

COMMUNITY LAW CENTRE BILL 2014

SAMOA

Explanatory Memorandum

Introduction

The Community Law Centre Bill 2014 seeks to establish a Community Law Centre (Centre) to provide legal assistance (in certain matters) for those people who cannot afford to engage private lawyers. It provides for the appointment of a Public Advocate who will be the head of the Office and other staff of the Centre. The Centre will be monitored by the Oversight Committee comprising of the Chief Executive Officer of the Ministry of Justice and Courts Administration (Ministry), a nominee of the Minister and the President of the Samoa Law Society of his/her nominee. Initial funding for the Centre will be sourced by the Law and Justice Sector for sustainable donors like AusAID.

Clauses:

PART 1 PRELIMINARY

- Clause 1:** - provides for the short title of the Bill which will be called the “Community Law Centre Act 2014” once it is passed. The Act is to commence on a date nominated by the Minister.
- Clause 2:** - provides for the definitions of certain terms and phrases used in the Act.

PART 2 COMMUNITY LAW CENTRE AND OVERSIGHT COMMITTEE

- Clause 3:** - establishes the Community Law Centre (Centre) as a body corporate with perpetual succession and a common seal. Therefore, the Centre

can own and dispose property, assets, enter into contracts, sue and be sued and do anything a body corporate can do in law.

- Clause 4:** - provides for the functions of the Centre to provide legal assistance.
- Clause 5:** - establishes the Oversight Committee consisting of three (3) members, who are the Chief Executive Officer of the Ministry, as Chairperson, a member nominated by the Minister and the President of the Samoa Law Society or a nominee of the President from the Council of the Samoa Law Society.

PART 3 LEGAL ASSISTANCE

- Clause 6:** - enables the Centre to provide legal assistance except for legal assistance on adoptions, matters within the jurisdiction of the Land and Titles Court, cases against the Government and conveyance matters.
- Clause 7:** - empowers the Public Advocate to grant legal assistance pursuant to requirements to be prescribed by regulations.
- Clause 8:** - provides for entitlement to apply for legal assistance.
- Clause 9:** - provides that Public Advocate may grant or refuse grant of legal assistance.
- Clause 10:** - provides for circumstances where legal assistance can be revoked.

PART 4 ADMINISTRATION AND FINANCE

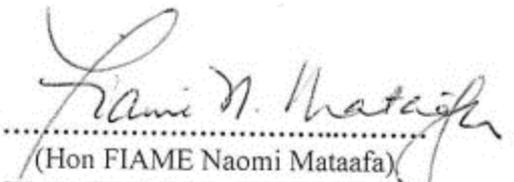
- Clause 11:** - empowers the Head of State to appoint a lawyer as the Public Advocate.
- Clause 12:** - provides for the resignation, termination and vacancy of the position of the Public Advocate.

- Clause 13:** - provides for the duties and powers of the Public Advocate.
- Clause 14:** - provides for the independence of employees of the Centre when providing legal assistance.
- Clause 15:** - provides for the staff of the Center and sets out the functions of the Office Manager.
- Clause 16:** - empowers the Public Advocate to approve a lawyer or any other person to undertake volunteer work with the Centre either as a part time or full time volunteer.
- Clause 17:** - provides for values, principles and code of conduct under Part IV of the Public Service Act 2004 to be adhered by the staff.
- Clause 18:** - provides for the funds and auditing of the funds of the Centre.
- Clause 19:** - provides for corporate plan and annual reports.

PART 5 MISCELLANEOUS

- Clause 20:** - provides for the protection from personal liability when carrying out the relevant functions, duties and powers in good faith.
- Clause 21:** - provides that the Minister has the power to transfer the legal aid programme undertaken by the Ministry to the Centre on the distinction of the Minister.
- Clause 22:** - provides that information in relation to legal assistance provided by the Centre, is confidential.
- Clause 23:** - provides for the power of the Public Advocate to issue guidelines and manuals.

Clause 24: - provides for the Head of State's power to make regulations and the Public Advocate's power to make forms.


