

LAND AND TITLES BILL 2020

SAMOA

Explanatory Memorandum

Object and reasons:

- a) The Bill replaces the current Land and Titles Act 1981 to update the law regulating the work of the Land and Titles Court, and to support the Constitution Amendment Bill 2020 which sets up a more autonomous Land and Titles Court framework.
- b) While the Constitution sets out the new framework, the Bill details the running of the courts, and provides helpful guidance for all potential users of the Court, which is the Samoan population. This includes provisions on the processes of each of the three (3) courts in the framework, administration and the general daily operation of the courts.
- c) Through the new framework, Samoa attempts to further emphasize the importance and uniqueness of Samoa's *tu ma aganuu* and her customary land and Matai titles, by affording it the specialist nature it was intended to have.

Clauses:

PART 1 PRELIMINARY

- Clause 1: - provides for the short title and commencement.
- Clause 2: - provides for the definitions of the terms in the Bill.

PART 2
ADMINISTRATION OF ACT

- Clause 3:** - provides for the Ministry responsible for the administration of the Bill when enacted.
- Clause 4:** - provides for the appointment of the Registrar of the Land and Titles Court.
- Clause 5:** - provides for the appointment of other officers and employees to assist the Registrar in the administration of the Act.
- Clause 6:** - provides for the records of the Court and how such records are to be kept.
- Clause 7:** - provides for the Seal of the Courts.

PART 3
CUSTOMARY LAND

Division 1 - Land deemed or declared Customary land

- Clause 8:** - provides for land deemed or declared as customary land.
- Clause 9:** - provides for the declaration of land to be customary land.
- Clause 10:** - provides for the Registrar of the Courts to refer to the Land Registrar any judgments of the Court concerning customary land.

Division 2 - Surveys and sketch-plans

- Clause 11:** - provides for the use of surveys and sketch plans concerning customary land and its boundaries.

PART 4
MATAI TITLES

Division 1 - Eligibility and Removal of Matai Title

- Clause 12:** - provides for the eligibility and qualifications of a person to hold a Matai Title.
- Clause 13:** - provides for the criteria to register a Matai Sa'o.
- Clause 14:** - provides for the removal of a Matai Title.

Division 2 - Validity of Matai Title bestowed

- Clause 15:** - provides for the validity of bestowment of a Matai Title.

Division 3 - Matai Title Register

- Clause 16:** - provides for the Registrar's duties regarding the maintenance of the Matai Title Register to continue.
- Clause 17:** - states that a person may object or file a petition in Court objecting to the Registrar's decision not to enter or delete a Matai Title.

Division 4 - Notification before Matai Title is bestowed

- Clause 18:** - provides that a faapogai Samoan who intends to bestow a title to a Samoan may give notice of such intention to the Registrar and of which must be accompanied by the prescribed fee. The notice must be published by the Registrar in five (5) consecutive issues of the Savali issued monthly.

- Clause 19:** - provides that a person may file an objection petition to the Court for the determination against the notice published in the Savali under clause 18.
- Clause 20:** - provides for the procedure where no objection to a proposed appointment is filed.
- Clause 21:** - provides for jurisdiction where there is no objection.

Division 5 - Notification after bestowment of Matai Title

- Clause 22:** - provides for the process to be undertaken when the publication of a notice of a Matai Title, is made after the bestowment of such Matai Title.
- Clause 23:** - states that a person may object or file a petition in Court objecting to the Matai title bestowed as set out in a Notice published under clause 22.

Division 6 - Procedure after bestowment of Matai Title

- Clause 24:** - provides for the duties and obligations of a Sui-o-le-Nuu after the bestowment of a Matai Title is complete. It also provides that in the event that a Sui-o-le-Nuu has not been appointed for a particular village as required, the Registrar may request that the member of the clergy that officiated the ceremony - confirm the details required under this clause.

Division 7 - Offences relating to Matai titles

- Clause 25:** - provides for the offence of providing false or misleading information to the Registrar, Sui-o-le-Nuu, or a person approved for the purpose of clause 24(4).

- Clause 26:** - provides that it is an offence for a person to wrongfully use a Matai Title as allowed under the Bill once enacted.

Division 8 - Interim Orders

- Clause 27:** - provides that the Registrar may reject the filing of a petition on which the final Judgment of the Court has been made.

- Clause 28:** - provides for the Interim Orders of the President or Deputy President.

- Clause 29:** - provides that the Registrar may issue interim orders in certain situations.

- Clause 30:** - provides for the duration of an order issued by the Registrar and provides that such order may not only be varied or set aside by the Registrar, but it may also be varied or set aside by the President or the Deputy President.

Division 9 - Conciliation and Resolution

- Clause 31:** - provides that parties are obligated to make a genuine effort to resolve a dispute by participating in dispute resolution avenues and other options for dispute settlement.

- Clause 32:** - provides for the Registrar to conduct Samoan conciliation in relation to any proceedings and for the process of Samoan conciliation which are to be prescribed under this Bill.

- Clause 33:** - provides for judicial settlement conferences where a judge appointed by the President is the mediator and facilitator.

- Clause 34:** - provides for dispute resolution processes.

PART 5
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Division 1 - Land and Titles Court

- Clause 35:** - provides for the time and place of sittings of the Court which are determined by the Registrar after consulting the President.
- Clause 36:** - provides for the functions and powers on conciliation and hearings of the court, which may be exercised by the Registrar upon direction of the President, Deputy President or Vice President.
- Clause 37:** - provides that it is an additional jurisdiction of the Land and Titles Court to determine claims and disputes involving access roads on customary land.
- Clause 38:** - provides for the institution of proceedings under the Land and Titles Court.
- Clause 39:** - provides for the discontinuance of proceedings on the consent of all parties.

Division 2 - Leave to Appeal to High Court

- Clause 40:** - provides for the President or the Deputy President to preside in leave to appeal application.
- Clause 41:** - provides for the hearing of an application for leave to appeal which shall be heard before the President or Deputy President sitting alone.

Division 3 - Land and Titles High Court

- Clause 42:** - provides for the limitation period in which an application for an appeal is to be filed.

- Clause 43:** - provides for the grounds in which an appeal may be made.
- Clause 44:** - provides for the procedure to be followed by a party in opposition of an application for leave to appeal.
- Clause 45:** - provides for the procedure for the hearing of an application for leave to appeal.
- Clause 46:** - provides for the conditions by which special leave may be granted by the President.

