

CONSTITUTION AMENDMENT BILL 2020

SAMOA

Explanatory Memorandum

1.0 Object and reasons:

- 1.1 The Bill seeks to amend the Constitution of the Independent State of Samoa 1960 (“Constitution”).
- 1.2 The object of the Bill is to give effect to a Term of Reference given to the three (3) Offices; the Office of the Attorney General, the Ministry of Justice and Courts Administration and the Samoa Law Reform Commission, ‘to review and research the laws of Samoa on how the Land and Titles Court can be an independent setup from the courts of civil and criminal jurisdictions, within the ambits of the Constitution’. The only way is to have the Land and Titles Court framework, within the provisions of the Constitution of the Independent State of Samoa.
- 1.3 The Bill attempts to reflect more of the Samoan context inside Samoa’s supreme law, the Constitution, to ‘make the Constitution a Samoan Constitution’ in light of today’s context.
- 1.4 This Bill is a response by Samoa to respond to the challenges of ‘legal pluralism’, a legal theoretical framework with features prevalent in most post-colonial societies. A review of all other Pacific Islands Constitutions show that since gaining political independence, the Pacific Islands had expressly aspired to **adopt in their Constitution and laws the context of their cultures, custom, and traditions to which they belong**. However, to date many countries have applied caution, and the express establishment of systems to accommodate both their customary systems with the modern western system in their supreme laws has not been pursued.

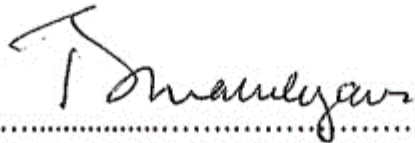
- 1.5 At the start of this XVIth Parliamentary term of Samoa's Parliament in March 2016, Samoa's newly elected members sat through a Parliament Symposium. It was here that the notion of reflecting ourselves in our laws was brought back to the forefront for necessary action. The challenges and the conflicts between modern laws and the custom and usages of the Samoan people were highlighted. The question was posed - Why is the Samoan Constitution more protective of the introduced modern principles such as individual rights, as compared to the Samoan custom and usages, the way of life of the Samoan people? In a court room, why are individual rights more powerful than Village Fonofono decisions? The answer is, because the Constitution says so.
- 1.6 In response to these challenges, Samoa, through this **Constitution Amendment Bill 2020** has opted to give more recognition of Samoa in our own Samoan Constitution. This is without removing our current rights and freedoms. In this **Constitution Amendment Bill**, we adopt the best of both the modern principles and the customary values in moving forward, so that Samoan customs and usages are not lost, not now, not in the near future, and it is hoped for a very long time to come.

Clauses:

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - amends Article 4(1) of the Constitution to expressly provide that any application by any person to enforce their fundamental rights under Part II of the Constitution, are subject to judicial review matters arising from proceedings under Part IX – Land and Titles Court.

- Clause 3:** - amends Article 32(2) (b) of the Constitution to provide for the increase in the number of Members of Parliament who may be appointed by the Head of State as Ministers, by replacing the term “twelve” with the term “fourteen”. This amendment will commence and take effect on the first day of the meeting of the 17th Parliament of Samoa.
- Clause 4:** - provides for the substitution of Part VI of the Constitution. The new Part VI provides for the set-up of the “**Civil and Criminal Courts**” system of Samoa, comprising of the Supreme Court, Court of Appeal, Subordinate Courts and its Judicial Service Commission. Provisions under this part pertain to the establishment, composition, jurisdiction and powers of the respective Courts.
- Clause 5:** - provides for the substitution of Article 103 of the Constitution. The new Article 103 clarifies that subject to any Act, all land lying below the line of high-water mark shall be public land.
- Clause 6:** - provides for the substitution of Article 104 of the Constitution. The new Article 104 provides for the establishment of the Land and Titles Court and its jurisdiction in relation to Matai titles and customary land.
- Clause 7:** - provides for the insertion of New Articles 104A, 104B, 104C, 104D, 104E, 104F, 104G into the Constitution. These Articles provide for the continuation of the Land and Titles Court, and for the establishment of the new Land and Titles Court system/hierarchy comprising of a new Land and Titles High Court, Land and Titles Court of Appeal and Review and a Komisi o Auaunaga a le Faamasinoga o Fanua ma Suafa. The same Articles provide for matters relating to composition, jurisdiction, oaths, salaries and allowances and other related matters.

