

VILLAGE FONO AMENDMENT BILL 2016

SAMOA

Explanatory Memorandum

Introduction:

The Bill seeks to amend the Village Fono Act 1990 (Act). The object of the Bill is to strengthen our culture to ensure stability in Samoa by strengthening the role of the Village Fono and to ensure that the exercise of the powers of the Village Fono are in accordance with the Constitution.

The Bill covers the following:

- (a) the granting of a specific power to impose curfews and banishment;
- (b) the inclusion of limited jurisdiction over those living in government, lease or freehold land located within village lands;
- (c) the provision of specific power to Village Fono to make their own *faiga faavae* or *iugafono* and register them at the Ministry of Women, Community and Social Development in order for them to be recognized by the Court. However, the registration of *faiga faavae* or *iugafono* do not necessarily mean that they are consistent with the Constitution;
- (d) the requirement to consult and obtain the approval of the Village Fono before any building or activity can be undertaken - e.g. a shop or a new church. If the Alii and Faipule decline the proposed activity or building, the decision can be appealed to the Land and Titles Court under section 11 of the Act.

- Clause 1:** - states that, when enacted, the Bill will be called the Village Fono Amendment Act 2016, and will commence on the date of assent by the Head of State.
- Clause 2:** - amends section 2 by amending the definition of “village misconduct” and also provides for new definitions to be incorporated in the Act.
- Clause 3:** - inserts new section 2A which provides for the objects of the Act.
- Clause 4:** - substitutes section 4 of the Act.
- Clause 5:** - amends section 5 of the Act by providing for the powers of Village Fono to make *faiga faavae* or *i’ugafono*. This amendment will replace the reference to “rules” with “*faiga fa’avae* or *i’ugafono*” in the Act.
- Clause 6:** - inserts new sections 5A to 5F which will provide for the procedures, effect and mode of registration of the *faiga faavae* or *i’ugafono* as well as provisions relating to the Register of *faiga faavae* or *i’ugafono*.
- Clause 7:** - amends section 6 of the Act by giving the power to the Village Fono to order banishment but subject to procedures to be followed. These procedures are in line with Article 9 of the Constitution.
- Clause 8:** - substitutes section 9 of the Act so that a Village Fono will have some control over those who are living on the government land, freehold land or leasehold land within the village who disrupts or likely to disrupt the harmony within the village.

- Clause 9:** - inserts new section 12 which requires a person who proposes the construction of a building or structure of any kind or undertake an activity for community purpose in a village to consult with the Village Fono for their approval before such work is undertaken. The Village Fono must comply with factors provided before a decision is made under this new section.
- Clause 10:** - provides for consequential amendment and transitional provisions.



(Hon FAIMALOTOA Kika Iemaima Stowers)

**MINISTER FOR WOMEN, COMMUNITY
AND SOCIAL DEVELOPMENT**

VILLAGE FONO AMENDMENT BILL 2016

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Section 2 amended
3. New section 2A inserted
4. Section 4 substituted
5. Section 5 amended
6. New sections 5A to 5F inserted
7. Section 6 amended
8. Section 9 substituted
9. New section 12 inserted
10. Consequential amendment and transitional

2016, No.

A BILL INTITULED

AN ACT to amend the Village Fono Act 1990 (“principal Act”).

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

1. Short title and commencement:

This Act may be cited as the Village Fono Amendment Act 2016, and commences on the date of assent by the Head of State.

2. Section 2 amended:

For section 2 of the principal Act:

- (a) in the definition of “village misconduct”, for “section 5” substitute “sections 5 and 12(4)”; and
- (b) insert the following definitions in their alphabetical positions:
 - “*faiga fa’avae*” or “*i’ugafono*” means village *faiga fa’avae* or *i’ugafono* made pursuant to section 5;
 - “**Chief Executive Officer**” means the Chief Executive Officer of the Ministry;
 - “**freehold land**” has the meaning in Article 101(3) of the Constitution;
 - “**government land**” has the meaning in section 2 of the Lands, Surveys and Environment Act 1989;
 - “**leasehold land**” means land that is the subject of a lease;
 - “**lease**” has the meaning in section 2 of the Land Titles Registration Act 2008;
 - “**Ministry**” means the Ministry responsible for Internal Affairs;
 - “**Register**” means the Register kept and maintained under section 5D;

“Sui-o-le-Nuu” means the person appointed as Sui-o-le-Nuu under section 14 of the Internal Affairs Act 1995.”.

3. New section 2A inserted:

After section 2 of the principal Act, insert:

“2A. Objects:

The objects of this Act are:

- (a) to provide for the recognition and protection of Village Fono;
- (b) to confer the exercise of power and authority by Village Fono in accordance with custom and usage of their village;
- (c) to validate the past and future exercise of powers and authority by Village Fono;
- (d) to provide procedures to be followed by Village Fono when undertaking inquiries into village misconduct or imposing punishment, including banishment; and
- (e) to empower Village Fono to make *faiga fa'avae* or *i'ugafono*.”.

