

# JUDICATURE BILL 2020

## SAMOA

### Explanatory Memorandum

#### **1.0 Object and reasons:**

- 1.1 This Bill updates the Judicature Ordinance 1961 (“JO 1961”), removing duplicated provisions found in the Constitution.
  
- 1.2 In essence, what is now regulated by this Bill are administrative, procedural and civil appeal provisions practiced in the Civil and Criminal Courts.

#### **Clauses:**

### PART 1 PRELIMINARY

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - provides for the interpretation of certain terms used throughout the Bill.
- Clause 3:** - provides that all civil and criminal Courts in Samoa shall within the limits of their jurisdiction, administer common law and equity concurrently.

**PART 2**  
**SUPREME COURT**

- Clause 4:** - provides for the appointment of the Registrar of the Supreme Court.
- Clause 5:** - provides for the appointment of the Deputy Registrars of the Supreme Court.
- Clause 6:** - provides for the appointment of Court administrative officers.
- Clause 7:** - provides that the Supreme Court shall have in the custody of each Judge, Registrar and Deputy Registrar a seal of the Court, for the sealing of all judgments, orders, decrees, warrants, records and other instruments that require to be sealed by the Court.
- Clause 8:** - provides for the practice and procedure of the Court.
- Clause 9:** - provides that the Head of State, acting on the advice of the Judicial Service Commission, may make such rules for the practice and procedure of the Supreme Court.

**PART 3**  
**COURT OF APPEAL**

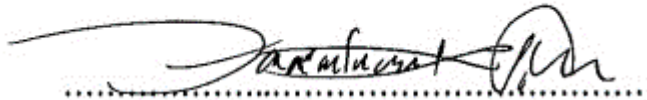
- Clause 10:** - provides that the Registrar, Deputy Registrars and other officers of the Supreme Court shall, without further appointment, act in the like capacity in the Court of Appeal.
- Clause 11:** - provides for the appeals in civil cases.
- Clause 12:** - provides for the questions of law that may be reserved for decision of the Court of Appeal.

- Clause 13:** - provides for the proceedings in the Supreme Court that may be removed into the Court of Appeal.
- Clause 14:** - provides for the Order granting leave for appeal.
- Clause 15:** - provides for no stay of execution unless Court orders.
- Clause 16:** - provides for the evidence on appeal.
- Clause 17:** - provides for the power of court regarding judgment.
- Clause 18:** - provides for when a court may order a new trial.
- Clause 19:** - provides for non-prosecution of appeal cases.
- Clause 20:** - provides for execution of order.
- Clause 21:** - provides no appeal on appeals from District Court, unless leave to appeal is given.
- Clause 22:** - provides for when special leave to appeal may be granted by the Court of Appeal.
- Clause 23:** - provides for the Court seal.
- Clause 24:** - provides that the Head of State, acting on the advice of the Judicial Service Commission, may make rules for the practice and procedure of the Court of Appeal.

**PART 4**  
**MISCELLANEOUS**

- Clause 25:** - provides that the Head of State, may make regulations setting out the fees payable for proceedings in the Supreme Court and Court of Appeal.

**Clause 26:** - provides for the repeal, savings and traditional provisions.

A handwritten signature in black ink, appearing to read 'FAAOLESA KATOPAU T. AINUU', is written over a horizontal dotted line.

(Hon FAAOLESA Katopau T. Ainuu)

**MINISTER OF JUSTICE AND**  
**COURTS ADMINISTRATION**

# JUDICATURE BILL 2020

## SAMOA

### Arrangement of Provisions

#### PART 1

#### PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Concurrent administration of law and equity

#### PART 2

#### SUPREME COURT

4. Registrar
5. Deputy Registrars
6. Court administrative offices
7. Seal of the Court
8. Practice and procedure
9. Rules of Court

**PART 3**  
**COURT OF APPEAL**

10. Officers
11. Appeals in civil cases
12. Questions of law may be reserved for decision of Court of Appeal
13. Proceedings in the Supreme Court may be removed into the Court of Appeal
14. Order granting leave for appeal
15. No stay of execution unless Court orders
16. Evidence on appeal
17. Power of Court regarding judgment
18. Court may order new trial
19. Non-prosecution of appeal
20. Execution of order
21. No appeal on appeals from District Court without leave
22. Special leave to appeal may be granted by the Court of Appeal
23. Court seal
24. Rules of practice

**PART 4**  
**MISCELLANEOUS**

25. Regulations
  26. Repeal, savings and transitional
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2020, No.

**A BILL INTITULED**

**AN ACT to update the law relating to the Civil and Criminal Courts of Samoa,  
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 Judicature Act 2020.
- (2) This Act comes into force on the date of assent of the Head of State.

