



SAMOA

CONSTITUTION OF THE INDEPENDENT STATE OF SAMOA

Arrangement of Provisions

PART I INDEPENDENT STATE OF SAMOA AND ITS SUPREME LAW

1. Name and description
2. The Supreme law

PART II FUNDAMENTAL RIGHTS

3. Definition of the State
4. Remedies for enforcement of rights
5. Right to life
6. Right to personal liberty
7. Freedom from inhuman treatment
8. Freedom from forced labour
9. Right to a fair trial
10. Rights concerning criminal law
11. Freedom of religion
12. Rights concerning religious instruction
13. Rights regarding freedom of speech, assembly, association, movement and residence
14. Rights regarding property
15. Freedom from discriminatory legislation

PART III HEAD OF STATE

16. O le Ao o le Malö
17. *Repealed*
18. Election of Head of State
19. Term of office of Head of State
20. Disabilities of Head of State
21. Resignation and removal from office
22. Salary of Head of State
23. Absence or incapacity
24. Special provisions as to absence or incapacity
25. Council of Deputies
26. Head of State to act on advice
27. Information for Head of State
28. Oath of office
29. Public Seal
30. Secretary to Head of State

PART IV EXECUTIVE

31. Executive power
32. Cabinet
33. Vacation of office
34. Official oath
35. Assignment of responsibilities to Ministers
36. Summoning of Cabinet
37. Cabinet procedure
38. When decisions of Cabinet are to take effect
39. Executive Council

***Constitution of the Independent
State of Samoa***

- 40. Consideration of Cabinet decisions by Executive Council
- 41. Attorney-General

**PART V
PARLIAMENT**

- 42. Parliament
- 43. Power to make laws
- 44. Members of the Legislative Assembly
- 45. Qualifications for membership
- 46. Tenure of office of members
- 47. Decisions on questions as to membership
- 48. Filling vacancies
- 49. Election of Speaker
- 50. The Deputy Speaker
- 51. Clerk of the Legislative Assembly
- 52. Meetings of the Legislative Assembly
- 53. Standing Orders
- 54. Languages
- 55. Presiding over Legislative Assembly
- 56. Proceedings are valid
- 57. Quorum
- 58. Voting
- 59. Introduction of bills, etc., into Legislative Assembly
- 60. Bills assented to become Acts of Parliament
- 61. Oath of allegiance
- 62. Privileges of Legislative Assembly
- 63. Prorogation and dissolution of Legislative Assembly
- 64. General elections

**PART VI
JUDICIARY**

Division 1 – Supreme Court

- 65. Establishment of the Supreme Court

- 66. Constitution of the Supreme Court
- 67. Tenure, suspension and removal of office
- 68. Senior Judge of the Supreme Court
- 69. Acting Judge of the Supreme Court
- 70. Jurisdiction of the Supreme Court
- 71. Judicial Guidance
- 72. Powers of Judges of the Supreme Court

Division 2 – Court of Appeal

- 73. Establishment and constitution of Court of Appeal
- 74. Number of Judges
- 75. Jurisdiction of Court of Appeal
- 76. Powers of the Court of Appeal
- 77. Definition of “decision”

Division 3 – Subordinate Courts

- 78. Subordinate Courts

Division 4 – Judicial Service Commission

- 79. Judicial Service Commission
- 80. Oath of office
- 81. Salaries and benefits

**PART VIA
OMBUDSMAN (KOMESINA
O SULUFAIGA)**

- 82A. Ombudsman
- 82B. Functions of Ombudsman

**PART VII
PUBLIC SERVICE**

- 83. Interpretation
- 84. Public Service Commission

- 85. Term of office
- 86. Salaries
- 87. Functions of the Commission
- 88. Procedure and Annual Report
- 89. Public Service Board of Appeal