- Clause 8:** - provides for consequential amendments to Article 94(4)(a) of the Constitution to correct reference to relevant Articles on Treasury Fund matters, by substituting “69” with “82”.
- Clause 9:** - provides for savings and transitional provision to allow any rights or liabilities made under the amended provisions to continue until they are completed or ended; for any provisions of the Constitution or Act impacted by these amendments to also continue and perfect any matter in progress under them if there is no substituting provisions; and for any power necessary to complete any matter made before the commencement of this Act, to be performed and exercised to complete any such matter.



(Hon TUILAEPA Auelua Fatialofa Lupesoliai Lolofietele
Neioti Aiono Galumalemana Dr. Sailele Malielegaoi)

PRIME MINISTER

CONSTITUTION AMENDMENT BILL 2020

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Article 4 amended
3. Article 32 amended
4. Part VI substituted
5. Article 103 substituted
6. Article 104 substituted
7. New Articles inserted
8. Consequential amendment
9. Savings and transitional

2020, No.

A BILL INTITULED

AN ACT to amend the Constitution on matters relating to the Civil and Criminal Courts and the Land and Titles Court, and related purposes.

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

1. Short title and commencement:

- (1) This Act may be cited as the Constitution Amendment Act 2020.
- (2) This Act commences on a date to be nominated by the Prime Minister by Notice.

2. Article 4 amended:

Clause (1) of Article 4 is amended by substituting “Any person” with the following:

“Subject to judicial review matters arising from the proceedings in Part IX Land and Titles Courts, any person”.

3. Article 32 amended:

- (1) In Article 32 of the Constitution, in clause (2)(b), substitute “twelve” with “fourteen”.
- (2) This amendment to Article 32 commences on the first day of the meeting of the 17th Parliament of Samoa.

4. Part VI substituted:

Part VI of the Constitution is substituted as follows:

“PART VI - CIVIL AND CRIMINAL COURTS

*Division 1 - Supreme Court***65. Establishment of the Supreme Court:**

There shall be a Supreme Court of Samoa which, except for Part IX Land and Titles Court, is a superior Court of record and shall consist of a Chief Justice as the Head of the Bench, and such number of other Judges as may be determined by the Judicial Service Commission.

66. Constitution of the Supreme Court:

- (1) The Chief Justice of the Supreme Court shall be appointed by the Head of State, acting on the advice of the Prime Minister.
- (2) A person shall not be qualified for appointment as a Judge of the Supreme Court unless the person:
 - (a) possesses such qualifications as the Head of State, acting on the advice of the Judicial Service Commission, may prescribe; and
 - (b) has been in practice as a barrister in Samoa, or in an approved country, or partly in the one and partly in the other, for a period of, or periods amounting in the aggregate to, not less than 15 years.
- (3) In computing, for the purposes of sub-clause (b) of clause (2), the period or periods during which any person has been in practice as a barrister, any period or periods during which the person has held judicial office in a Court of superior or subordinate jurisdiction in Samoa or an approved country shall be included.
- (4) For the purposes of clause (2) of this Article, the Head of State, acting on the advice of the Judicial Service Commission, may designate as an approved country any country which, in the opinion of the Commission, has a legal system similar to that existing in Samoa.