Division 4 - Leave to Appeal to the Court of Appeal and Review

- Clause 47:** - provides that an appeal cannot be lodged without the leave of the Chairperson of the Court of Final Appeal and Review.
- Clause 48:** - provides for the procedure for filing a notice of appeal.
- Clause 49:** - provides for the time limitation for filing for leave to appeal.
- Clause 50:** - provides for the hearing of an application for leave to appeal.

Division 5 - Court of Final Appeal and Review

- Clause 51:** - provides that an application for appeal or review must be filed within two (2) months from the date leave is granted together with the prescribed security for costs.
- Clause 52:** - provides for grounds for appeal.
- Clause 53:** - provides that the grounds for review.
- Clause 54:** - provides for notice of hearing of appeal and review.

- Clause 55:** - provides that a party in opposition of the appeal must file a response within the specified timeframe of 30 days after receiving a copy of the application.

Division 6 - Decision of the Court

- Clause 56:** - provides that the provisions of this Division applies to the Court of First Instance, Court of First Appeal and Court of Final Appeal.

- Clause 57:** - provides for the process by which the Court of First Instance, Court of First Appeal and Court of Final Appeal delivers its decisions.

- Clause 58:** - provides that the Court must provide reasons for its judgments.

- Clause 59:** - provides that the decisions and orders of this Court are not reviewable by other Courts.

Division 7 - Orders of the Court

- Clause 60:** - provides that the Court of First Instance, Court of First Appeal and Court of Final Appeal may make orders as to costs.

Division 8 - Enforcement

- Clause 61:** - provides that the enforcement of decisions and order of the Court are to be made through the Supreme Court or District Court.

Division 9 - Offences

- Clause 62:** - provides for general offences under the Act.

PART 6

RULES OF PROCEDURE OF THE COURTS

- Clause 63:** - provides that the Head of State acting on the advice of the Komisi may make Rules regulating the practice and procedure of the Courts.
- Clause 64:** - provides for the procedure for service of application on other parties.
- Clause 65:** - states that a lawyer may be engaged to represent any party to a proceedings before the Court of Appeal and review.

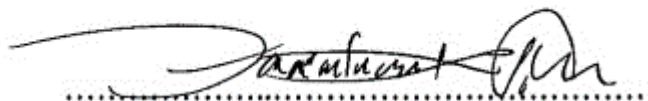
PART 7

VILLAGE FONON ACT MATTERS

- Clause 66:** - provides that the rules of procedure provides for the process of appeals from the Village Fono, under the Village Fono Act 1990.

PART 8
MISCELLANEOUS

- Clause 67:** - provides for the repeal of the Land and Titles Act 1981.
Clause 68: - provides for savings and transitional provisions.
Clause 69: - provides for consequential amendments to the Village Fono Act 1990.



(Hon FAAOLESA Katopau T. Ainuu)

MINISTER FOR JUSTICE AND
COURTS ADMINISTRATION

LAND AND TITLES BILL 2020

SAMOA

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2020, No.

A BILL INTITULED

AN ACT to replace the Land and Titles Act 1981.

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 Land and Titles Act 2020.
(2) This Act commences on a date nominated by the Minister.

2. Interpretation:

In this Act, unless the context otherwise requires:

“Commission” means the Commission appointed as such under the Land and Titles Investigation Act 1966;

“Court” means the Land and Titles Courts established under Part IX of the Constitution;

“custom and usage” or “Samoa custom and usage” means the customs and usages of Samoa accepted as being in force at the relevant time and includes:

- (a) the principles of custom usage accepted by the people of Samoa in general; and
- (b) the customs and usages accepted as being in force in respect of a particular place or matter.

“Deputy President” means a Deputy President of the Court appointed under Part 9 of the Constitution;

“faapogai” means a Matai Sa’o or a sulii;

“Komisi” means the Komisi o Auaunaga a le Faamasinoga o Fanua ma Suafa constituted by Article 104E of the Constitution;

“land” means customary land;

“Land Registrar” means the Registrar defined in section 2 of the Land Titles Registration Act 2008;

“lawyer” has the meaning given it under the Lawyers and Legal Practice Act 2014;

“matai” means a person whose title has been registered under this Act;

“Matai Title Register” means the Register of Matai continued under section 16;

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

“Ministry” means the Ministry responsible for Justice and Courts Administration;

“name” for the purpose of sections 18(4)(d) and 22(b)(ii) means the name on a person’s birth certificate or passport;

“officer” in relation to the Court includes any Registrar, clerk, bailiff, usher or messenger in the service of the Court, and “Staff” in relation to the Court includes all officers of the Court;

“party” includes every person who takes part as claimant, objector, petitioner, respondent or applicant in any proceedings under this Act (other than as a witness) whether or not named as a party to any such

proceedings, and, in any proceedings to appoint a matai, includes the pule and the proposed appointee;

“President” means the President of the Court appointed under Part IX of the Constitution;

“record of customary land” has the meaning given in the Land Titles Registration Act 2008;

“Registrar” means the Registrar referred to in section 4 also known as the Court Registrar;

“repealed Act” means the Land and Titles Act 1981;

“rules” means any rules of Court made pursuant to this Act;

“Samoan” has the same meaning given to that term under the Mataupu Tau Samoa Act 1963;

“Samoan conciliation” means the process by which the parties to a dispute, with the assistance of the Registrar and in accordance with Samoan custom and usage, identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement and in which the Registrar may make suggestions for terms of settlement and actively encourage the participants to reach an agreement which accords with Samoan custom and usage and the requirements of this Act;

“Sui o le Nuu” means a person appointed as such under section 14(1)(a) of the Internal Affairs Act 1995;

“Vice President” means a Vice President appointed under Part IX of the Constitution;

“working day” means a day other than Saturday, Sunday or a public holiday.

PART 2

ADMINISTRATION OF ACT

3. Ministry responsible for administration of this Act:

- (1) The Ministry responsible for Justice and Courts Administration is responsible for the administration of this Act.
- (2) The Registrar shall keep or cause to be kept proper records in relation to the Ministry.

