; and
 - (d) permit the Ministry to enter upon the lands, premises or assets of the person to conduct inspections and assessments which are relevant to the matter of the inquiry; and
 - (e) do some other act or thing which is relevant to the matter of the inquiry and within the reasonable power of the person or entity to do.
- (3) The Chief Executive Officer must apply to a Judge of the court for a warrant:
 - (a) for a person to provide and submit any documents or information under subsections (2)(a) to (c) and (e) when a person does not comply with an order; or

- (b) to enter upon the lands, premises or assets of a person who does not comply with an order addressed to him or her under subsection (2)(d).
- (4) A Judge may issue a warrant under subsection (3) only if the Judge is satisfied that there are reasonable grounds for issuing the warrant.
- (5) A warrant issued under subsection (3) shall include:
 - (a) a statement of the purpose for which the warrant is issued; and
 - (b) a description of the kind of documents or information authorised to be seized; and
 - (c) the time at which the warrant ceases to have effect; and
 - (d) a statement whether entry is authorised at any time or at specified times.
- (6) The Chief Executive Officer may request assistance from the Samoa Police Service for the purpose of executing a warrant issued by a Judge under subsection (4).
- (7) All inquiries and orders of the Chief Executive Officer under subsection (2) must be:
 - (a) reasonably necessary; and
 - (b) conducted -
 - (i) in a reasonable manner; and
 - (ii) in good faith; and
 - (iii) with due regard to the privacy and operational requirements of the person or entity the subject of the inquiry; and
 - (iv) having regard to the rules of natural justice.
- (8) A person commits an offence and is liable on conviction to a fine not exceeding 5 penalty units if the person:
 - (a) fails to comply with an order of the Chief Executive Officer issued under subsection (2); or

- (b) deceives or obstructs an inquiry, or attempts to do so; or
- (c) fails to comply with an order issued under this section.

11. Delegation:

- (1) The Chief Executive Officer may delegate any of his or her functions and powers under this Act to any other Ministry's personnel.
- (2) A delegation:
 - (a) does not include delegating the power under this section; and
 - (b) may be given with or without terms and conditions; and
 - (c) may be varied, suspended or revoked; and
 - (d) does not prevent the Chief Executive Officer from carrying out any function or power so delegated.

PART 3
ADMINISTRATION AND FUNCTIONS
OF MINISTRY

12. Purpose of the Ministry:

The purpose of the Ministry is to guide and facilitate the management and development of a sustainable agriculture and fisheries sector in Samoa in accordance with:

- (a) this Act, the enactments listed in the Schedule, and any other relevant enactment; and
- (b) relevant policies and strategies in relation to agriculture and fisheries and national development.

13. Continuation of Ministry:

The Ministry of Agriculture and Fisheries continued under this Act is the Ministry specified as such or (whatever name it is called) under Schedule 1 of the Ministerial and Departmental Arrangements Act 2003.

14. Divisions, units or other sections:

- (1) The Ministry may comprise divisions, units or other sections.
- (2) The Public Service Act 2004 applies to the establishment and approval of any division, unit or other section of the Ministry.

15. Personnel:

All personnel are:

- (a) to be employed as public servants under the Public Service Act 2004; and
- (b) under the direction and management of the Chief Executive Officer for the purposes of this Act, any enactments listed in the Schedule or any other enactment.

16. Functions:

- (1) The Ministry may perform any functions it considers reasonably necessary to fulfil its purpose under section 12, and any other functions under any other enactment, including the following:
 - (a) research, data and information;
 - (b) policy development and planning;
 - (c) capacity building and training;
 - (d) supporting sectoral development;
 - (e) supporting the development of regulations;
 - (f) monitoring, evaluation, control and inspection;
 - (g) promoting and encouraging investment and market development;
 - (h) promoting organic farming;
 - (i) consultation and cooperation;

- (j) controlling and regulating pesticides;
 - (k) enforcement.
- (2) Without limiting subsection (1) or the functions of other Ministries or other agencies, the Ministry may perform any functions, including with respect to:
- (a) the production, harvesting and protection of plants and animals relevant to agriculture and fisheries; and
 - (b) the processing and marketing of plants and animals relevant to agriculture and fisheries, and their products; and
 - (c) food safety and quality of agriculture and fisheries products; and
 - (d) food security; and
 - (e) the conservation and sustainable utilization of natural resources relevant to agriculture and fisheries; and
 - (f) the international trade of plants and animals relevant to agriculture and fisheries, and their products; and
 - (g) the implementation of treaties or conventions to which Samoa is a party.

17. Enactments administered:

- (1) The Ministry is responsible for the administration of the enactments listed in the Schedule.
- (2) The Minister may, by order in the Savali, amend the Schedule.

18. Cooperation with agricultural and fisheries associations:

- (1) The Ministry may cooperate with agriculture and fisheries associations in managing and developing agriculture and fisheries, including by:

- (a) inviting their representatives as member of, and otherwise allowing their representatives access to committees and other forums; and
 - (b) undertaking initiatives in collaboration with them; and
 - (c) coordinating responses from Government to issues raised by them; and
 - (d) share relevant information on matters that may affect them or the interest they represent; and
 - (e) involving them or their representatives in consultations on matters that may affect them or the interests they represent.
- (2) The Chief Executive Officer may prepare guidelines or criteria which agriculture and fisheries associations are required to meet in order to be eligible for cooperation under this section.