67. Tenure, suspension and removal of office:

- (1) Except in the case of an appointment made under the provisions of clause (2), a Judge of the Supreme Court shall hold office until the Judge reaches the age of 68 years:
PROVIDED THAT the Head of State, acting (in the case of the Chief Justice) on the advice of the Prime Minister or (in the case of any other Judge of the Supreme Court) on the advice of the Judicial Service Commission, may extend the period of office of a Judge who has reached the age of 68 years.
- (2) A person of any age who is not a citizen of Samoa and who is qualified for appointment under the provisions of clause (2) of Article 74 may be appointed to hold office as a Judge of the Supreme Court for a term of years.
- (3) Nothing done by a Judge of the Supreme Court in the performance of his or her functions shall be deemed to be invalid by reason only that the Judge has reached the age at which he or she is required by this Article to retire or that his or her term of office has expired, as the case may be.
- (4) The Chief Justice or a Judge of the Supreme Court may resign from his or her office in writing addressed to the Head of State.
- (5) The Chief Justice shall not be removed from office, except by the Head of State on an address of the Legislative Assembly carried by not less than two-thirds of the total number of Members of Parliament (including vacancies), praying for his or her removal from office on the grounds of 'stated misbehaviour' or 'infirmity of the mind' as prescribed by Act.
- (6) The Head of State, acting on the advice of the Prime Minister on the advice of the Judicial Service Commission, may at any time when the Legislative Assembly is not meeting suspend the Chief Justice from his or her office, and such suspension, unless previously revoked, shall continue in force until the end of the next ensuing session and no longer.

68. Acting Chief Justice:

- (1) While any vacancy exists in the office of Chief Justice or during any absence from Samoa of the Chief Justice, the senior Judge of the Supreme Court shall have authority to act as Chief Justice and to perform the functions of the office of Chief Justice.
- (2) Wherever by reason of illness or any cause other than absence from Samoa the Chief Justice is unable to perform the functions of the office of Chief Justice, the Head of State, acting on the advice of the Prime Minister, may authorise the senior Judge of the Supreme Court, to act as Chief Justice until the Chief Justice resumes those functions, and, during that period, to perform those functions.
- (3) The authority conferred on the Acting Chief Justice under the provisions of this Article shall not include power to preside over the Court of Appeal unless he or she is qualified by virtue of his or her seniority to preside thereover, under clause (3) of Article 66.

69. Acting Judge of the Supreme Court:

- (1) If the office of any Judge of the Supreme Court (other than the Chief Justice) is vacant or if any such Judge is unable to perform the functions of his or her office, the Head of State, acting on the advice of the Judicial Service Commission, may appoint a person qualified under clause (2) of Article 66 to be temporarily a Judge of the Supreme Court:
PROVIDED THAT a person may be so appointed notwithstanding that the person has attained the age of 68 years.

- (2) A person appointed under the provisions of clause (1) to be temporarily a Judge of the Supreme Court shall hold office for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Head of State, acting on the advice of the Judicial Service Commission:

PROVIDED THAT the person may at any time resign his or her office by writing under his or her hand addressed to the Head of State.

70. Senior and Supreme Court Judges:

The Head of State, acting on the advice of the Judicial Service Commission, has authority to appoint a Senior or a Chief Supreme Court Judge to hold the offices of a Senior or a Supreme Court Judge.

71. Jurisdiction of the Supreme Court:

- (1) Except for Part IX Land and Titles Court and the laws administered thereunder, the Supreme Court shall:
- (a) have such original, appellate and, revisional jurisdiction; and
 - (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws of Samoa.
- (2) Except for Part IX Land and Titles Court and without prejudice to any appellate or revisional jurisdiction of the Supreme Court, where in any proceedings before another Court (except the Court of Appeal) a question arises as to the interpretation or effect of any provision of this Constitution, the Supreme Court may, on the application of any party to the proceedings, determine that question and either dispose of the case or remit it to that other Court to be disposed of in accordance with the determination.

- (3) Except for Part IX Land and Titles Court, the Head of State, acting on the advice of the Prime Minister, may refer to the Supreme Court for its opinion any question as to the interpretation or effect of any provision of this Constitution which has arisen or appears likely to arise, and the Court shall pronounce its opinion on any question so referred to it.

72. Judicial Guidance:

Subject to the provisions of this Constitution, customs must be taken into account in all courts under this Part.