4. Registrar:

- (1) The person appointed as the Chief Executive Officer of the Ministry also known as the Court Registrar shall be the Registrar of the Land and Titles Court.
- (2) A suitable qualified person may be appointed under the Public Service Act 2004 as Deputy Registrar.
- (3) In respect of the Court and subject to the direction of the Registrar, each Deputy Registrar must possess, exercise and perform the same powers, functions and duties as the Registrar, and any reference in this Act to the Registrar, unless the context otherwise requires, includes a reference to each Deputy Registrar.

5. Appointment of other officers and employees:

The Public Service Commission may appoint other officers and employees of the Ministry as may be necessary.

6. Records of the Court:

- (1) The Registrar shall keep or cause to be kept records of or in relation to the Court, and of every proceeding before the Court, as required by this Act, or as may be prescribed by Rules, or by the President.
- (2) No person shall have access to the records of the Court except with the permission of the President, or the Registrar.
- (3) No person shall remove the records of or in relation to the Court.

7. Seal:

- (1) The seals of the following Courts are to be kept in the custody of the Registrar:
 - (a) Land and Titles Court;
 - (b) Land and Titles High Court; and
 - (c) Land and Titles Court of Appeal and Review.
- (2) The form of the seal is to be determined by the Registrar, with the approval of the President.
- (3) The seal or seals in use at the commencement of this Act continue to be the seal or seals of the Courts under subsection (1) until and unless replaced.

**PART 3
CUSTOMARY LAND**

Division 1 - Land deemed or declared Customary Land

8. Land deemed or declared customary land:

- (1) The following land is deemed customary land, and any interest in the following land is deemed interest in customary land:
 - (a) any land ordered by the Court to be customary land under section 9;
 - (b) any land conveyed by Government or any public body by way of deed which provides that the land is held in accordance with the customs and usages of the Samoan people.
- (2) Land deemed or declared as customary land and saved as such under the Repealed Act is regarded as customary land under this Act.

9. Declaration of certain land to be customary land:

- (1) A person or the alii and faipule of any village claiming an interest in any freehold land or any land in respect of which the customary or freehold status is claimed to be in doubt, may petition the Court for an order to be made with the consent of all parties, declaring such land to be customary land.
- (2) The Registrar, on payment of the prescribed fee, shall publish the petition in the Savali in five (5) consecutive issues, giving notice of the place, and the time or period (not being less than six (6) months from the date of the first publication) for filing objections by any Samoan who may be affected by the petition.
- (3) The Court shall not make an order under this section in respect of land which is registered as freehold land under the Land Titles Registration Act 2008 unless:
 - (a) a person having a registered interest in such land;
 - (b) a trustee appointed to represent beneficial interests in respect of such registered interest;
 - (c) a person who has filed an objection to the petition who claims any registered, beneficial or equitable interest; and
 - (d) a person who has filed such an objection and who claims an interest in the land in accordance with custom and usage,has consented to such order in person before the Court, or by affidavit.
- (4) The Court shall not make an order under this section in respect of any land which is not registered as freehold land under the Samoan Land Registration Order 1920 unless:
 - (a) a person, not being a person to whom subsection (5) applies, who has filed an objection to the petition and who claims that the land should be so registered as freehold land; and

- (b) a person who has filed such an objection and who claims an interest in the land in accordance with custom and usage,
has consented to such order in person before the Court, or by affidavit.
- (5) For the purpose of subsection (4), the Court may make an order under this section without the consent of any person who has claimed a freehold interest in the land if that person's claim has been rejected by the Commission under the provisions of the Land Titles Investigation Act 1966.
- (6) If in the course of any proceedings begun under this section, it appears to the Court that any person who has objected to the making of an order under this section claims a freehold interest in the land in question, the Court may adjourn the proceedings to enable that person to make a claim in respect of the said land under the Land Titles Investigation Act 1966 and, if such application is made, the Court may further adjourn the proceedings as it thinks fit to await the decision of the Land Titles Investigation Commission in respect of the claim.
- (7) Despite any provision in this section to the contrary, if the Court would have made an order but for the failure of the persons referred to in subsection (3) or (4) to agree as to the matai title or the pule by which the land should be held, the Court may, with the consent of such persons, order the land to be customary land by consent and shall thereupon, or at an adjourned hearing, proceed to hear and determine the question of the matai title or the pule.
- (8) Any order made pursuant to this section shall be forwarded to the Registrar of Lands who shall make such amendments in the Land Register as may be necessary.

10. Referral of judgments concerning customary land:

The Registrar of the Court must refer to the Land Registrar any judgment of the Court concerning the pule or status of any customary land or interest in the land, or an order or declaration made under this Act.

*Division 2 - Surveys and sketch-plans***11. Surveys and sketch plans:**

- (1) A petitioner questioning the accuracy of customary land boundaries shall ensure that a sketch plan of the customary land and its boundaries is carried out by a licensed surveyor before filing a petition.
- (2) The sketch plan undertaken pursuant to subsection (1) must be filed together with a petition or a response to a petition in order for the matter to be heard before the Court.
- (3) It is the duty of the licensed surveyor making the sketch plan to define the land or boundary in dispute in accordance with the direction of the parties to the dispute present or represented.
- (4) Nothing in this section limits the power of the Court to order a survey to be made at any time in respect of any matter before it.
- (5) The costs of the survey ordered under subsection (4) shall be paid as ordered by the Court.
- (6) Despite subsection (1), for a matter where the pule is decided by the Court, the Court Registrar may:
 - (a) request that parties to a petition survey land or boundaries; and
 - (b) direct that parties pay for the cost of the survey.
- (7) All parties to Land and Titles Court proceedings must be present at any survey to be conducted under this section.
- (8) For the purpose of this section a “licensed surveyor” is a person who holds a practicing certificate under the Survey Act 2010.

PART 4
MATAI TITLES

Division 1 - Eligibility and Removal of Matai Title

12. Eligibility to hold a Matai Title:

- (1) A person is not qualified to hold a Matai Title or be registered as a matai unless she or he:
 - (a) is a Samoan;
 - (b) is at least 21 years of age; and
 - (c) is prepared to carry out the obligations of his or her Matai Title including properly serving his or her family, village and community according to Samoan custom and usage; and
 - (d) meets other criteria required by the family in accordance with their custom and usages.
- (2) A person who is convicted of an offence that holds a seven (7) years' imprisonment term or more, is not eligible to hold a Matai Title unless that person's aiga unanimously support the bestowment of that person's Matai Title.

