

SAMOA

Arrangement of Provisions

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2013, No. 9

AN ACT to establish the Customary Land Advisory Commission to encourage, facilitate and promote greater economic use of customary land for the purpose of enhancing the social, cultural, economic and commercial development of Samoa and for related purposes.

[5th April 2013]

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 Customary Land Advisory Commission Act 2013.

(2) This Act commences on the date assented to by the Head of State.

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

“Commission” means the Customary Land Advisory Commission established by section 4;

“commissioner” means a commissioner appointed under section 4(1);

“customary land” has the same meaning as in Article 101(2) of the Constitution;

“Minister” means the Minister responsible for Natural Resources and Environment;

“staff” means staff appointed under section 10.

3. Act binds Government - This Act binds the Government.

4. Establishment-(1) The Customary Land Advisory Commission is established comprising three (3) commissioners appointed by the Head of State acting on the advice of Cabinet.

(2) A person is not eligible to be appointed as a commissioner unless the person:

(a) is a matai; and

(b) is not a bankrupt; and

(c) has not been convicted of an offence with a prescribed maximum penalty of at least two (2) years imprisonment; and

(d) is of good repute within his or her community; and

(e) has a significant understanding of Samoan culture; and

(f) is a good advocate of the economic use of customary land.

(3) Cabinet must appoint one of the commissioners to be the Chairperson.

(4) Subject to section 14, a commissioner holds office for three (3) years, and is eligible for reappointment.

(5) Unless a commissioner resigns or is removed from office under section 5, a commissioner continues to hold office on expiry of term until the commissioner is re-appointed or a successor is appointed.

5. Removal, resignation and vacancy-(1) Cabinet may remove a commissioner on any of the following grounds:

- (a) disability;
- (b) inefficiency;
- (c) misconduct;
- (d) neglect of duty;
- (e) bankruptcy;
- (f) permanent departure from Samoa proved to the satisfaction of Cabinet.

(2) A commissioner may resign from office by written notice addressed to the Chief Executive Officer responsible for the affairs of Cabinet.

(3) If a commissioner resigns, is removed from office or dies, the Head of State, acting on the advice of Cabinet, may appoint another person to fill the vacancy.

6. Functions and powers-(1) The Commission has the following functions:

- (a) to recommend to Cabinet suggested measures for the facilitation, encouragement and promotion of the economic use of customary land in Samoa;
- (b) in accordance with references made to it by Cabinet, to conduct public consultations on areas of law affecting customary land considered to be in need of reform and report its recommendations for reform to Cabinet;
- (c) to consult with and advise the public and any specific sectors of the community about its work;

- (d) to review all laws affecting customary land in Samoa and make recommendations to Cabinet for changes to such laws where such are necessary for the facilitation, encouragement and promotion of the economic use of customary land;
 - (e) to carry out any other function given to it under this Act or any other Act.
- (2) The Commission has the following powers:
- (a) to conduct or sponsor such studies and research as it thinks expedient for the preparation of reports and associated documents relating to a matter referred to it under this Act;
 - (b) to consult any government Ministry or agency concerning the review of any aspect of the law and to request and receive from any government Ministry or agency any information relating to a review;
 - (c) to publicise its work, conduct public consultations, seek comments from the public on its proposals, and consult any person or group of persons;
 - (d) to hire or otherwise obtain the services of suitably qualified persons to assist with its work;
 - (e) to delegate, in writing, to a commissioner or staff any specific function of the Commission;
 - (f) to exercise all powers as are necessary or expedient for the purposes of carrying out its functions.

7. Meetings and committees-(1) At a meeting of the Commission:

- (a) the Chairperson presides; and
- (b) all three (3) commissioners constitute a quorum; and
- (c) a question is to be determined by a majority of the commissioners.

(2) Subject to this Act, the Commission may regulate its own procedures.

(3) The Commission may appoint a committee to assist the Commission in carrying out its functions, duties and powers under this Act.