73. Powers of Judges of the Supreme Court:

Each Judge of the Supreme Court or any two (2) or more Judges may, in any part of Samoa and at any time or place, exercise all the powers of the Supreme Court.

Division 2 - Court of Appeal

74. Establishment and constitution of Court of Appeal:

- (1) There shall be a Court of Appeal of Samoa, which for this Part, shall be a superior Court of record.
- (2) Subject to the provisions of this Part, the Judges of the Court of Appeal shall be:
 - (a) retired Judges of the Supreme Court of Samoa under the age of 75 years;
 - (b) the Chief Justice and other Judges of the Supreme Court of Samoa; and

- (c) such persons possessing similar qualifications as those persons under clause (2) of Article 66, as may be appointed by the Head of State from time to time, acting on the advice of the Judicial Service Commission.
- (3) Judges of the Court of Appeal shall take seniority according to the respective dates of their first appointment as Judges of a superior Court in Samoa or in any approved country.
- (4) The Chief Justice, and in his absence, the most senior Judge of the Court of Appeal shall be President of the Court of Appeal, but, in his or her absence, the senior Judge of the Court present at the appeal or, if the Judges so present are of the same seniority, a Judge designated by the Chief Justice shall preside.
- (5) An appointment under the provisions of sub-clause (c) of clause (2) shall be for a period of time or for the trial or hearing of particular causes or matters, as may be specified in the instrument of appointment.

75. Number of Judges:

- (1) Any three (3) Judges of the Court of Appeal may exercise all the powers of the Court:
PROVIDED THAT:
 - (a) for every sitting of the Court of Appeal, the majority of Judges shall be retired Supreme Court Judges or Supreme Court Judges; and
 - (b) in the interest of justice, one of the three (3) Court of Appeal Judges may be an overseas non Samoan Court of Appeal Judge appointed under sub-clause (2)(c) of Article 74; and

- (c) the Court may have its judgment delivered by any one of its members, and if there is no such member then through the Registrar of the Court of Appeal.
- (2) The Judgment of the Court of Appeal shall be in accordance with the opinion of the majority of the Judges present.
- (3) A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by the Judge or by a Court on which the Judge sat as a member.
- (4) The decision of the Court of Appeal on any appeal from the Supreme Court shall be final.
- (5) Any two (2) Judges of the Court may exercise all the powers of the Court of Appeal on the certificate of the President of the Court that it is in the interests of justice that they should do so.

76. Jurisdiction of Court of Appeal:

- (1) Except for Part IX Land and Titles Court and subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to hear and determine:
 - (a) such appeals including proceedings removed by order of the Supreme Court to the Court of Appeal; and
 - (b) all appeals from any judgment, decree, or order of the Supreme Court whether in its civil or criminal jurisdiction, subject to the Judicature Act 2020 and of the Criminal Procedure Act 2016, and to such rules and orders for regulating the terms and conditions on which such appeals shall be allowed by those Acts; and

- (c) an appeal from any decision of the Supreme Court in any proceedings under the provision of Article 4.
- (2) Except for Part IX Land and Titles Court, an appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceeding, if the Supreme Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution; and:
 - (a) where such a certificate is given or such leave granted, any party in the case may appeal to the Court of Appeal on the ground that any such question has been wrongly decided and, with the leave of that Court, on any other ground; or
 - (b) where the Supreme Court has refused to give such a certificate, the Court of Appeal may, if it is satisfied that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution, grant special leave to appeal from that decision.

77. Powers of the Court of Appeal:

On any appeal from the Supreme Court, the Court of Appeal may:

- (a) affirm, reverse, or vary the judgment appealed from; or
- (b) order a new trial; or
- (c) dismiss the appeal; or

- (d) make any such order with respect to the appeal as the Court thinks fit; and
- (e) award such costs as it thinks fit.

78. Definition of “decision”:

In Articles 75, 76 and 119, “decision” includes judgment, decree, order, writ, declaration, conviction, sentence, opinion or other determination.