13. Matai sa'o:

- (1) To maintain the integrity of the institution of the Samoan Matai Sa'o, only five (5) matai sa'o for a family may be registered at any one time.
- (2) At the commencement of this Act:
 - (a) if a family holds a lesser number of Matai Sa'o than five (5), only that number will be registered, and if more than five (5), there shall be no further matai sa'o to be registered; and
 - (b) those already registered will continue to be registered until a Matai Sa'o no longer holds the Matai Sa'o title under the provisions of this Act, or by death.

14. Removal of Matai Title:

- (1) The Court on petition of a Sa'o or a Suli may hear and determine whether to remove a Matai Title if any of the following occurs:
 - (a) where the holder of that Title has acted in a manner that brings disrepute to the family, village or community of the Matai; or
 - (b) where the holder of that Title has failed to properly perform the duties of a Matai; or
 - (c) where the holder of that Title has been convicted of a crime that is punishable by imprisonment for seven (7) years or more.
- (2) The Court may order to stay the removal of a Matai Title that is the subject of a petition under this section, until a final determination of the Court.
- (3) For the purpose of this section a petition to:
 - (a) remove a Matai Title from a suli may only be made by the Sa'o with pule over that Matai Title on the consensus of the suli; and
 - (b) remove a Matai Title of a Sa'o may be made by consensus suli.

*Division 2 - Validity of Matai Title bestowed***15. Validity of the bestowment of a Matai Title:**

- (1) The following requirements must be met in order for a Matai Title bestowment to be considered valid for registration under this Act:
 - (a) the person is appointed the holder of a Matai Title by and in accordance with the customs and usages of the Samoan people, including appointment in pursuance of a judgment of the Court; and
 - (b) a traditional ceremony of appointment in the village to which that Matai Title belongs is held; and
 - (c) that during the traditional ceremony under paragraph (b) -
 - (i) the person is physically present;

- (ii) the village council of the village are physically present to acknowledge recognition of the bestowment of the Matai Title.
- (2) For the purpose of this section, the requirement of the presence of the village council is met when the Sui-o-le-Nuu and a majority of the village council are present.
- (3) Where a village is divided, the 'recognised village' according to the records of the Ministry of Women, Community and Social Development, and in the absence of such, a relevant decision of the Court.

Division 3 - Matai Title Register

16. Registrar to keep Matai Title Register:

- (1) The Matai Title Register ("Register") is continued and must be maintained by the Registrar for the purpose of recording Matai Titles referred for registration under this Act.
- (2) The Registrar must register a Matai Title onto the Register:
 - (a) where for intention to bestow under Division 4 -
 - (i) no objections are made and the person meets the requirements of Division 6; or
 - (ii) objections are made and the validity of the bestowment of the Matai Title is upheld by the Court;
 - (b) where for notification after bestowment of a Matai Title under Division 5 -
 - (i) no objections are made; or
 - (ii) if objections are made, the validity of the bestowment of the Matai Title is upheld by the Court.
- (3) If the Registrar is not satisfied that the requirements of section 15 are met, the Registrar must:
 - (a) not enter the Matai Title onto the Register; and
 - (b) in writing notify the Matai Title holder that his or her Matai Title has not been entered onto the Register after which the person notified is to provide a written response to the Registrar one (1) month after receiving that notice.

- (4) The Registrar must remove a Matai Title from the Register where:
 - (a) the holder or such title is the subject of an order of the Court under section 14(1); or
 - (b) the Registrar is satisfied that -
 - (i) upon application of a faapogai based on substantiated grounds that the person has vacated the Matai Title in question; or
 - (ii) the entry was made pursuant to an incomplete or defective folio forwarded by a Sui-o-le-Nuu or a faifeau under section 24; or
 - (iii) that the entry was made in error;
 - (c) the Registrar receives a request from the holder of a matai title, with reasonable grounds and supporting documentation.
- (5) The Registrar may remove a Matai Title from the Register upon an application of the Matai Title holder.
- (6) The Matai Title of a person that has been deleted from the Register under subsection (4)(a) must not be re-registered unless the person has again been appointed the holder of such Matai Title in accordance with the customs and usage of the Samoan people under this Part.

17. Objection to Registrar's decision not to enter or delete Matai Title:

- (1) A person may file a petition in Court objecting to the Registrar's decision made under section 16(3) or (4).

- (2) The Court may order that:
 - (a) the Matai Title of a person be entered onto the Register by the Registrar; or
 - (b) confirm the Registrar's decision.

Division 4 - Notification before a Matai Title is bestowed

18. Intention to bestow title:

- (1) A faapogai Samoan who intends to bestow a title to a Samoan may give notice of such intention to the Registrar which must be accompanied by the prescribed fee, at the office of the Court in Savaii or Upolu.
- (2) A person the subject of a notice under subsection (1) must meet the qualifications set out under section 12.
- (3) Upon receiving a notice under subsection (1), the Registrar must publish the particulars of the notice provided in five (5) consecutive issues of the Savali issued monthly.
- (4) The Registrar must ensure the notice specifies:
 - (a) the time limitation of six (6) months in which a person must file an objection petition to the intention to bestow title; and
 - (b) the place for an objection petition to be filed;
 - (c) the name of the faapogai;
 - (d) the name of the Matai Title holder;
 - (e) the Matai Title and the village where the Title was bestowed.

19. Objection may be filed against Notice of intention to bestow title:

A person may file an objection petition to the Court for determination against the notice published under section 18.

20. Procedure where no objection is filed:

- (1) If there is no objection to the proposed appointment, the Registrar shall, as soon as practicable after the time fixed for lodging objections, prepare, sign and file a petition to the Court for confirmation.
- (2) Upon receipt of the Court's confirmation under this section, the person the subject of a notice under section 18 must proceed with the required traditional ceremony for bestowment of a Matai Title.
- (3) Upon receipt of confirmation and particulars of the traditional ceremony bestowment of a Matai Title from the Sui-o-le-Nuu, the Registrar must register the Matai Title onto the Register.