**PART VIII
FINANCE**

- 90. Public funds
- 91. Restriction on taxation
- 92. Public revenue
- 93. Payment out of public funds
- 94. Appropriation of expenditure
- 95. Expenditure in anticipation of appropriation
- 96. Unforeseen expenditure
- 97. Controller and Auditor General
- 97A. Responsibilities of Controller and Auditor General
- 98. Duty of Controller and Auditor General to report to Legislative Assembly
- 99. Term of office
- 99A. Conditions of service
- 99B. Other employment
- 99C. Rights preserved
- 99D. Absence of Controller and Auditor General
- 99E. Resignation of Controller and Auditor General
- 99F. Removal from office of Controller and Auditor General

**PART IX
LAND AND TITLES**

- 100. Matai titles
- 101. Land in Samoa
- 102. No alienation of customary land
- 103. Land below high-water mark

LAND AND TITLES COURTS

- 104. Customary Land and Titles Protection
- 104A. Land and Titles First Court
- 104B. Land and Titles High Court
- 104C. Land and Titles Court of Appeal and Review
- 104D. Appointment, removal, tenure of office
- 104E. Komisi o le Faamasinoga o Fanua ma Suafa
- 104F. Oath
- 104G. Salaries and benefits

**PART X
EMERGENCY POWERS**

- 105. Proclamation of Emergency
- 106. Emergency Orders
- 107. Orders to be laid before Legislative Assembly
- 108. Restriction on detention

**PART XI
GENERAL AND
MISCELLANEOUS**

- 109. Amendment of Constitution
- 110. Power of pardon
- 111. Interpretation
- 112. Authoritative texts
- 113. Coming into force

**PART XII
TRANSITIONAL**

- 114. Existing law to continue
- 115. Functions of Council of State
- 116. Tenure of office of Ministers
- 117. First Legislative Assembly
- 118. Existing Judges
- 119. Existing legal proceedings
- 120. Existing officers to continue in office
- 121. Laws not brought into force before Independence Day

*Constitution of the Independent
State of Samoa*

122. Adaptation of existing law

123. Vesting of property

Schedules

124. Transitional amendments to
Constitution

IN THE HOLY NAME OF GOD, THE ALMIGHTY, THE EVER LOVING WHEREAS sovereignty over the Universe belongs to the Omnipresent God alone, and the authority to be exercised by the people of Samoa within the limits prescribed by God's commandments is a sacred heritage

WHEREAS the Leaders of Samoa have declared that Samoa should be an Independent State based on Christian principles and Samoan custom and tradition

AND WHEREAS the Constitutional Convention, representing the people of Samoa, has resolved to frame a Constitution for the Independent State of Samoa

WHEREIN the State should exercise its powers and authority through the chosen representatives of the people

WHEREIN should be secured to all the people their fundamental rights

WHEREIN the impartial administration of justice should be fully maintained

AND WHEREIN the integrity of Samoa, its independence, and all its rights should be safeguarded

NOW THEREFORE, we the people of Samoa in our Constitutional Convention, this 28th day of October 1960, do hereby adopt, enact and give to ourselves this Constitution.

Tupua Tamasese, C.B.E

(Fautua)

Malietao Tanumafili II, C.B.E

(Fautua)

Fiaame Mataafa Faumuina Mulinu'u II, C.B.E

(Prime Minister, M.L.A.,
Lotofaga)

Tuimaleali'ifano S. II

(Tama Aiga)

Anapu Solofa

(M.L.A. Safata)