Division 3 - Subordinate Courts

79. Subordinate Courts:

There shall be such subordinate Courts possessing such jurisdiction and powers as may be provided by Act.

Division 4 - Judicial Service Commission

80. Judicial Service Commission:

- (1) There shall be a Judicial Service Commission consisting of:
 - (a) the Chief Justice, as Chairperson;
 - (b) the Attorney-General or if for reason the Attorney General is unable to act, the Ombudsman (*Komesina o Sulufaiga*);
 - (c) a person nominated from time to time by the Minister of Justice;
 - (d) the Chairman of the Public Service Commission;
 - (e) a retired Supreme Court Judge appointed by the Head of State on the advice of Cabinet; and
 - (f) the Registrar of the Supreme Court as the secretary of the Commission who shall have no voting rights.

- (2) No business shall be transacted by the Judicial Service Commission unless any three (3) members appointed under clause (1)(a)-(e) are present, and all questions proposed for decision by the Commission shall be decided by a majority of the votes of those members.
- (3) A meeting of the Judicial Service Commission may be called by three (3) members except the Registrar.
- (4) The power of appointing, promoting, transferring and dismissing a Supreme Court Judge and a subordinate Court is vested in the Head of State, acting on the advice of the Judicial Service Commission, as may be provided by Act.

81. Oath of office:

- (1) The Chief Justice, Senior Supreme Court Judge and every Judge of the Supreme Court shall, before assuming the functions of his or her office take and subscribe before the Head of State an oath in the form set out in the Third Schedule.
- (2) A person appointed as a Judge of the Court of Appeal shall, on first appointment, take and subscribe before the Head of State an oath in the form set out in the Third Schedule.

82. Remuneration, salaries, and allowances:

- (1) Each Judge of the Court of Appeal appointed under this Part shall be remunerated as may be proposed by the Judicial Service Commission, and appropriated by the Legislative Assembly.
- (2) The salaries of the Judges of the Supreme Court shall be appropriated by the Legislative Assembly and shall be charged on the Treasury Fund. The salaries of such Judges shall not be diminished during their period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

- (3) There shall be paid to the Chief Justice, and to the other Judges of the Supreme Court, from money appropriated for the purpose by the Legislative Assembly, such additional amounts by way of travelling allowances and expenses and other allowances as may be fixed by the Head of State, acting on the advice of the Judicial Service Commission.
- (4) For the purposes of clause (3) there shall be charged on and payable out of the Treasury Fund as statutory expenditure, effective from the date of appointment as Chief Justice, an allowance of \$12,000 a year, to be paid annually to the Chief Justice.
- (5) Payments made under clause (4) and the value of benefits shall unless the Head of State by Order otherwise directs be exempt from taxation and the Income Tax Act 2012 applies accordingly.”.

5. Article 103 substituted:

Article 103 is substituted as follows:

“103. Land below high-water mark:

- (1) Subject to the provision of any Act, all land lying below the line of high-water mark shall be public land.
- (2) For the purposes of this Article, the term “**high-water mark**” means the line of median high tide between the spring and neap tides.”.

6. Article 104 substituted:

Article 104 is substituted as follows:

“LAND AND TITLES COURT

104. Customary Land and Titles Protection:

- (1) There shall be Land and Titles Courts with such composition and with such jurisdiction in relation to Matai titles and customary land provided in this Constitution.
- (2) The Courts in this Part IX Land and Titles Court has special jurisdiction, it governs a legal system different and separate from that of the Civil and Criminal Courts in Part VI; and has supreme authority over the subject of Samoan customs and usages.
- (3) All persons are entitled to the protection of their custom rights the subject of the jurisdiction of the courts in this Part.”.