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(Hon FIAME Naomi Mataafa)
MINISTER FOR JUSTICE AND
COURTS ADMINISTRATION

COMMUNITY LAW CENTRE BILL 2014

SAMOA

Arrangement of Provisions

<p style="text-align: center;">PART 1 PRELIMINARY</p> <p>1. Short title and commencement</p> <p>2. Interpretation</p>	<p style="text-align: center;">PART 4 ADMINISTRATION AND FINANCE</p> <p>11. Public Advocate</p> <p>12. Resignation, termination and vacancy</p> <p>13. Duties and powers of Public Advocate</p> <p>14. Independence</p> <p>15. Staff</p> <p>16. Volunteers</p> <p>17. Values, principles and code of conduct</p> <p>18. Funds and audit</p> <p>19. Corporate plan and annual reports</p>
<p style="text-align: center;">PART 2 COMMUNITY LAW CENTRE AND OVERSIGHT COMMITTEE</p> <p>3. Establishment of the Centre</p> <p>4. Functions of the Centre</p> <p>5. Oversight Committee</p>	<p style="text-align: center;">PART 5 MISCELLANEOUS</p> <p>20. Exemption from personal liability</p> <p>21. Power of Minister</p> <p>22. Confidentiality</p> <p>23. Guidelines and manuals</p> <p>24. Regulations and forms</p>
<p style="text-align: center;">PART 3 LEGAL ASSISTANCE</p> <p>6. Legal assistance</p> <p>7. Prescribed requirements for legal assistance</p> <p>8. Application for legal assistance</p> <p>9. Granting of legal assistance</p> <p>10. Revocation of legal assistance</p>	

2014, No.

A BILL INTITULED

AN ACT to establish the Community Law Centre and to provide for its functions, duties and powers 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 Community Law Centre Act 2014.

(2) This Act commences on a date nominated by the Minister.

2. Interpretation-(1) In this Act, unless the context otherwise requires:

“Centre” means the Community Law Centre established by section 3;

“child” means a person aged 18 years or under;

“lawyer” has the meaning in the Law Practitioners Act 1976;

“legal aid” means legal aid provided by the Ministry;

“legal assistance” means assistance in a form of legal aid granted under this Act, and includes legal aid transferred to the Centre under section 21;

“legal service” means any legal advice or service provided by the Centre, other than legal assistance;

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

“Ministry” means the Ministry of Justice and Courts Administration;

“Oversight Committee” or “Committee” means the Oversight Committee of the Centre established under section 5.

(2) The power to make appointment under this Act, includes the power to confirm, suspend or terminate the appointment, to promote, to take disciplinary proceedings or to impose terms and conditions of appointment.

PART 2
COMMUNITY LAW CENTRE
AND OVERSIGHT COMMITTEE

3. Establishment of the Centre - The Community Law Centre is established as a body corporate with perpetual succession and a common seal and may:

- (a) own and dispose of property and other assets; and
- (b) enter into contracts; and
- (c) sue and be sued; and
- (d) do any other thing that a body corporate may do under law.

4. Functions of the Centre-(1) The functions of the Centre are:

- (a) subject to section 6, to provide legal assistance to persons entitled to it in a Court for criminal matters; and
- (b) subject to section 6, to provide legal assistance to persons entitled to it in a Court for civil matters; and
- (c) to provide basic or preliminary legal advice and assistance that a person may further pursue; and
- (d) to provide legal assistance to persons entitled to it for other legal matters, including assistance in mediation relating to legal assistance or proceedings; and
- (e) to provide public awareness and education programmes on legal rights, obligations and services; and
- (f) with the approval of the Attorney General, to act in any proceedings relating to an order for the welfare of a child under the Divorce and Matrimonial Causes Ordinance 1961 or any other enactment relating to the welfare of a child; and

(g) to carry out any other functions under this Act or any other enactment.

(2) The Public Advocate is responsible for carrying out the functions of the Centre under this Act, subject to the duties and powers of the Committee.

5. Oversight Committee-(1) The Oversight Committee of the Centre is established comprising the following members:

- (a) the Chief Executive Officer of the Ministry, as Chairperson;
- (b) a member nominated by the Minister;
- (c) the President of the Samoa Law Society or a nominee of the President from the Council of the Samoa Law Society.

(2) The Oversight Committee may:

- (a) advise the Public Advocate on matters relating to the operation and administration of the Centre; and
- (b) approve any fees that the Centre may charge in offering legal assistance; and
- (c) carry out other functions, duties and powers given to it under this Act or any other enactment.