*Constitution of the Independent
State of Samoa*

5

Amo Tausilia L.	(M.L.A Aleipata – Itūpā-i-lalo)
Aiono Urima	(M.L.A Aana Alofi Nu 1)
Asiata Lagolago	(M.L.A Satupaitea, Alataua)
Iuli Veni	(M.L.A Anoamaa East)
Ufagalilo Fa'atafa	(M.L.A Faasaleleaga Nu 3)
Ulualofaiga Talamaivao V	(M.L.A. Vaa-o-Fonoti)
Ulumalautea Papali'i F	(M.L.A Vaimauga East)
Usu To'avalu	(M.L.A Alataua West)
Faalava'au Galu	(M.L.A Samatau/Falelatai)
Fatialofa M. Faimalo	(M.L.A Lepa)
Fenunuti Tauafua	(M.L.A Lefaga, Faleaseela)
Luamanuvae Eti Alesana	(M.L.A. Faasaleleaga No. 1).
Leasi Avaula	(M.L.A Gagaifomauga Nu.3)
Leiataua S	(M.L.A Aigai le Tai)
Lesatele Rapi	(M.L.A Vaisigano Nu.2)
Luafatasaga Su'e Taule'alo	(M.L.A. Sagaga-Le Usoga).
Luatua Mata'ese	(M.L.A Sagaga-Le-Falefa)
Matai'a Europa	(M.L.A Faleata East)
Maposua Seilala	(M.L.A Palauli-Le-Falefa)
Papali'i Pesamino	(M.L.A Faasaleleaga Nu.2)
Peseta Seko J. S	(M.L.A Gagaifomauga Nu.1)
Pilia'e Leilua Iuliano	(M.L.A Aana Alofi Nu.2)
Pulepule M	(M.L.A Anoamaa West)
Saipaia U	(M.L.A Aana Alofi Nu.3)
Sagapolutele Posē	(M.L.A Aleipata-itūpā-i-luga)
Seiuli Tolova'a Iakopo	(M.L.A Faleata West)
Seuamuli Etimani	(M.L.A Gagaemauga Nu.3)
Soifuā Solia Gese	(M.L.A Falealupo)
Tualaulalei M	(M.L.A Palauli)
Tuatagaloa Leutele Satele Te'o Simaile	(M.L.A. Falealili).
Toomata Lilomaiava T	(M.L.A Salega)
Tevaga Paletasala	(M.L.A Gagaemauga Nu.1)
Tofaeono Muliaga	(M.L.A Vaimauga West)
Toloafa Lafaele	(M.L.A Siumu)
Tufuga Fatu Lemana	(M.L.A Vaisigano Nu.1)
Tugaga Isa'aka	(M.L.A Gagaifomauga Nu.2)
Tuala Tiaina	(M.L.A Gagaemauga Nu.2)
Tuatō Poto	(M.L.A Palauli West)
Vui Fale	(M.L.A Faasaleleaga Nu.4)
G. F. D. Betham	(M.L.A Apia)
Hans J. Keil	(M.L.A Apia)
F. C. F. Nelson	(M.L.A Apia)
Eugene F. Paul	(M.L.A Apia)
Leilua P. Plowman	(M.L.A Apia)