21. Jurisdiction where there is no objection:

- (1) The Court has jurisdiction, ex parte, to confirm wholly or in part, and with or without modification, any claim for the bestowment of any title for a notice in which an objection has not been filed.
- (2) A proposed bestowment of title confirmed under this section may be set aside, in prescribed proceedings, for reason of error, misconduct or bad faith.
- (3) For all purposes any confirmation is regarded as a decision of the Court.
- (4) A confirmation by the Court under subsection (1) does not remove the obligation for a person to meet the requirements of Division 6.

*Division 5 - Notification after bestowment of Matai Title***22. Notification after bestowment of Matai Title:**

Where the Registrar receives for registration record for a Matai Title after the Title has been bestowed, the Registrar must before registration cause a Notice of the information provided pursuant to section 24 to be published:

- (a) in five (5) consecutive issues of the monthly issue of the Savali;
and
- (b) setting out -
 - (i) the name of the faapogai;
 - (ii) the name of the Matai Title holder;
 - (iii) the Matai Title and the village where the Title was bestowed;
 - (iv) the time limitation of six (6) months from the date of first publication of a notice to inform that an objection may be made against the Matai Title bestowed.

23. Objection to the Matai Title bestowed:

- (1) A person may file a petition in Court objecting to the Matai Title bestowed as set out in a Notice published under section 22.
- (2) Where the Registrar is satisfied that the bestowment of a Matai Title has not been made in accordance with the Act, the Registrar must prepare, sign and file a petition for the Court to determine whether or not the Matai Title in question should be entered onto the Register.
- (3) The Court may either confirm the Matai Title bestowed or declare that the Matai Title bestowed is not valid under this Act.

Division 6 - Procedure after bestowment of Matai Title

24. Procedure after bestowment of Matai Title:

- (1) This section applies to matai titles bestowed after notification pursuant to Division 6, or before notification pursuant to Division 4.
- (2) A Sui-o-le-Nuu must within 14 days after a Matai Title is bestowed, do the following:
 - (a) ascertain whether or not that village is the village to which that title belongs;

- (b) ensure the full name of the person bestowed with a Matai Title is entered correctly in the book approved by the Registrar, and that the name is the same in his or her birth certificate, passport or other legal identification means;
 - (c) enter and sign in triplicate in a book approved by the Registrar to be kept by the Sui-o-le-Nuu, the particulars of the traditional ceremony of appointment to the title, including whether the requirements of section 15 are met;
 - (d) forward to the Registrar from the book the original record containing those particulars;
 - (e) hand or forward to the new Matai Title holder from the book the duplicate record containing those particulars; and
 - (f) retain in the book the triplicate record containing those particulars until the book is full after which it must be returned to the Registrar for the issuance of a new book.
- (3) Despite subsection (2)(c), the duplicate record provided by a Sui-o-le-Nuu to the new Matai Title holder under subsection (2)(d) may be provided by the Matai Title holder to the Registrar for the Court's confirmation and Registration.
- (4) If a Matai Title is bestowed in a village without a Sui-o-le-Nuu, the Registrar may approve that the member of the clergy who officiated the bestowment ceremony confirm details required for confirmation under this section.

Division 7 - Offences relating to matai titles

25. False information and misleading:

A person:

- (a) who wilfully gives false information to the Registrar, Sui-o-le-nuu or person approved for the purpose of section 24(4); or

- (b) who intentionally misleads the Registrar, Sui-o-le-nuu or person approved for the purpose of section 24(4); and
 - (c) including any Sui-o-le-nuu, who, without lawful excuse, breaches any duty required under section 24,
- commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 12 months.

26. Wrongful user of a Matai Title:

A person other than the rightful holder who uses a Matai Title, or permits himself or herself to be addressed by a Matai Title, or acts as the holder of a Matai Title he or she has not been bestowed, commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 12 months.

Division 8 - Interim Orders

27. Registrar to reject filing of application:

The Registrar may reject the filing of a petition on which the final Judgment of the Court has been made.

28. Interim orders by President or Deputy President:

- (1) Upon the commencement of any proceedings and pending the final determination of the petition by the Court, the President or Deputy President, sitting alone may make, either ex parte or otherwise, such interim orders as the President or Deputy President thinks fit as to the possession of the land, or the use of the title, or the exercise of the right to which the petition relates.
- (2) An order made under this section is taken as an order of the Court, and is enforceable accordingly.

29. Interim orders by Registrar:

- (1) The Registrar may on the application of a party, with the concurrence of the Deputy President, Vice President or two (2) Samoan Land and Titles Court Judges before the commencement of proceedings, make an order the Registrar regards necessary to restrain any person from:
 - (a) remaining in possession of or entering upon any land;
 - (b) holding or using any Matai Title; or
 - (c) exercising any right or doing any act matter or things concerning or affecting any land or any Matai Title.
- (2) An order made under this section is taken as an order of the Court, and is enforceable accordingly.

30. Duration of interim order by Registrar:

- (1) An order under section 29 may be made ex parte or otherwise, and remains in force until the final judgment of the Court.
- (2) The President or Deputy President may after the commencement of proceedings, upon the application of any party affected by an order made under section 29, modify, vary or rescind the order.
- (3) The Registrar may before the commencement of proceedings, upon the application of any person affected by an order made under section 29, modify, vary or rescind the order.

*Division 9 - Conciliation and Resolution***31. Genuine effort to resolve the dispute:**

Each party to a matter in the Court is required to make a genuine effort to resolve the dispute before the commencement of a case by:

- (a) participating in dispute resolution, such as mediation or Samoan conciliation; and

- (b) exchanging a notice of intention to claim and exploring options for settlement by correspondence.

32. Registrar to conduct Samoan conciliation:

- (1) The Registrar shall conduct Samoan conciliation in relation to any proceedings, any dispute prior to a petition being filed under this Act in relation to that dispute with a view to resolving that dispute.
- (2) The process of Samoan conciliation shall be provided under rules of procedure to be prescribed under this Act.
- (3) The rules may provide for the Registrar to make suggestions on how a dispute may be resolved.
- (4) The Registrar may under this section:
 - (a) charge a prescribed fee; and
 - (b) impose prescribed costs for non-attendance of parties.