(3) The following rules apply to any meeting of the Oversight Committee:

- (a) the Committee must meet at least three (3) times in a year to be convened by the Chairperson;
- (b) the Chairperson determines the date, time and venue of the meeting;
- (c) two (2) members constitute a quorum;
- (d) the Chairperson or, in his or her absence, a member designated by the Chairperson, presides;
- (e) any question before a meeting is to be determined by a majority of valid votes of the members present;
- (f) the presiding member has an ordinary vote and a casting vote;
- (g) a member who has an interest in any matter before the Committee -
 - (i) must declare the interest to the Committee; and

(ii) must not take part in the deliberation and voting on that matter without affecting the quorum of the Committee.

(4) The Committee may require the Public Advocate to attend its meeting but has no right to vote.

(5) Subject to this section, the Committee may regulate its own procedures.

PART 3 LEGAL ASSISTANCE

6. Legal assistance-(1) The Centre may, through the Public Advocate, provide legal assistance under section 4 to a person entitled to it.

(2) The Centre must not provide legal assistance on any of the following matters:

(a) adoptions;

(b) matters within the jurisdiction of the Land and Titles Court;

(c) civil proceedings (including judicial review) for or against the Government or any other State institution or any public body listed under the Public Bodies (Performance and Accountability) Act 2001;

(d) conveyance matters.

(3) Legal assistance provided under this Act does not affect legal aid provided by the Ministry.

(4) This Act does not limit the power of a court to order legal assistance to be undertaken by the Centre or legal aid by the Ministry.

7. Prescribed requirements for legal assistance-(1) Without limiting section 9(2), the Public Advocate may grant legal assistance pursuant to prescribed requirements.

(2) The prescribed requirements must comply with the following:

(a) cover persons who cannot financially afford lawyers to represent them in courts; and

(b) for criminal cases, to take into account the number of previous convictions of applicants for legal assistance; and

- (c) deal with matters relating to ascertaining the financial affordability of a lawyer by the applicant; and
- (d) deal with any other prescribed requirements for legal assistance.

8. Application for legal assistance - A person entitled to legal assistance must apply in the approved form to the Public Advocate.

9. Granting of legal assistance-(1) When determining an application for legal assistance, the Public Advocate may grant (with or without condition) or refuse to grant, legal assistance.

(2) A court may, in special circumstances, order that legal assistance be provided to a person by the Centre.

10. Revocation of legal assistance - The Public Advocate may revoke legal assistance if:

- (a) the person granted legal assistance has instructed a private lawyer to act on the person's behalf; or
- (b) the matter no longer requires any legal assistance; or
- (c) the person had provided false or misleading information in the application for legal assistance; or
- (d) the Public Advocate or a lawyer of the Centre has a conflict of interest in a matter that is handled by the Centre; or
- (e) it is in the interests of justice to revoke the legal assistance; or
- (f) the person withdraws in writing from legal assistance.

PART 4 ADMINISTRATION AND FINANCE

11. Public Advocate-(1) The Head of State, acting on the advice of Cabinet, may appoint a lawyer with at least seven (7) years of litigation experience or legal practice, as the Public Advocate.

(2) Before advising the Head of State to appoint the Public Advocate under subsection (1), Cabinet shall instruct the Oversight Committee:

(a) to interview applicants for the Public Advocate; and

(b) to prepare a report and recommendation to Cabinet on the suitable candidate.

(3) The Public Advocate:

(a) holds office for a term not exceeding three (3) years, subject to the terms set out in the contract of employment; and

(b) is eligible for reappointment; and

(c) on expiry of the term, continues in office until reappointed or a successor is appointed.

(4) If for any reason the Public Advocate is unable to carry out his or her functions under this Act, the most senior Assistant Public Advocate must act as the Public Advocate, or otherwise an Assistant Public Advocate designated in writing by the Public Advocate.

12. Resignation, termination and vacancy-(1) The Public Advocate may resign by delivering to the Head of State a signed notice of resignation.

(2) The Head of State acting on the advice of Cabinet may terminate the appointment of the Public Advocate by reason of misbehaviour or physical or mental incapacity.

(3) The appointment of the Public Advocate is automatically terminated if the Public Advocate:

(a) is convicted of an offence in Samoa or another country carrying a minimum penalty of 20 penalty units or two (2) years imprisonment; or

(b) has been subject to an order under the Mental Health Act 2007.

(4) The office of the Public Advocate is vacant if:

(a) the Public Advocate resigns, retires or dies; or

(b) the appointment is terminated.