7. New Articles inserted:

After Article 104, insert the following:

"104A. Land and Titles Court:

- (1) There shall continue to be a Land and Titles Court which shall be a court of record.
- (2) A sitting of the Land and Titles Court consists of:
 - (a) the Vice President on behalf of the President as the presiding Judge; and
 - (b) two (2) Land and Titles Court Judges.
- (3) The Land and Titles Court shall continue to have all the jurisdiction it exercised prior to this Constitution Amendment Act 2020 coming into force.
- (4) The Land and Titles Court shall:
 - (a) have such original and appellate jurisdiction; and

- (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws under this Part IX Land and Titles Court.
- (5) In particular the Land and Titles Court shall have jurisdiction:
- (a) in all matters relating to Samoan names and titles;
 - (b) to make orders or declarations in respect of Samoan names and titles as may be necessary to preserve or define the same, or the rights or obligations attaching to those names and titles in accordance with the customs and usages of the Samoan race and all laws in force in Samoa with reference to customs and usages;
 - (c) all claims and disputes between Samoans relating to customary land, and the right of succession to property held in accordance with the customs and usages of the Samoan race;
 - (d) in all the powers that are inherent in a Court of record; and
 - (e) as may be conferred by Act.
- (6) 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.
- (7) The Court shall decide all matters in accordance with what it considers to be fair and just between the parties.
- (8) The English common law and equity of England does not apply in the Land and Titles Court.

- (9) In any matter before it, the Land and Titles Court may reserve for consideration by the Land and Titles High Court:
 - (a) a petition presented; or
 - (b) on a case stated.
- (10) The Court in determining any petition before it has the power:
 - (a) to make a decision on a petition brought before it; and
 - (b) make orders that take effect to be specified in the order or on the date on which it is made.
- (11) The decision of the Land and Titles Court is in accordance with the opinion of the majority of the members of the Court.
- (12) The decision of the Land and Titles Court is subject to an appeal to the Land and Titles High Court, under Article 104B.

104B. Land and Titles High Court:

- (1) There shall be a Land and Titles High Court which, for this Part is a superior court of record.
- (2) The Land and Titles High Court is constituted by:
 - (a) the President as the presiding Judge and Head of Bench or, on the direction of the President, the Deputy President as the presiding Judge; and
 - (b) two (2) Land and Titles Court Vice Presidents appointed by the President.
- (3) A Judge is disqualified from sitting on an appeal if he or she was a member of the Land and Titles Court in the first instance hearing of the petition in the matter on appeal.

- (4) Subject to the direction of the President, a Deputy President may preside over sittings of the Court of Appeal, and exercise such other functions of the President as may in respect of a particular case or matter be directed by the President.
- (5) The Land and Titles High Court shall:
 - (a) have such original, appellate and, revisional jurisdiction; and
 - (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws under this Part IX Land and Titles Court.
- (6) The Land and Titles High Court shall have jurisdiction to hear any appeals from the Land and Titles Court, and has all the powers and jurisdiction of the Land and Titles Court.
- (7) The Land and Titles High Court has the power to:
 - (a) uphold the appeal; or
 - (b) set aside, vary or reverse the decision of the Land and Titles Court; or
 - (c) order the Land and Titles Court to rehear the matter; or
 - (d) make any such order with respect to the appeal as the Court thinks fit; and
 - (e) award such costs as it thinks fit.
- (8) The decision of the Land and Titles High Court is subject to a further appeal to the Land and Titles Court of Appeal and Review, under Article 104C.
- (9) In any matter before the Land and Titles High Court, the Land and Titles High Court may reserve for consideration by the Land and Titles Court of Appeal and Review:
 - (a) a petition presented; or
 - (b) a case stated.
- (10) The President may certify special leave to hear proceedings in the Land and Titles Court of Appeal and Review, subject to conditions as set out by Act.