*Constitution of the Independent
State of Samoa*

Ale Pusi	(A.S.M. Faleata West)
A'e'au Taulupo'o	(A.S.M. Falealupo)
Asiata Tulelei	(A.S.M. Satupaitea-Alataua)
Aiolupotea Mana'ia	(A.S.M. Alataua West)
Auali'itia Faa'ole'ole	(A.S.M. Gagaemauga Nu.1)
Asi Falana'ipupu Ulu Filiva'a	(A.S.M. Vaimauga West).
Afamasaga Maua II	(A.S.M. Aana Alofi Nu.3)
Auelua Filipo	(A.S.M. Lepa)
Auelua Tagoa'i Tufi	(A.S.M. Lepa)
One Sofai	(A.S.M. Gagaifomauga Nu.3)
Ugapo Tauaneai	(A.S.M. Aana Alofi Nu.2)
Umaga Pa'u	(A.S.M. Aana Alofi Nu.2)
Ulugia Fa'alua	(A.S.M. Faleata West)
Fafai Tuivale	(A.S.M. Sagaga Le Usoga)
Fata M	(A.S.M. Sagaga Le Usoga)
Fonoti Faagalu	(A.S.M. Falealili)
Fuimaono Faafete	(A.S.M. Falealili)
Faamoe Sasi	(A.S.M. Gagaemauga Nu.3)
Fao Isaia	(A.S.M. Vaisigano Nu.1)
Fesola'i Pio	(A.S.M. Aana Alofi Nu.1)
Faletufuga Asiasi	(A.S.M. Faasaleleaga Nu.2)
Fuiono Alefosio	(A.S.M. Falealupo)
Fasavalu Faali'i	(A.S.M. Salega)
Feiloaivao Pa'u Peter	(A.S.M. Aana Alofi Nu.3)
Fiu Tanielu	(A.S.M. Gagaifomauga Nu.3)
Faanana Fenika	(A.S.M. Satupaitea - Alataua)
Fiso Faamotu L	(A.S.M. Lotofaga)
Faiumu A	(A.S.M. Palauli West)
FisoFusi	(A.S.M. Palauli)
Fui Eli Seuamuli	(A.S.M. Gagaifomauga Nu.2)
Fuataga Penita	(A.S.M. Aleipata-Itūpā-i-luga)
Faoasau Ausage	(A.S.M. Vaimauga East)
Fui Tauaivale	(A.S.M. Lefaga Faleaseela)
Faolotoi M	(A.S.M. Lepa)
Faliuila T	(A.S.M. Aleipata-Itūpā-i-lalo)
Gasū Taatua	(A.S.M. Satupaitea - Alataua)
Leleua Peni	(A.S.M. Faleata East)
Leapai Sefo	(A.S.M. Sagaga Le Usoga)
Leota Iakopo	(Gagaemauga Nu.3)
Leaupepe Aifualaa	(A.S.M. Aana Alofi Nu.1)
Leiataua Pōai	(A.S.M. Aigai le Tai)
Levaa Fofoa	(A.S.M. Aigai le Tai)
Li'omatefili T	(A.S.M. Siumu)
Leausa Foe	(A.S.M. Vaa o Fonoti)

*Constitution of the Independent
State of Samoa*

7

Leota Leuma	(A.S.M. Anoamaa West)
Luafalealo Pesa	(A.S.M. Anoamaa West)
Lavea Lalä S	(A.S.M. Gagaifomauga Nu.1)
Lealuga Vaaiga	(A.S.M. Vaisigano Nu.2)
Lagaia Faamaga	(A.S.M. Palauli)
Leiataatimu P	(A.S.M. Sagaga Le Falefa)
Luatuanuu Tolai	(A.S.M. Sagaga Le Falefa)
Lauago M. Tofu	(A.S.M. Gagaemauga Nu.2)
LeniuFanene	(A.S.M. Vaimauga West)
A. Le – Mamea Matatumua, O.B.E.	(A.S.M. Lefaga - Faleaseela).
Moeono Alai'a K	(A.S.M. Anoama'a East).
Moala Maugatai Limutau Asueru	(A.S.M. Anoama'a East).
Magele Tagaileono Ate	(A.S.M. Faasaleleaga Nu.1)
Matai'a Tavale	(A.S.M. Gagaemauga Nu.3)
Masoe Pele	(A.S.M. Vaisigano Nu.1)
Mata'ūtia Ueni	(A.S.M. Palauli Le Falefa)
Matalē Tuugafala	(A.S.M. Palauli West)
Malaitai Lautaimi	(A.S.M. Gagaifomauga Nu.2)
Mata'ūtia Fetaui	(A.S.M. Aleipata-Itūpā-i-Lalo)
Matai'a Si'utaulalova'a	(A.S.M. Faleata West)
Mano Togamau	(A.S.M. Siumu)
Moalele Mau'afu	(A.S.M. Faasaleleaga Nu.2)
Mata'u Fiaali'i	(A.S.M. Vaisigano Nu.2)
Mauisii Sefo	(A.S.M. Palauli Le Falefa)
Muagututi'a Tautau	(A.S.M. Lotofaga)
Matafeo Siatu	(A.S.M. Faasaleleaga Nu.4)
Mulitalo Faleniu	(A.S.M. Faasaleleaga Nu.4)
Nonoa Aleli F	(A.S.M. Anoamaa East)
Polataivao Luni	(A.S.M. Gagaifomauga Nu.3)
Paitomaleifi Siaki	(A.S.M. Falealili)
Pini F	(A.S.M. Faasaleleaga Nu.3)
Pa'uTitō	(A.S.M. Samatau/Falelatai)
Peseta Tavai	(A.S.M. Faasaleleaga Nu.4)
Soalaupule Sale	(A.S.M. Safata)
Seumanu Saleilua	(A.S.M. Faasaleleaga Nu.1)
Savusa Faavela	(A.S.M. Vaa o Fonoti)
Segi Lafa	(A.S.M. Faasaleleaga Nu.3)
Solia Sikuka	(A.S.M. Falealupo)
Seinafolava Sofara	(A.S.M. Lotofaga)
Safuneituuga Meatuai	(A.S.M. Gagaifomauga Nu.2)
Semau Peleseuma	(A.S.M. Gagaemauga Nu.2)
Seuala Meauli	(A.S.M. Aleipata-Itūpā-i-Luga)
Saumalu Tui	(A.S.M. Aleipata-Itūpā-i-Luga)
Taala Ioelu	(A.S.M. Faleata East)