(5) In this section, “misbehaviour” means neglecting performance of the duty, function or power of the office or misconducting himself or herself in office without reasonable excuse or justification.

13. Duties and powers of Public Advocate - The Public Advocate:

- (a) is the administrative head of the Centre; and
- (b) is primarily responsible for conducting all legal matters of the Centre; and
- (c) may provide or approve any legal advice that the Centre provides; and
- (d) may provide legal assistance for persons entitled to it in a Court; and
- (e) reports to the Minister through the Committee; and
- (f) may carry out other functions under this Act or any other enactment; and
- (g) may carry out other prescribed functions for the purpose of this Act.

14. Independence - Except as provided in this Act, the Public Advocate, Assistant Public Advocates (including any other persons authorised by the Public Advocate) and legal officers are not subject to the direction of any other person (except any direction of a court) when dealing with or conducting legal assistance cases under this Act.

15. Staff-(1) The staff of the Centre comprise the following:

- (a) the Public Advocate; and
- (b) one (1) or more Assistant Public Advocates; and
- (c) legal officers; and
- (d) the Office Manager and other officers and employees of the Centre.

(2) A lawyer with at least three (3) years litigation experience is eligible to be appointed as an Assistant Public Advocate.

(3) The staff mentioned in subsection (1)(b) to (d) are to be appointed by the Public Advocate.

(4) The functions of the Office Manager are:

- (a) to assist the Public Advocate in the daily operation and administration of the Centre; and
- (b) to ensure that proper records of the Centre are kept; and
- (c) to manage the finances of the Centre; and

(d) to carry out any other functions assigned by the Public Advocate.

16. Volunteers-(1) The Public Advocate may approve a lawyer or any other person who wishes to undertake part-time or full-time volunteer work, such as duty solicitor, at the Centre to undertake volunteer work for the Centre.

(2) A volunteer is subject to any directions given by the Public Advocate.

(3) The Committee may, after consulting the Samoa Law Society, set the number of hours that a member of the Society (“member”) may undertake in any month or year for legal service at the Centre, as a condition for rewarding of legal aid to the member.

(4) A member who does not undertake any voluntary legal services at the Centre pursuant to subsection (3) is not entitled to be given any legal aid work.

17. Values, principles and code of conduct - Part IV of the Public Service Act 2004 applies to the staff of the Centre.

18. Funds and audit-(1) The funds for the Centre comprise:

- (a) money appropriated by Parliament for the purpose of this Act; and
- (b) any donations, contribution or other money or fund received by or on behalf of the Centre; and
- (c) fees collected by the Centre under this Act.

(2) The Controller and Auditor General must audit the funds of the Centre annually and prepare an Auditor’s report on it.

19. Corporate plan and annual reports-(1) The Public Advocate must ensure that:

- (a) a corporate plan of the Centre is prepared pursuant to the same requirements applying to Ministries; and
- (b) an annual report is prepared setting out the operations of the Centre in the previous year.

(2) The annual report and Auditor’s report must be sent to the Minister who must as soon as practicable present it to the Legislative Assembly under its Standing Orders.

PART 5
MISCELLANEOUS

20. Exemption from personal liability - A member of the Committee or staff or any other person who carries out any function, duty or power under this Act is not personally liable for any act done in good faith in carrying out the function, duty or power.

21. Power of Minister-(1) The Minister, acting on the advice of the Chief Executive Officer, may transfer legal aid funds handled by the Ministry to be allocated and administered by the Centre.

(2) When the transfer is made under subsection (1), references to legal assistance under this Act are to be read as references to legal aid.

22. Confidentiality-(1) Any information given to the Centre under this Act for the purposes of legal advice or legal assistance must remain with the Centre and has the same privilege as solicitor and client privileged information.

(2) A person who discloses any information under subsection (1) without the permission of the Public Advocate commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding three (3) months, or both.

23. Guidelines and manuals-(1) The Public Advocate may:

- (a) issue guidelines on all matters relating to employment under this Act; and
- (b) manuals for legal services and legal assistance provided under this Act.

(2) If there are no guidelines issued under subsection (1)(a), the procedures for employment in the Public Service are to be adopted.

24. Regulations and forms-(1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act, and in particular to make the following regulations:

- (a) matters relating to employment of the Public Advocate;

(b) procedures and requirements required under this Act.

(2) The Public Advocate may approve forms for the purpose of this Act.
