

LAND AND TITLES AMENDMENT BILL 2022

SAMOA

Explanatory Memorandum

1.0 **Object and reasons:**

1.1 The Bill seeks to amend the Land and Titles Act 2020 (“principal Act”) to address issues identified following the passing and the commencement of the principal Act, in particular the appointment of the judges of the Land and Titles Court (LTC) and the savings and transition of the Deputy Presidents and Samoan judges appointed under the Land and Titles Act 1981 (“repealed Act”) to the new LTC structure under the principal Act and the Constitution.

1.2 The objects of the Bill are:

- (a) to provide for the appointment, terms and conditions, suspension and removal of the LTC judges;
- (b) to provide for a savings and transitional provisions relating to the Deputy Presidents and Samoan judges appointed under the repealed Act;
- (c) to correct a few references to ensure consistency between the English and Samoan versions of the principal Act.

2.0 Clauses:

- Clause 1:** - provides for the short title and commencement date for the Bill.
- Clause 2:** - amends section 2 of the principal Act by inserting new definitions for “Chairperson”, “judge” and “matai services”. It also makes amendments to some of the definitions in order to make reference to the newly inserted Part 5A to the principal Act.
- Clause 3:** - amends section 12(1)(b) of the Tulafono o Fanua ma Suafa 2020 (Samoan version of the principal Act only) by inserting “lē” after the word “ia” for consistency with the English version of the principal Act.
- Clause 4:** - amends section 43(2) of the principal Act by omitting “and review” for coherence and consistency with the jurisdiction of the LTC.
- Clause 5:** - amends section 54(1)(a) of the principal Act by substituting “Deputy President” with “Vice President” to clarify that the Vice President presides in the Land and Titles First Court not the Deputy President.
- Clause 6:** - inserts new Part 5A (proposed *sections 61A to 61I*) in the principal Act to provide for the functions of the *Komisi o le Faamasinoga o Fanua ma Suafa* (“Komisi”) and the appointment of judges for the LTC as follows:
- (a) *Section 61A* - provides for the functions of the Komisi to advise the Head of State for the appointment, terms and conditions of appointment and suspension and removal of LTC judges pursuant to Article 104E(4) the Constitution. Furthermore it empowers the Komisi to regulate its own

procedures and make rules and guidelines for regulating and facilitating its functions under this clause;

- (b) *Section 61B* - empowers the Head of State to appoint fit and proper persons to be Deputy Presidents, Vice Presidents or judges of the Land and Titles First Court;
- (c) *Section 61C* - provides for the qualifications of a person to be appointed as Deputy President;
- (d) *Section 61D* - provides for the qualifications of a person to be appointed as Vice President. It further provides for the transition of a Deputy President appointed under the repealed Act to be appointed as Vice President under this clause but not qualified to be appointed as a member of the Land and Titles Court of Appeal and Review under Article 104C of the Constitution unless he or she satisfies the qualifications under subclause (1);
- (e) *Section 61E* - provides for the qualifications of judges of the Land and Titles First Court. It further provides for the transition of Samoan judges appointed under the repealed Act to be appointed as judges of the Land and Titles First Court;
- (f) *Section 61F* - provides for the immunity of judges of the LTC similar to the immunity of judges of the Supreme Court;

- (g) *Section 61G* - provides for the tenure of office of a LTC judge and also provisions relating to the resignation from office of LTC judges;
- (h) *Section 61H* - provides for the grounds of suspension and removal of a judge of the LTC;
- (i) *Section 61I* - provides for the grounds of removal of the President of LTC pursuant to Article 104D(3) of the Constitution;
- (j) *Section 61J* - provides for the salaries and entitlements of the President, Deputy President, Vice President and Judges of the Land and Titles First Court as well as empowering the relevant authorities responsible for determining such entitlements.

Clause 7: - amends section 67 of the principal Act to provide for a new subsection (8) to clarify the salaries that are to be received by the Deputy President and the Samoan judges that are appointed by virtue of sections 61D(3) and 61E(2).

Clause 8: - provides for a savings and transitional provisions to save and validate any decision or act that was done or purported to be done for the purpose of the principal Act from the time the principal Act commenced until the assent date of this Bill.