(4) Members of a committee are entitled to remuneration determined by the Commission payable from the funds of the Commission.

8. Fees, allowances and other conditions-(1) A commissioner is entitled to fees and allowances determined by Cabinet payable from the funds of the Commission.

(2) Regulations may provide other conditions of appointment of commissioners.

9. Reports-(1) The Commission must prepare and provide the following reports to Cabinet:

- (a) reports relating to any terms of reference referred to it by Cabinet;
- (b) annual reports on its operations and expenditure;
- (c) any other report required by Cabinet.

(2) The Commission may, with the approval of Cabinet, publish a report under subsection (1)(a) or (c).

10. Staff - The Public Service Commission shall provide staff for the purposes of this Act.

11. Funds and accounts-(1) The Commission must be funded by monies appropriated by Parliament for the purpose of this Act.

(2) The Commission must keep proper accounts and records of its transactions and do all things necessary to ensure that:

- (a) all funds received are brought to account;
- (b) all payments are properly authorised and correctly made and accounted for; and
- (c) there are adequate controls over the Commission's -
 - (i) assets;
 - (ii) property under the Commission's control;
 - (iii) expenditure; and
 - (iv) liabilities.

(3) The Commission must prepare and submit to Cabinet, within six (6) months after the end of its financial year, an annual report containing:

- (a) financial statements for that financial year, including a statement of financial transactions and the financial positions for that financial year with comparison with the immediate preceding years;
- (b) a report on the operations of the Commission during that financial year; and
- (c) such other information as Cabinet may require.

(4) The Commission must submit to the Controller and Chief Auditor for audit the accounts, financial statements and other information required under this section.

(5) The Minister must table the annual report of the Commission together with the Controller and Chief Auditor's report on the Commission's financial statements before Parliament as soon as practicable after receiving the report.

12. Exemption from liability - A commissioner, staff or any other person engaged or required to carry out a function, duty or power under this Act is not personally liable for any act done or omitted to be done in good faith when carrying out the function, duty or power under this Act.

13. Regulations - The Head of State, acting on the advice of Cabinet, may make regulations to give effect to or for the purposes of this Act, including matters required to be prescribed by this Act.

14. Dissolution-(1) The Commission is dissolved after seven (7) years from the commencement of this Act.

(2) As an exception to subsection (1), the Legislative Assembly may, before the expiry of seven (7) years, by resolution published in the Savali extend the operations of the Commission for a further period not exceeding seven (7) years.

(3) This Act ceases to take effect on the date that the Commission is dissolved except:

- (a) section 11 continues until all accounts of the Commission are settled;

- (b) that cessation of the Act does not have the effect of repealing the amendments to the Alienation of Customary Land Act 1965 by section 15 of this Act.
- (4) At the date of dissolution of the Commission:
 - (a) appointments of all commissioners, staff, committees, or persons engaged for the purpose of this Act, cease except adequate staff for the purpose of subsection (3)(a);
 - (b) all assets and liabilities of the Commission are vested in the Government.
- (5) Regulations may be made to deal with the dissolution of the Commission.

15. Consequential amendment - Section 4 of the Alienation of Customary Land Act 1965 is amended:

- (a) by renumbering the current provision as section 4(1);
- (b) by adding the following new subsections:

“(2) For the avoidance of doubt, an interest in the lease or licence of customary land that the Minister can grant by subsection (1) includes a mortgage of the interest of the lessee or licensee.

(3) The process of registration and discharge of mortgages in the Land Titles Registration Act 2008 applies to the registration and discharge of such mortgages.

- (4) Nothing in this Act may be construed or implied:
 - (a) to permit the alienation or disposition of customary land in a manner prohibited by Article 102 of the Constitution; or
 - (b) to permit or deem ownership in any customary land to vest in a person otherwise than as determined under any law dealing with the title to customary land.”.

**The Customary Land Advisory Commission Act 2013
is administered by the Ministry of Natural Resources
and Environment.**

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