33. Judicial Settlement Conference:

- (1) The Court shall set a matter for a judicial settlement conference after it commences.
- (2) A Judge shall be appointed by the President to mediate the judicial settlement conference.
- (3) A Judge that acts as facilitator must not sit as a Judge on any of the same issues.
- (4) A Judge acting a facilitator is to be treated as acting judicially and retains the same immunities that applies when he or she acts as a Judge.
- (5) A settlement decision made under this section is treated as a judgment of the Court.
- (6) Rules may be prescribed setting out the procedure under this section.

- (7) The Registrar may charge a prescribed fee under this section.
- (8) The Judge may order costs for non-attendance under this section.

34. Dispute resolution processes:

- (1) The Court may at any time it deems fit advise the parties to use a dispute resolution process during the progression of a matter.
- (2) Where the parties consent to the advice of the Court made under subsection (1), the Court may refer the matter to a dispute resolution process and adjourn the proceedings before it.

**PART 5
PROCEEDINGS**

Division 1 - Land and Titles Court

35. Sittings of the Court:

- (1) The time and places of sittings of the Court are determined by the Registrar after consulting the President.
- (2) The Court while sitting to hear any matter, may adjourn the hearing to any other time or venue.
- (3) A matter adjourned under subsection (2) must not be unreasonably delayed.
- (4) Two (2) or more Courts constituted under this Act:
 - (a) may sit at the same time in the same or different appointed venues; and
 - (b) have all the powers and jurisdiction of the Land and Titles Court.

36. Registrar's functions and powers on conciliation and hearings:

- (1) The following functions of the Court may, if the President, Deputy President or Vice President directs, be exercised by the Registrar for proceedings of the Court:
 - (a) adjournments of matters; and
 - (b) extension for filing of required documents.
- (2) A direction made by the Registrar under this section, is regarded as a direction of the Court.

37. Disputes on right of way:

In addition to the jurisdiction of the Land and Titles Court in Part IX of the Constitution, the Land and Titles Court shall determine claims and disputes involving right of way or access on customary land.

38. Institution of proceedings:

- (1) Proceedings before the Court must commence on the filing of the petition.
- (2) The petition is instituted in the Court by written notice of the matter in dispute given by any interested party to the Registrar.
- (3) The Registrar may refer an applicant requiring assistance, to the Community Law Centre for the preparation of a petition in the prescribed form showing:
 - (a) the nature and particulars of the claim or dispute;
 - (b) the relief sought; and
 - (c) the name of the petitioner, the respondent and his or her village;
 - (d) contact detail of the petitioner and address for service.
- (4) A petition must be signed and sworn before the Registrar by the petitioner, and at least two (2) others, who shall be a party leader and a deputy party leader.
- (5) Subject to subsection (6), upon the filing of a petition the Registrar must set it down for first call.

- (6) A petition filed must be published by the Registrar in five (5) consecutive issues of the monthly issue of the Savali.
- (7) The Registrar must stay setting down a matter for hearing until the parties to that matter have undertaken Samoan conciliation.
- (8) In preparation for a matter under this section, the Registrar may include certified copies of the faiga faavae referred to her or him under section 5A(3) of the Village Fono Act 1990.

39. Discontinuance of proceedings:

The Court with the consent of all parties, may order that proceedings be discontinued and such proceeding must be held in open court.

Division 2 - Leave to Appeal to High Court

40. Leave to appeal:

- (1) No appeal shall be lodged without the leave of the High Court, by the President or the Deputy President who sits alone.
- (2) An application for leave to appeal must be brought within 40 working days from the date of delivery of the Court's final judgment.
- (3) The 40th day is counted from the first working day after the day of the delivery of the Court's final judgment.
- (4) The Registrar must not accept an application filed outside of the time specified under subsection (3) unless otherwise directed by the President.

41. Hearing of application for leave to appeal:

- (1) The application for leave to appeal shall be heard before the President or Deputy President sitting alone on a date to be notified to each party by the Registrar in the prescribed form.
- (2) All parties may be heard and may make submissions.
- (3) The hearing may be *ex parte* or in open court, as directed by the Land and Titles High Court.
- (4) The Land and Titles High Court may make such order on the application, as the President or Deputy President thinks fit.
- (5) The decision for leave to appeal must be made within:
 - (a) 21 working days from the date of filing if the application was considered *ex parte*; or
 - (b) 21 working days from the date of the hearing.
- (6) In granting leave, the Court:
 - (a) may order a stay of execution of the decision or order, pending the outcome of the appeal;
 - (b) may grant requests for joinder parties; and
 - (c) must order the appellant to pay security for costs.

*Division 3 - Land and Titles High Court***42. Time for appeal:**

- (1) An application for appeal must be filed with the security for costs within 21 working days from the date leave is granted together.
- (2) The Registrar must not accept an application filed outside of the time specified in subsection (1), unless otherwise directed by the President or Deputy President.

43. Grounds for appeal:

Leave to appeal may be granted on any of the following grounds:

- (a) that new and material evidence had been found since the hearing of the petition of which the applicant had no knowledge, or which could not reasonably have been adduced at the hearing of the petition;
- (b) that the successful party had been guilty of such misconduct in relation to the hearing of the petition as to affect the result of the case;
- (c) that a witness had been guilty of such misconduct in relation to the hearing of the petition as to affect the result of the case;
- (d) that a mistake has been identified and proven in relation to the hearing of the petition as to affect the result of the case;
- (e) that the Court did not have jurisdiction to make the decision or order;
- (f) that the decision or order is wrong in law or not in accordance with custom and usage;
- (g) that the decision or order was manifestly against the weight of the evidence adduced at the hearing of the petition;
- (h) a substantial wrong or a miscarriage of justice has occurred.

44. Response to application for appeal:

- (1) A party in opposition of the application must, within 21 working days after receiving a copy of the application under section 64, file with the Registrar an answer stating his or her opposition and the reasons for it.
- (2) The respondent must, as soon as practicable, prepare and serve a copy of the answer on the applicant.

45. Appeal hearing:

- (1) The High Court must hear an appeal within six (6) months from the date leave was granted.
- (2) An appeal must be by way of rehearing.

- (3) The Registrar must prepare and produce to the Land and Titles High Court the relevant record of the proceedings, and evidence.
- (4) The Court in its discretion may re-hear the whole or any part of the evidence referred to in subsection (3).