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(Hon MATAMUA Seumanu Vasati Sili Pulufana)

MINISTER FOR JUSTICE AND COURTS ADMINISTRATION

LAND AND TITLES AMENDMENT BILL 2022

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Section 2 amended
3. Section 12 amended
4. Section 43 amended
5. Section 54 amended
6. New Part 5A inserted
7. Section 67 amended
8. Savings and transitional

2022, No.

A BILL INTITULED

AN ACT to amend the Land and Titles Act 2020 (“principal Act”) to provide for the appointment, terms and conditions, suspension and removal of judges of the Land and Titles Court and for 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 Land and Titles Amendment Act 2022.
- (2) This Act is taken to have commenced on 15 March 2021, except for section 8.
- (3) Section 8 commences on the date of assent by the Head of State.

2. Section 2 amended:

Section 2 of the principal Act is amended as follows:

- (a) insert a new definition in its correct alphabetical order:

““Chairperson” means the Chairperson of the Land and Titles Court of Appeal and Review appointed under Part IX of the Constitution;

“judge” means a Judge of the Land and Titles Court appointed under Part 5A;

“matai services” means the service and responsibilities required to be carried out by a person in connection with their matai title, and includes properly serving his or her family, village and community according to Samoan custom and usage;”;

- (b) in the definitions of -
- (i) "Court" insert "Land and Titles High Court" after "Land and Titles First Court,";
 - (ii) "Deputy President" insert "under Part 5A" after "Komisi";
 - (iii) "rules" insert "the" after "of";
 - (iv) "Vice President" insert "under Part 5A" after "Komisi".

3. Section 12 amended:

In section 12(1)(b) of the Tulafono o Fanua ma Suafa 2020 (Samoan version of the principal Act), insert the word "lē" after the word "ia".

4. Section 43 amended:

In section 43(2) of the principal Act omit "and review" after the words "decision".

5. Section 54 amended:

In section 54(1)(a) of the principal Act, for "Deputy President" substitute with "Vice President".

6. New Part 5A inserted:

After Part 5 of the principal Act, insert:

**"PART 5A
KOMISI O LE FAAMASINOGA O FANUA MA SUAFA AND
APPOINTMENT OF JUDGES FOR THE LAND AND TITLES COURT**

*Division 1 - Komisi o le Faamasinoga
o Fanua ma Suafa*

“61A. Functions of the Komisi o le Faamasinoga o Fanua ma Suafa (“Komisi”):

- (1) Pursuant to Article 104E(4) of the Constitution, the Komisi may advise the Head of State on the following:
 - (a) the appointment of a judge of the Land and Titles Court;
 - (b) the terms and conditions of the appointment of a judge;
 - (c) the suspension or the removal of a judge.
- (2) The Komisi may regulate its own procedure and may make rules and guidelines as it thinks fit for regulating and facilitating the performance of its functions under this Part.
- (3) Any rules and guidelines made pursuant to subsection (2) must be published.

*Division 2 - Appointment of Judges
for the Land and Titles Court*

61B. Judges of the Land and Titles Court:

Pursuant to Article 104E(4) of the Constitution, the Head of State, acting on the advice of the Komisi, may appoint fit and proper persons qualified under this Division to be:

- (a) Deputy Presidents; or
- (b) Vice Presidents; or
- (c) Judges of the Land and Titles First Court.

61C. Qualifications of Deputy President:

A person may be appointed as a Deputy President if the person:

- (a) is a Samoan lawyer who has been practicing under the relevant Act for lawyers in Samoa, for a period of not less than 10 years; and

- (b) holds a matai title and has rendered matai services in their village for a period of not less than three (3) consecutive years immediately prior to the appointment; and
- (c) is considered by the Komisi to be qualified by reason of character, ability, standing and reputation; and
- (d) resides in Samoa for a period of not less than three (3) consecutive years; and
- (e) has adequate knowledge and experience of Samoan custom and usage; and
- (f) has not reached the age of 68 years.

61D. Qualifications of Vice Presidents:

- (1) A person may be appointed as a Vice President if the person:
 - (a) is or has been a judge of the Land and Titles Court for at least three (3) years; and
 - (b) meets the qualifications for an appointment of a judge under section 61E.
- (2) For the purpose of subsection (1)(a), three (3) years of being a judge also includes the years a person was a Samoan judge under the repealed Act.
- (3) A Deputy President appointed under the repealed Act is taken to be appointed as a Vice President under this section until his or her tenure of office ceases pursuant to section 61G(1).
- (4) A judge appointed under subsection (3) is not qualified to be appointed as a member of the Land and Titles Court of Appeal and Review under Article 104C of the Constitution unless he or she satisfies the qualifications under subsection (1).