4. Section 4 substituted:

For section 4 of the principal Act, substitute:

“4. Evidence of village misconduct and punishment:

- (1) A Village Fono may keep written record of its inquiry into any allegation of village misconduct or of any punishment imposed.
- (2) A person who is found by a Village Fono to have been guilty of village misconduct is not, by reason only of that fact, to be treated as guilty of a crime or offence under any enactment.

- (3) Any evidence relating to the decision of a Village Fono or of any punishment imposed by it against a person may be given as evidence in Court with the consent of that person.”.

5. Section 5 amended:

In section 5 of the principal Act:

- (a) for the section heading, substitute “**Powers of Village Fono**”; and
- (b) for references to “rules” substitute “*faiga fa’avae*” or “*i’ugafono*” wherever it appears;
- (c) in subsection (2), substitute:

“(2) A Village Fono may make *faiga fa’avae* or *i’ugafono* for application in its village in relation to the following:

- (a) hygiene and sanitation;
- (b) development and use of village land for the economic betterment of the village;
- (c) harmony;
- (d) improvement of living standards;
- (e) enquiring any person to do any work for the purposes of paragraphs (a) to (d);
- (f) imposing a curfew within any village or village land in accordance with village customs and practices (including the power to exempt any person during a curfew if necessary in an emergency situation or to enforce the curfew);
- (g) promoting social cohesion and harmony;

- (h) classifying village misconducts and penalties;
- (i) protecting Samoan customs and traditions;
- (j) safeguarding village traditions, norms and protocols;
- (k) protecting natural resources and the environment;
- (l) promoting natural justice and fairness principles in decision making processes and procedures;
- (m) recording of minutes or discussions during Village Fono meeting;
- (n) any other matter to give effect to or to promote wellbeing, development and maintenance of harmony and good order of the village and its inhabitants.”;

(d) after subsection (3), insert:

“(4) The powers to make *faiga fa’avae* or *i’ugafono* under subsection (2) includes the power to amend, suspend, revoke or replace *faiga fa’avae* or *i’ugafono*.”.

6. New sections 5A to 5F inserted:

After section 5 of the principal Act, insert:

“5A. Registration of *faiga fa’avae* or *i’ugafono*:

- (1) A Sui-o-le-Nuu (or any authorised representative of the Sui-o-le-Nuu) may send their original of the *faiga fa’avae* or *i’ugafono* to the Chief Executive Officer for registration in the Register of *faiga fa’avae* or *i’ugafono*.
- (2) The original *faiga fa’avae* or *i’ugafono* must state:

- (a) the date of approval of the *faiga fa'avae* or *i'ugafono* by the Village Fono; and
 - (b) the commencement date of the *faiga fa'avae* or *i'ugafono*.
- (3) When the Chief Executive Officer receives the *faiga fa'avae* or *i'ugafono*, the Chief Executive Officer must:
- (a) stamp (including the date of stamping) the *faiga fa'avae* or *i'ugafono*; and
 - (b) retain the original *faiga fa'avae* or *i'ugafono*; and
 - (c) make and certify four (4) copies of the registered *faiga fa'avae* or *i'ugafono* and send a certified true copy to each of the following for their records -
 - (i) the Sui-o-le-Nuu (or any authorised representative of the Sui-o-le-Nuu) who sent the *faiga fa'avae* or *i'ugafono* under subsection (1); and
 - (ii) the Registrar of Land and Titles Court; and
 - (iii) the Attorney General; and
 - (iv) the Clerk of the Legislative Assembly.

5B. Mode of registration:

The registration of *faiga fa'avae* or *i'ugafono* is effected by entering the following in the Register:

- (a) the name of the Village Fono that makes *faiga fa'avae* or *i'ugafono* and the name of the village where the *faiga fa'avae* or *i'ugafono* will apply;
- (b) the name or title and the commencement date of the registered *faiga fa'avae* or *i'ugafono*;
- (c) the date of stamping of the *faiga fa'avae* or *i'ugafono* under section 5A(3)(a);
- (d) any other information determined by the Chief Executive Officer.

5C. Effect of registration:

- (1) The registration of *faiga fa'avae* or *i'ugafono* under section 5A must not be taken as if the whole or part of the *faiga fa'avae* or *i'ugafono* are consistent with the Constitution.
- (2) The non-registration of any *faiga fa'avae* or *i'ugafono* under section 5A does not invalidate or affect the operation of the *faiga fa'avae* or *i'ugafono* in the applicable village.

5D. Register of *faiga fa'avae* or *i'ugafono*:

The Chief Executive Officer must keep and maintain a Register of Village Fono *faiga fa'avae* or *i'ugafono*.

5E. Search of Register:

The Register is open to search and inspection by the public.

5F. Delegation by the Chief Executive Officer:

- (1) The Chief Executive Officer may delegate to an officer of the Ministry ("delegate") all or any of the powers of the Chief Executive Officer under this Act except the power of delegation in this section.
- (2) The delegate:
 - (a) may exercise delegated power in the same manner and with the same effect as if the power had been conferred on the delegate directly by this section and not by delegation; and
 - (b) is presumed, in the absence of proof to the contrary, to be acting pursuant to the terms of the delegation.