104C. Land and Titles Court of Appeal and Review:

- (1) There shall be a Land and Titles Court of Appeal and Review which shall be a superior court of record.
- (2) The composition of the Land and Titles Court of Appeal and Review is as follows:
 - (a) a retired Samoan Supreme Court Judge as Chairperson of the Court;
 - (b) one (1) Samoan Supreme Court Judge;
 - (c) a retired Vice President of the Land and Titles Court; and
 - (d) a Samoan person eligible to be appointed as a Supreme Court Judge.
- (3) Any three (3) members of the Land and Titles Court of Appeal and Review may at any one (1) sitting exercise the powers of the Land and Titles Court of Appeal and Review.
- (4) A member of the Land and Titles Court of Appeal and Review is disqualified from sitting on an appeal or a review if he or she was a member of the Land and Titles High Court at the appeal hearing, or the Land and Titles Court hearing at the first instance.
- (5) The Land and Titles Court of Appeal and Review shall:

- (a) have original, appellate and, revisional jurisdiction; and
 - (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws under this Part IX Land and Titles Court.
- (6) The Land and Titles Court of Appeal and Review in particular shall have jurisdiction to hear and determine:
- (a) an appeal from a decision of the Land and Titles High Court; and
 - (b) an application for judicial review or a review of a decision of the Land and Titles Court or the Land and Titles High Court.
- (7) Proceedings under this Article commence by:
- (a) an appeal notice commencing through leave proceedings, by application the procedures which may be provided by Act; or
 - (b) a judicial review or a review application brought by or on behalf of any party to the proceedings in the Land and Titles High Court or the Land and Titles Court in which the order or decision is made; the procedures which may be provided Act.
- (8) The Court of Final Appeal and Review has the power to:
- (a) for an appeal -
 - (i) uphold the appeal; or
 - (ii) set aside, vary or reverse the decision of the Land and Titles High Court; or
 - (iii) order the Land and Titles High Court to rehear the matter; or

- (iv) make any such order with respect to the appeal as the Court thinks fit; and
 - (v) award such costs as it thinks fit.
 - (b) for a review -
 - (i) grant the remedy sought; or
 - (ii) grant the prerogative writ sought (mandamus, prohibition and certiorari, and for relief in the form of an injunction); or
 - (iii) dismiss the application.
- (9) The decisions of the Land and Titles Court of Appeal and Review Court are final.
- (10) Where in any proceedings before any Courts in this Part a question arises as to the interpretation or effect of any provision of this Constitution under this Part, the Land and Titles Court of Appeal and Review may, on the application of any party to the proceedings, determine that question and either dispose of the case or remit it to that other Court to be disposed of in accordance with the determination.
- (11) The Head of State, acting on the advice of the Prime Minister, may refer to the Land and Titles Court of Appeal and Review for its opinion any question as to the interpretation on the effect of any provision of this Part which has arisen or appears likely to arise, and the Land and Titles Court of Appeal and Review Court shall pronounce its opinion on any question so referred to it.

104D. Appointment, removal, tenure:

- (1) The Head of State, upon the recommendation of the Prime Minister, may appoint as President of the Land and Titles High Court and Head of the Land and Titles Court Bench:
 - (a) a Samoan legal practitioner who has practiced under the Lawyers and Legal Practice Act 2014 in Samoa for a period of not less than 15 years; and
 - (b) has held a matai title and rendered matai services to his or her village for a period of not less than 15 years;
 - (c) he or she holds office until the age of 68 years, provided that the Head of State acting on the advice of the Komisi o Galuega o le Faamasinoga o Fanua ma Suafa (Komisi) may extend for not more than 12 months or for successive period each of not more than 12 months.
- (2) The Head of State, on the advice of the Komisi o Galuega o le Faamasinoga o Fanua ma Suafa, may appoint as Deputy President:
 - (a) a Samoan legal practitioner who has practiced under the Lawyers and Legal Practice Act 2014 in Samoa for a period of not less than 13 years; and
 - (b) has held a matai title and rendered matai services to his or her village for a period of not less than 10 years; and
 - (c) any such qualifications the Head of State, acting on the advice of the Komisi may prescribe; and
 - (d) he or she holds office until the age of 68 years, provided that the Head of State acting on the advice of the Komisi may extend for not more than 12 months or for successive period each of not more than 12 months.