46. President's Certificate for special leave:

- (1) An appeal shall lie to the Land and Titles Court of Appeal and Review from a decision of the Land and Titles Court or the Land and Titles High Court in any proceeding, if the President certifies that:
 - (a) the case involves a substantial question of the law in the interpretation or effect of clauses (5) and (6) of Article 104A; or
 - (b) the President is of the opinion the question involved is one which by reason of its general, customary or public importance or the magnitude of the interests affected, ought to be submitted to the Land and Titles Court of Appeal and Review.
- (2) Where the President grants the certificate, the appellant may appeal to the LTC Appeal and Review Court on the ground that any such question was wrongly decided and, with the leave of that Court, on any other ground.
- (3) Where a certificate is refused, the Land and Titles Court of Appeal and Review may, if it is satisfied that the case involves a substantial question of law as to the interpretation or effect of clauses (4) and (5) of Article 104A, grant special leave to appeal from that decision.

Division 4 - Leave to Appeal to the Court of Appeal and Review

47. Leave to appeal:

- (1) No appeal shall be lodged without the leave of the Chairperson of the Court of Final Appeal and Review.
- (2) In granting leave, the Head Judge may order a stay of execution of the decision or order pending the outcome of the appeal.

48. Procedure for filing notice of appeal:

Every appeal shall be commenced by notice of appeal given in the form and manner prescribed by the rules of Court within two (2) months after the date of the decision or order appealed from or within such further period as the Court of Final Appeal may allow.

49. Time limitation for filing for leave to appeal:

- (1) An application for leave must be brought within 21 working days from the date of delivery of the Court of Appeal decision.
- (2) The decision for leave to appeal must be made within 21 working days from the date of filing.
- (3) In granting leave, the Chairperson:
 - (a) may order a stay of execution of the decision or order, pending the outcome of the final appeal; and
 - (b) must order the appellant pay security for costs which is refundable if successful.

50. Hearing of application for leave for appeal:

- (1) The application for leave for final appeal shall be heard before the Chairperson on a date to be notified to each party by the Registrar in the prescribed form.
- (2) All parties may be heard and may make submissions.
- (3) The hearing is not open to members of the public.
- (4) The Chairperson may make such order on the application and as to costs or otherwise, as the Chairperson thinks fit.
- (5) The Chairperson may grant or reject the application for leave for final appeal.

Division 5 - Court of Final Appeal and Review

51. Time for final appeal or review:

An application for appeal or review must be filed within two (2) months from date leave is granted together with the prescribed security for costs.

52. Grounds for appeal:

- (1) The Court of Appeal and review must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the court to hear and determine the appeal.
- (2) It is necessary in the interests of justice for the Court of Appeal to hear and determine a proposed appeal if:
 - (a) the appeal involves a matter of general or public importance; or

- (b) a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or
- (c) the appeal involves a matter of general customary or cultural significance.

53. Grounds for review:

The grounds for review in the Final Court of Appeal and Review are common law grounds of judicial review, such as illegality, irrationality and procedural impropriety.

54. Notice of hearing of appeal and review:

- (1) The Registrar upon receiving the prescribed security for costs, must give notice of the hearing of a final appeal or review by serving the parties notice in the Savali at least 21 working days before the date of the hearing.
- (2) The notice must be in the form prescribed containing:
 - (a) the time and place of the hearing; and
 - (b) the names of the parties and the nature of proceedings.

55. Response to application for appeal and review:

- (1) A party in opposition of the application must, within 30 days after receiving a copy of the application under section 64, file with the Registrar an answer stating his or her opposition and the reasons for it.
- (2) The Registrar shall, as soon as practicable, prepare and serve a copy of the answer on the applicant.
- (3) An applicant for judiciary review must comply with the rules in the Land and Titles Court Procedure Rules.

*Division 6 - Decision of the Court***56. Application:**

This Division applies to the Court of First Instance, Court of First Appeal and Court of Final Appeal.

57. Delivery of Judgments:

- (1) A judgment is to be delivered in open Court:
 - (a) for Court of Final Appeal, by the Chairperson or a member of the Court; and
 - (b) for the Court of Appeal, by the President or Deputy President presiding within three (3) months of the last date of the proceedings; and
 - (c) for the Land and Titles Court, by the Deputy President presiding within three (3) months of the last date of the proceedings.
- (2) A decision is regarded as complete upon the release of the written decision under subsection (1).
- (3) The written decision is to be released 10 working days from the date of the delivery of the decisions under subsection (1)(b) and (c).

58. Reasons for judgments:

- (1) All the Courts must give reasons for its judgments.
- (2) For leave to appeal decisions, the reasons may be stated briefly and in general terms only.

59. Decisions and orders not reviewable by other Courts:

- (1) Subject to Part IX of the Constitution and this Act, no decision or order of the Court of Final Appeal and Review, Land and Titles High Court or Land and Titles Court shall be reviewed or questioned in any other Court by way of appeal, or prerogative writ.

- (2) A decision of the Land and Titles High Court is final.

Division 7 - Orders of the Court

60. Orders as to costs:

- (1) In any proceedings the Court may make such order as it thinks just, as to the payment of the costs of the proceedings, or of any matter incidental or preliminary to the proceedings, by or to any person who is a party to the proceedings.
- (2) If the Court is of the opinion:
- (a) that any proceedings is frivolous or vexatious; or
 - (b) that any petition, claim, action, application or objection in respect of the proceedings is frivolous or vexatious,
- it may, if it thinks fit, irrespective of the result of the proceedings, allow any party the whole or any part of his or her costs in defending or disputing the frivolous and vexatious proceedings.
- (3) In any proceedings and at any stage of the hearing, the Court may require any party to deposit any sum of money as security for costs, and in default of making the deposit the Court may stay the proceedings either wholly or in respect of the party in default.
- (4) The sum deposited is disposed of in such manner as the Court directs.

*Division 8 - Enforcement***61. Enforcement of decisions and orders of the Court:**

- (1) A decision or order of the Court shall be enforced in and by the Supreme Court or, as the case may be, by the District Court.
- (2) For the purposes of subsection (1):
 - (a) a decision or order of the Court is taken to be a judgment or order of the Supreme Court or, as the case may be, of the District Court; and
 - (b) a rule of procedure of the Supreme Court or the District Court, and an enactment, with the necessary modifications, apply to a decision or order of the Court, as if the decision or order were a judgment or order of the Supreme Court or, as the case may be, the District Court.
- (3) A sealed copy of the decision or order to be enforced under this section is to be filed in the Supreme Court, or the District Court.