- (3) A delegation may be made:
 - (a) to a specified officer or class of officers; or
 - (b) to the holder or holders of a specified office or class of offices.
- (4) A delegation:
 - (a) is to be in writing and signed by the Chief Executive Officer; and
 - (b) may be subject to any special or general conditions; and
 - (c) does not prevent the exercise of any delegated power by the Chief Executive Officer; and
 - (d) is revocable at will; and
 - (e) until revoked, continues in force, even if the Chief Executive Officer who made it has ceased to hold office; and
 - (f) continues to have effect as if it were made by the successor in office of that Chief Executive Officer.”.

7. Section 6 amended:

For section 6 of the principal Act:

- (a) renumber the current provision as subsection (1);
- (b) after paragraph (a), insert:

“(aa) subject to subsection (2), the power to order banishment;”;

- (c) after the proposed subsection (1), insert:

“(2) Before exercising its power under subsection (1)(aa), the Village Fono must, as a minimum, comply with the following procedures:

- (a) inform the alleged offender of the allegations against the offender, and any evidence supporting the allegations;
 - (b) give the alleged offender an opportunity to respond, either orally or in writing and within a reasonable specified time, to the allegations and any supporting evidence;
 - (c) give the alleged offender the option of having a support person or persons or representative to support or represent the offender when he or she responds and makes submissions on the allegations against him or her;
 - (d) if the response received under paragraph (b) confirms the allegations, give the offender an opportunity to make a submission on, what the alleged offender believes, is the appropriate penalty for the misconduct.
- (3) The response made under subsection (2)(b) may either confirm or contradict the allegations and any evidence in support of the allegations against the alleged offender.
- (4) The Village Fono must take into account the response and any submissions made by the alleged offender under subsection (2) before it decides to confirm or reject the allegations and any supporting evidence.
- (5) For the purposes of subsection (4), the Village Fono may take into account the faa-Samoa decision making process to ensure thorough discussions of the allegation and in particular where the Village Fono considers the allegation as serious.

- (6) Despite subsection (2), the Village Fono may exercise its power under subsection (1)(aa) if an alleged offender does not respond to the Village Fono within a reasonable specified time pursuant to subsection (2)(b).
- (7) As an exception to section 11, the person against whom the banishment order is made under subsection (1)(aa) may appeal the order to the Land and Titles Court.”.

8. Section 9 substituted:

For section 9 of the principal Act, substitute:

“9. Limitation of jurisdiction of Village Fono:

- (1) Subject to this section, the relevant Village Fono does not have jurisdiction over a person residing on Government, freehold or leasehold land located within village land where that person:
 - (a) is not a Matai of that village; or
 - (b) is not liable in accordance with the custom and usage of that village to render tautua to a Matai of that village.
- (2) A Village Fono may, in any manner it considers appropriate, inform any person living on government land, freehold land or leasehold land within its village land about any village *faiga fa'avae* or *i'ugafono* registered under section 5A.
- (3) Where the Village Fono has reasonable cause to believe that a person informed under subsection (2) disrupts or is likely to disrupt harmony within the village, Village Fono may summon that person to appear before them to discuss the Village Fono's concerns with a view to resolving those concerns.

- (4) If the person fails to appear before the Village Fono or where the concerns of the Village Fono are not resolved, the Village Fono may request the registrar to convene a Samoan Conciliation under the Land and Titles Act 1981 to resolve the matter.
- (5) A person commits an offence and is liable to a fine not exceeding 5 penalty units if the person fails to attend a Samoan Conciliation required under subsection (4)."

9. New section 12 inserted:

For the principal Act, after section 11, insert:

"12. Structures and activities for community purposes:

- (1) If a person proposes:
 - (a) to construct a building or structure of any kind; or
 - (b) to undertake any activity,
 for community purposes on village land, the person must first consult with the Village Fono to approve the building, structure or activity before it is constructed or undertaking the activity.
- (2) When considering a request under subsection (1), the Village Fono must take into account the following factors:
 - (a) the community purpose for the use of the building or structure or for undertaking the activity;
 - (b) whether the building, structure or activity will have any benefit to the village and its community;
 - (c) whether any other person in the village will be or likely to be adversely affected if approval is given, and the extent to which the person will be affected;
 - (d) the effect on the applicant if the approval is declined;

- (e) consent of the matai of the family who are beneficial owners of the land.
- (3) In this section:
 - “**community purpose**” includes any purpose (including large business operations) which impacts on the promotion of Samoan customs and traditions, community safety, health and wellbeing, social cohesion and village harmony;
 - “**person**” includes family, organisation or any community group.
- (4) A person who constructs a building or structure or undertake an activity without the approval under subsection (1) is guilty of village misconduct and is liable to any punishment under section 6 or imposed pursuant to the powers granted or preserved under this Act.

10. Consequential amendment and transitional:

- (1) The Internal Affairs Act 1995 is amended by repealing sections 5(1)(f) and 18(2)(b).
 - (2) Despite subsection (1), any regulations made pursuant to section 18(2)(b) of the Internal Affairs Act 1995 or bylaw proposed and made under the regulations continue in force as if they were made under this Act until revoked or replaced as *faiga fa'avae* or *i'ugafono* under this Act.
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