61E. Qualifications of judges of the Land and Titles First Court:

- (1) A person may be appointed as a judge of the Land and Titles First Court if the person:
 - (a) is a Samoan citizen who has resided in Samoa for a period of not less than three (3) consecutive years immediately prior to the appointment; and
 - (b) holds a matai title and has rendered matai services in their village for a period of not less than three (3) consecutive years; and
 - (c) is considered by the Komisi to be qualified by reason of character, ability, standing and reputation; and
 - (d) has adequate knowledge and experience of Samoan custom and usage; and
 - (e) has a minimum qualification of a certificate in the field of Law, or a certificate in any other relevant training as determined by the Komisi; and
 - (f) has not reached the age of 68 years.
- (2) A Samoan judge appointed under the repealed Act is taken to be appointed as a judge of the Land and Titles First Court under this section until his or her tenure of office ceases pursuant to section 61G(1).

61F. Immunity of judges:

A judge has the same immunity as a judge of the Supreme Court.

61G. Tenure of office:

- (1) A judge appointed under this Division holds office until:
 - (a) he or she reaches the age of 68 years, subject to subsection (2); or

- (b) he or she resigns under subsection (5); or
 - (c) he or she is removed from office under section 61H(1).
- (2) The Head of State acting on the advice of the Komisi may extend for not more than 12 months, or for successive periods each of not more than 12 months, the period or periods of office of a judge who has reached the age of 68 years.
- (3) The Komisi may take into account the following factors in advising the Head of State under subsection (2):
- (a) a medical certificate under the hand of a senior medical officer designated by the Chief Executive Office of the Ministry; and
 - (b) a performance appraisal of a judge.
- (4) Nothing done by a judge appointed under this Division in the performance of his or her functions is taken to be invalid by reason only that the judge has reached the age at which he or she is required by this section to retire or that his or her term of office has expired.
- (5) A judge may resign his or her office by giving written notice to the Head of State through the Komisi.

61H. Suspension and removal of a judge:

- (1) A judge appointed under this Division may only be removed by the Head of State, acting on the advice of the Komisi, on the following grounds:
- (a) a stated misbehaviour which may include a criminal conviction; or
 - (b) infirmity of body or mind, rendering the judge incapable of discharging the functions of his or her office.

- (2) The Head of State, acting on the advice of the Komisi, may suspend a judge from office, where an investigation into alleged misbehaviour is pending, and may at any time, revoke the suspension.

61I. Grounds for removal of the President under Article 104D(3) of the Constitution:

- (1) Pursuant to Article 104D(3) of the Constitution, the President may only be removed from office on the following grounds :
 - (a) a stated misbehaviour which may include a criminal conviction; or
 - (b) infirmity of body or mind rendering the President incapable of discharging the functions of his or her office.
- (2) Pursuant to Article 104D(3) of the Constitution, other grounds for the removal of the President includes:
 - (a) behaviour which brings, or is likely to bring, the office of the President or the Court into disrepute; or
 - (b) behaviour which may affect the confidence of the public in the Land and Titles Court.

61J. Salaries and benefits:

- (1) Pursuant to Article 104G of the Constitution, the President is entitled to be paid such salaries, allowances and other benefits as are fixed by the Head of State, acting on the advice of Cabinet, after consulting the Remuneration Tribunal.
- (2) A Deputy President, Vice President and a judge of the Land and Titles First Court are entitled to be paid such salaries, allowances and other benefits as are fixed by the

Head of State, acting on the advice of Cabinet, after Cabinet has received the recommendations from the Komisi.

- (3) The salaries of 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.

7. Section 67 amended:

Section 67 of the principal Act is amended by inserting after subsection (7), a new subsection as follows:

- “(8) A judge that is taken to be appointed under sections 61D(3) and 61E(2), continues to be entitled to be paid with the same salaries and other benefits he or she received before the commencement of this Act until the Head of State fixes salaries, allowances and other benefits pursuant to section 61J.”.

8. Savings and transitional:

At the commencement of this Act, any decision or act that was done or purported to be done for the purpose of the principal Act (for the period between 15 March 2021 and the assent date of this Act) is validated as if it was made under this Act.