*Division 9 - Offences***62. Offence proceedings:**

- (1) A person commits an offence and is liable upon conviction to a fine of 10 penalty units or to imprisonment for six (6) months who:
 - (a) disobeys any decision or order of the Court, or any order made under section 28 or 29;
 - (b) uses any abusive, insulting, offensive or threatening words or behaviour in the presence of the Court, or writes any such words to a member or officer of the Court;

- (c) assaults, resists, obstructs, or incites any other person to assault, resist, or obstruct, any constable, surveyor, or officer of the Court in serving any process of the Court or executing any decision or order of the Court;
 - (d) by any words or behaviour obstructs in any manner the proper and orderly administration of justice in the Court;
 - (e) fails to appear on a summons relating to the hearing of any proceedings before the Court;
 - (f) being a party to a petition, fails to be present at the time and place appointed for a survey under section 11.
- (2) Proceedings for an offence under subsection (1) are to be commenced in the District Court.
 - (3) Any person who breaches section 6(3) shall be liable to a fine not exceeding 500 penalty units or to an imprisonment term not exceeding 14 years, or both.

PART 6

RULES OF PROCEDURE OF THE COURTS

63. Rules for the procedures of the Courts:

- (1) The Head of State acting on the advice of the Komisi may make rules for the purpose of regulating the practice and procedure of the Land and Titles Court, Land and Titles High Court and Land and Titles Court of Final Appeal and Review, in all matters within their jurisdictions.
- (2) The rules of Court made under subsection (1) shall be referred to as the "Land and Titles Court Procedure Rules".
- (3) The Rules of Court may make provision for:

- (a) in the Land and Titles Court -
 - (i) filing of petitions required under this Act;
 - (ii) notification process for petitions filed under this Act;
 - (iii) for the Court of Appeal, the rules must provide for leave to appeal and appeal proceedings;
 - (b) for the Land and Titles High Court and Land and Titles Court of Appeal and Review proceedings, the rules must provide for leave for appeal, final appeal and judicial review proceedings.
- (4) The rules must also provide for:
- (a) trial management, including -
 - (i) that the Court must allow a right of response or question by any party to an issue arising from matters raised before it; and
 - (ii) not consider any matter that is not part of any evidence presented before it;
 - (iii) follow precedent set in other matters already decided by it, if it is relevant; and
 - (b) evidence;
 - (c) the adjournment of proceedings; and
 - (d) mediation and preliminary conferences prior to a hearing; and
 - (e) the prevention or termination of frivolous or vexatious proceedings; and
 - (f) the summary disposal of proceedings; and
 - (g) how a person makes a submission to the Court; and

- (h) dispute resolution processes and the procedure to be followed when any dispute resolution process ends; and
 - (i) consent orders where parties have reached agreement about a matter in dispute in the proceedings; and
 - (j) such other matters as the Court thinks appropriate.
- (5) In any matter of practice or procedure not provided for, or where the strict compliance with any rule of practice or procedure may be inequitable or inconvenient, the Court may act in each case in such manner as it considers most consistent with Samoan custom and usage and natural justice and convenience.

64. Service of application on other parties:

- (1) At the court of first instance in the Land and Titles Court:
 - (a) the party filing a petition has the duty to serve all relevant parties a copy of his or her petition in accordance with the rules of procedure; and
 - (b) for the purpose of subsection (1), a party with the duty to serve a copy of the application must serve on the Registrar a sworn affidavit of service attaching confirmation of service of each party referred in the affidavit.
- (2) The party filing an appeal has the duty to serve all parties to the proceeding in the Court of First Instance, a copy of the application for leave to appeal.
- (3) For the purpose of subsection (2), a party with the duty to serve a copy of the application must serve on the Registrar a sworn affidavit of service attaching confirmation of service of each party referred in the affidavit.

- (4) The Applicant shall prepare and serve on all other parties to the proceedings a copy of the application for leave to appeal.
- (5) For the purpose of subsection (1), a party with the duty to serve a copy of the application must serve on the Registrar a sworn affidavit of service attaching confirmation of service of each party referred in the affidavit.

65. Engaging a lawyer:

- (1) A petition or other document in connection with any proceeding before the Land and Titles Court and the Court of Appeal may be prepared on behalf of any party by a Solicitor.
- (2) A lawyer may be engaged to represent any party to a proceeding before the Court of Appeal and Review.

PART 7

VILLAGE FONO ACT MATTERS

66. Appeals from the Village Fono

The rules of procedure provide for the process of appeals from the Village Fono, under sections 6 and 11 of the Village Fono Act 1990.

PART 8

MISCELLANEOUS

67. Repeal:

The Land and Titles Act 1981 is repealed.

68. Savings and transitional provisions:

- (1) All Matai Titles entered onto and deleted by the Registrar under the repealed Act is treated as having been entered onto or deleted from the Register by the Registrar under this Act, at the commencement of this Act.
- (2) The provisions of the repealed Act are saved for the purpose of determination of a petition filed before the commencement of this Act, at the commencement of this Act.
- (3) The provisions of the repealed Act are saved for the purpose of determination of proceedings that are before the court at the commencement of this Act.
- (4) The provisions of the repealed Act are saved for the purpose of determination of all orders and decisions of the Court as relevant at the commencement of this Act.
- (5) Employees employed under the repealed Act are taken to be employed under this Act, at the commencement of this Act.
- (6) The Appellate Division of the Land and Titles Court is the Land and Titles High Court at the commencement of this Act.

69. Consequential amendments:

- (1) The Village Fono Act 1990 is amended:
 - (a) in section 5D -
 - (i) inserting the following as subsection (2):

“(2) The Register is open to search and inspection by the public.”; and
 - (ii) renumber subsection (1) accordingly;
 - (b) substitute section 5E with the following:

“5E. Use of *faiga faavae* in Land and Titles Court:

The Land and Titles Court’s may refer to and consider a registered *faiga faavae* where it is relevant to a Land and Titles Court proceeding before it.”;

- (c) by repealing section 11(6).
-