**2. Interpretation:**

In this Act, unless the context otherwise requires:

“action” means a civil proceeding commenced by writ or plaint or in such  
manner as may be prescribed by rules of Court;

“judgment” includes any judicial decree, order, or determination, whether  
in an action or in any other judicial proceeding, whether civil or criminal;

“Judicial Service Commission” means the Judicial Service Commission  
constituted by Article 80 of the Constitution;

“rules of Court” means rules or regulations made under this Act.

**3. Concurrent administration of law and equity:**

All Civil and Criminal Courts in Samoa shall within the limits of their jurisdiction administer common law and equity concurrently, and in all cases in which there is any conflict between common law and equity with reference to the same matter the rules of equity shall prevail.

**PART 2**  
**SUPREME COURT**

**4. Registrar:**

- (1) There shall be appointed by the Public Service Commission a Registrar of the Supreme Court.
- (2) The Registrar shall be responsible to the Minister responsible for Justice for the administration and control of the Court offices and he or she shall keep or cause to be kept such records of the proceedings of the Court and matters pertaining thereto as the Minister of Justice may direct and shall perform such other duties in relation to the administration of the Court as the Chief Justice may require.

**5. Deputy Registrars:**

- (1) There shall be appointed by the Public Service Commission of Samoa such Deputy Registrars of the Supreme Court as the Minister of Justice may direct.
- (2) A Deputy Registrar appointed under this section shall, subject to the control of the Registrar, possess, exercise and perform the same powers, functions and duties as the Registrar; every reference in this Act to the Registrar of the Supreme Court shall so far as applicable extend and apply to a Deputy Registrar.



**6. Court administrative offices:**

There shall be appointed by the Public Service Commission of Samoa such interpreters, bailiffs, clerks and administrative officers as the Minister of Justice may require who shall perform such duties in relation to the administration of the Court as may be assigned to them by the Registrar.

**7. Seal of the Court:**

The Supreme Court shall have in the custody of each Judge, Registrar and Deputy Registrar a seal of the Court in such form as the Chief Justice may approve, for the sealing of all judgments, orders, decrees, warrants, records and other instruments that require to be sealed by the Court.

**8. Practice and procedure:**

Subject to this Act, the Code of Civil Procedure, and the Rules of Court, the practice and procedure of the Supreme Court in the exercise of its civil and criminal jurisdiction shall be such as the Court thinks in each case to be most consistent with natural justice and convenience.

**9. Rules of Court:**

The Head of State, acting on the advice of the Judicial Service Commission, may make rules for the practice and procedure of the Supreme Court.

**PART 3**  
**COURT OF APPEAL**

**10. Officers:**

The Registrar, Deputy Registrars and other officers of the Supreme Court shall, without further appointment, act in the like capacity in the Court of Appeal.

**11. Appeals in civil cases:**

An appeal shall lie in any action, cause or matter, not being a criminal proceeding, to the Court of Appeal from the Supreme Court:

- (a) as of right when the matter in dispute amounts to or is of the value of \$3000 or upwards; and
- (b) with leave of the Court of Appeal or of the Supreme Court if in the opinion of either Court the question involved in the appeal is one which by reason of its general or public importance or the magnitude of the interests affected, or for any other reason, ought to be submitted to the Court of Appeal for decision.

**12. Questions of law may be reserved for decision of Court of Appeal:**

In any matter not being a criminal proceeding the Supreme Court may reserve for consideration by the Court of Appeal, on a case stated, any question of law which may arise on the trial of any action, cause or matter, and may give any judgment or decision, subject to the opinion of the Court of Appeal, and the Court of Appeal shall have power to hear and determine and read such question.

**13. Proceedings in the Supreme Court may be removed into the Court of Appeal:**

- (1) In any matter not being a criminal proceeding, the Supreme Court may order the removal into the Court of Appeal of any of the following proceedings:
  - (a) a notice of motion;
  - (b) a petition presented;
  - (c) a special case stated;
  - (d) a question of law ordered to be argued.
- (2) On removal, the Court of Appeal has the same power to adjudicate on the proceedings as the Supreme Court had.