- (3) The Head of State, on the advice of the Komisi may appoint as Vice President:
 - (a) a Samoan matai who has held the position of a Land and Titles Court Judge for a period of not less than 10 years; and
 - (b) holds a matai title and rendered matai services to his or her village for a period of not less than 10 years; and
 - (c) any such qualifications the Head of State, acting on the advice of the Komisi may prescribe; and
 - (d) he or she holds office until the age of 68 years, provided that the Head of State acting on the advice of the Komisi may extend for not more than 12 months or for successive period each of not more than 12 months.
- (4) The Komisi may appoint Land and Titles Court Judges on terms and conditions approved by the Komisi.
- (5) The Head of State may on the advice of the Prime Minister, suspend the President of the Land and Titles High Court from office when the Legislative Assembly is not meeting, and such suspension, unless previously revoked, continues in force until the end of the next ensuing session and no longer.
- (6) The Head of State may remove the President of the Land and Titles Court from office on an address:
 - (a) of the Legislative Assembly carried by not less than two-thirds of the total number of Members of Parliament (including vacancies); and

- (b) praying for the President's removal from office on the ground of 'stated misbehaviour' or of 'infirmity of body or mind' as prescribed by Act.
- (7) The Head of State, on the advice of the Komisi may remove the Deputy President and a Vice President.
- (8) Nothing done by a Deputy President, Vice President, and a Samoan Land and Titles Court Judge in the performance of his or her functions is deemed to be invalid by reason only that he or she has reached the age at which he or she is required by this Part to retire.

104E. Komisi o Auaunaga a le Faamasinoga o Fanua ma Suafa:

- (1) There shall be a Komisi o Auaunaga a le Faamasinoga o Fanua ma Suafa, which shall consist of:
 - (a) the President of the LTC, as Chairperson;
 - (b) a Supreme Court Judge as nominated by the Chief Justice; and
 - (c) the Chairperson of the Public Service Commission;
 - (d) the Registrar of the Supreme Court as the secretary of the Commission who shall have no voting rights.
- (2) No business shall be transacted by the Komisi unless all three (3) members are present, and all questions proposed for decision by the Commission shall be decided by a majority of the votes of those members.
- (3) A meeting of the Komisi may be called by any of the three (3) members in clause (1) (a) - (c).
- (4) The power of appointing, promoting and transferring and removal of any Samoan Land and Titles Court Judge is vested in the Head of State, acting on the advice of the Komisi as may be provided by Act.

104F. Oath:

- (1) The President of the Land and Titles High Court, shall, before assuming the functions of his or her office take and subscribe before the Head of State an oath in the form set out in the Third Schedule.
- (2) The Chairperson and members of the Land and Titles Court of Appeal and Review shall, before assuming the functions of office take and subscribe before the President an oath in the form set out in the Third Schedule.
- (3) A Deputy President and a Vice President a Judge of the Land and Titles Court shall, before assuming the functions of his or her office take and subscribe before the President of the Land and Titles High Court an oath in the form set out in the Fourth Schedule.

104G. Salaries and allowances:

The President, a Deputy President, Vice President and Samoan Land and Titles Court Judge shall be paid out of moneys appropriated by the Legislative Assembly such salary, allowance or other benefit, travelling expenses and other costs as may be fixed by the Head of State by order, acting on the advice of Cabinet, after Cabinet has received the recommendations of the Komisi.”.

8. Consequential amendment:

In Article 94(4)(a), substitute the number ‘69’ with ‘82’.

9. Savings and transitional:

- (1) The commencement of this Act does not affect any rights or liabilities made under the provisions amended by this Act, and such rights or liabilities shall continue to be in force until they have been completed or ended.

- (2) The provisions of the Constitution or any Act impacted by this Act remain in force for the purpose of continuing and perfecting an act, matter, or thing, or any proceedings commenced or in progress under them, if there is no substituted provision adapted to the completion of the act, matter, or thing, or proceedings commenced or in progress under those provisions.
- (3) A power or act which may be necessary to complete, carry out, or compel the performance of a subsisting contract or agreement lawfully made, entered into, or commenced under the provisions of the Constitution before this Act commences, may be exercised and performed in all respects to the completion of that contract or agreement.