19. Annual reports:

Annual report of the Ministry prepared under the Public Service Act 2004 must include the administration and operation of this Act.

**PART 4
COMMITTEES**

20. Establishment:

- (1) The Minister may, with the approval of Cabinet, establish committees for the purposes of this Act.
- (2) The responsibilities of the Minister or the Chief Executive Officer in carrying out their respective functions are not reduced or otherwise affected by any committee established and appointed under this section.

21. Appointments:

- (1) When a committee is established under section 20, the Minister may, with the approval of Cabinet:
 - (a) determine the membership, purpose and functions of the committee; and

- (b) appoint the members of the committee and determine their tenure and terms of reference; and
 - (c) delegate to the committee any functions and powers under this Act reasonably necessary for it to perform its purpose and functions; and
 - (d) regulate the procedures of the committee; and
 - (e) dissolve the committee or revoke the appointment of its members.
- (2) In determining the membership of a committee, the Minister must take into account the following:
- (a) any relevant policy or regulation on the composition of members of boards or committees;
 - (b) the members of a committee -
 - (i) have the required level of technical expertise necessary for the purpose and functions of the committee;
 - (ii) where feasible, are also representative of the widest possible stakeholder interests in accordance with principles of equity.
- (3) A Member of Parliament is not eligible to be appointed to a committee.
- (4) A member of the committee (other than a member who is also a civil servant) is not taken to be a public servant by reason of appointment to a committee.
- (5) Except as authorised in writing by the Minister, a member of a committee has no authority to bind or speak on behalf of the Government, the Ministry, the Minister, the Chief Executive Officer or another committee.
- (6) In this section, the power to appoint includes the power to vary, suspend or revoke the appointment of a member.

22. Remuneration:

- (1) Subject to subsection (2) a committee member is entitled to fees, allowances and other expenses approved by Cabinet and payable from the Ministry's funds.
- (2) A committee member is not entitled to fees or allowances if the member is a public servant or an employee or a member of a board of a public body.

23. Notice of establishment and dissolution:

- (1) The Chief Executive Officer may, by notice in the Savali and one other newspaper in Samoa, publish:
 - (a) the name of a newly established committee, including its purpose; and
 - (b) any committee that have been dissolved and the reasons for its dissolution.
- (2) The non-publication of establishment or dissolution of a committee under subsection (1) does not affect the validity of the establishment or dissolution of a committee.

**PART 5
MISCELLANEOUS**

24. Evidence by certificate:

- (1) The Evidence Act 2015 applies to the records maintained by the Ministry for the purposes of this Act.
- (2) The Chief Executive Officer and personnel of the Ministry authorised in writing by the Chief Executive Officer, may provide a certificate stating any fact known to the Ministry, or indicating the content of any record or register maintained by the Ministry.

- (3) Despite any other law, a certificate complying with the requirements of subsection (2) is (unless the contrary is proved) admissible in Samoa as sufficient evidence of the fact or content stated in the certificate before:
 - (a) any court or tribunal; or
 - (b) any person exercising judicial or quasi-judicial or statutory or administrative authority.
- (4) Despite subsection (3), the person who signs a certificate issued under subsection (2) may be required to appear in person before the court, tribunal or other body, authority or person for the purpose of examination.

25. Protection from personal liability:

- (1) The Government Proceedings Act 1974 applies to claims made by or against the Ministry.
- (2) A person is not personally liable for anything done or omitted to be done when carrying out in good faith a function, duty or power under this Act, the enactments listed in the Schedule or any other enactment.

26. Regulations:

The Head of State, acting on the advice of Cabinet, may make regulations to give effect to this Act, and in particular regulations:

- (a) to regulate organic farming; and
- (b) to regulate pesticides; and
- (c) to amend the schedule; and
- (d) for matters required to be prescribed under this Act.

27. Repeal:

The Agriculture and Fisheries Ordinance 1959 is repealed.

28. Savings and transitional provisions:

At the commencement of this Act:

- (a) the Chief Executive Officer and employees of the Ministry of Agriculture are employees of the Ministry under their respective contracts of employment; and
- (b) existing divisions, units and other sections of the Ministry continue until they are discontinued or reformed under the Public Service Act 2004; and
- (c) existing regulations or other subsidiary legislation made under the Agriculture and Fisheries Ordinance 1959 continue as if they had been made under this Act until they are amended, revoked or replaced under this Act; and
- (d) rights, entitlements, obligations and liabilities applying to the Ministry of Agriculture, including all monies owed to or owed by it, continue to apply to the Ministry as if they were conferred or incurred under this Act; and
- (e) contracts and legal proceedings to which the Ministry of Agriculture was a party continue as if they were made or instituted under this Act; and
- (f) references to the Ministry of Agriculture in any law or document may be taken as a reference to the Ministry.

SCHEDULE

(Section 17)

ENACTMENTS ADMINISTERED BY THE MINISTRY

The following enactments (including their subsidiary legislation) are administered by the Ministry:

- (a) Animals Ordinance 1960;
 - (b) Produce Export Ordinance 1961;
 - (c) Export of Meat Act 1997;
 - (d) Quarantine (Bio-Security) Act 2005;
 - (e) Slaughter and Meat Supply Act 2015;
 - (f) Fisheries Management Act 2016;
 - (g) any other Act assigned to the Minister under Article 35 of the Constitution.
-