**14. Order granting leave for appeal:**

- (1) No such appeal, whether as of right or not, shall be brought except in pursuance of an order of the Supreme Court granting leave to appeal: **PROVIDED THAT**, subject to subsections (2) and (3), the Supreme Court shall grant such leave in every case where the appellant is entitled to appeal as of right.
- (2) Leave to appeal shall be granted only on condition that the appellant within a period to be fixed by the Court, not exceeding two (2) months from the date of the hearing of the application, gives security to the satisfaction of the Court or the Registrar thereof in a sum to be fixed by the Court, not exceeding \$200 per half day, for the payment of the costs of the appeal.
- (3) Where the Court grants leave to appeal on condition that the appellant gives security for costs, the order granting leave to appeal shall not be sealed until that security has been duly given.

**15. No stay of execution unless Court orders:**

The appeal shall not operate as a stay of execution or of proceedings under the decision appealed from except in so far as the Supreme Court or the Court of Appeal may order, and no intermediate act or proceedings shall be invalidated except so far as the Supreme Court may direct.

**16. Evidence on appeal:**

- (1) Any such appeal shall, so far as it relates to any question of fact, be determined by the Court of Appeal by reference to the evidence heard at the trial as certified under the seal of the Supreme Court, and no further evidence shall, without the leave of the Court of Appeal, be heard or admitted.
- (2) It shall not be open, as of right, to any party to an appeal to adduce new evidence in support of his or her original case, but a party may allege any facts essential to the issue which have come to his or her knowledge after the date of the decision from which the appeal is brought, and may adduce evidence in support of his or her allegations.
- (3) The Court of Appeal may in any case, if it thinks fit, allow or require new evidence to be adduced, either by oral examination in Court, by affidavit, or by depositions taken before an examiner or commissioner.

**17. Power of Court regarding judgment:**

The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which the Court considers ought to have been made, and to make such further or other order as the case may require.

**18. Court may order new trial:**

If on the hearing of an appeal it shall appear to the Court that a new trial ought to be had, it shall be lawful for the Court, if it shall think fit, to order that the decision appealed from, be set aside, and that a new trial shall be had.

**19. Non-prosecution of appeal:**

If the appellant does not prosecute his or her appeal with due diligence, the respondent may apply either to the Supreme Court or to the Court of Appeal for an order dismissing the appeal for non-prosecution, and if such order is made the costs of the appeal and the security entered into by the appellant shall be dealt with in such manner as that Court may direct.

**20. Execution of order:**

The determination of the Court of Appeal on an appeal from the Supreme Court shall be transmitted to the Registrar of the Supreme Court under the seal of the Court of Appeal, and judgment shall thereupon be entered in the Supreme Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the Supreme Court as are required by such determination.

**21. No appeal on appeals from District Court without leave:**

The determination of the Supreme Court sitting on appeal from the District Court shall be final unless leave to appeal to the Court of Appeal is given: **PROVIDED THAT** no such leave shall be given with respect to a criminal proceeding.

**22. Special leave to appeal may be granted by the Court of Appeal:**

- (1) Subject to rules of Court, the Court of Appeal may, in any civil case in which it thinks fit and at any time, grant special leave to appeal to that Court from any final judgment of the Supreme Court.
- (2) Such leave may be granted subject to such conditions as to security for costs and otherwise as the Court of Appeal thinks fit.
- (3) This Part, so far as applicable, applies to appeals in pursuance of such special leave.

**23. Court seal:**

The Court of Appeal shall have in the custody of the Registrar a seal of that Court, in such form as the Chief Justice approves, for the sealing of all documents which require to be sealed.

**24. Rules of practice:**

The Head of State, acting on the advice of the Judicial Service Commission, may make rules for the practice and procedure of the Court of Appeal.

**PART 4  
MISCELLANEOUS**

**25. Regulations:**

- (1) The Head of State may make regulations setting out the fees payable for proceedings in the Supreme Court and Court of Appeal.
- (2) The amount of any fee prescribed under subsection (1):

- (a) shall be proposed by the Ministry with the concurrence of the Judicial Service Commission; and
- (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

**26. Repeal, savings and transitional:**

- (1) The Judicature Ordinance 1961 (repealed Ordinance) is repealed.
  - (2) The repeal of the Judicature Ordinance 1961 does not affect any rights or liabilities made under the provisions of that Ordinance, and such rights or liabilities shall continue to be in force until they have been completed or ended.
  - (3) The provisions of the repealed Ordinance continue and shall be in force for the purpose of continuing and perfecting under the repealed Ordinance 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 the repealed Ordinance.
  - (4) 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 repealed Ordinance, may be exercised and performed in all respects to the completion of that contract or agreement.
  - (5) All rules made under the repealed Ordinance are unaffected and continue under the provisions of this Act.
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