*Constitution of the Independent
State of Samoa*

Taimalie Meapelo	(A.S.M. Aana Alofi Nu.2)
Tuiā Iosefa	(A.S.M. Safata)
Tofilau Moeloa	(A.S.M. Faasaleleaga Nu.1)
Tapu Atonio Fidow	(A.S.M. Vaisigano Nu.1)
Tapusoa Peni II	(A.S.M. Gagaifomauga Nu.1)
Tapua'i Kuka	(A.S.M. Salega)
To'ala Mulifusi	(A.S.M. Palauli Le Falefa)
Tuai'aufa'i Fuifui	(A.S.M. Alataua West)
Tuala Osooso	(A.S.M. Gagaemauga Nu.1)
Tofa Peleti	(A.S.M. Faasaleleaga Nu.3)
Telea Fasi	(A.S.M. Sagaga Le Falefa)
Tauvalaau Lua	(A.S.M. Aana Alofi Nu.3)
Tuala Siaki	(A.S.M. Lefaga/Faleaseela)
Tataivaatele Ioane	(A.S.M. Aleipata-Itūpā-i-Lalo)
Tuaautoto'a Iefata	(A.S.M. Aana Alofi Nu.1)
Taupai Semu	(A.S.M. Aigai le Tai)
Tuimalatū Suli	(A.S.M. Vaa o Fonoti)
Tagaloa Tuala Siaosi	(A.S.M. Anoamaa West)
Tuilagi Pa'ō	(A.S.M. Faasaleleaga Nu.2)
Timu Kolio	(A.S.M. Gagaifomauga Nu.1)
Tuisalega E	(A.S.M. Salega)
Tanuvasa Taotafa	(A.S.M. Alataua West)
Toluono Lama	(A.S.M. Palauli)
Tuala Milo	(A.S.M. Gagaemauga Nu.1)
Tevaga Matafā	(A.S.M. Gagaemauga Nu.2)
Toomalatai Fiso	(A.S.M. Vaimauga West)
Tuiletufuga Tualai	(A.S.M. Vaimauga West)
Tuli'apupu Muliaga S	(A.S.M. Vaimauga East)
Vaitagutu S	(A.S.M. Faleata East)
W. F. Betham	(A.E.M. Apia)
O. R. Crichton	(A.E.M. Apia)
A. M. Gurau	(A.E.M. Apia)

PART I
THE INDEPENDENT STATE OF
SAMOA AND ITS SUPREME LAW

1. Name and description - (1) The Independent State of Samoa (hereinafter referred to as Samoa) shall be free and sovereign.

(2) Samoa shall comprise the islands of Upolu, Savai'i, Manono and Apolima in the South Pacific Ocean, together with all other islands adjacent thereto and lying between the 13th and

15th degrees of south latitude and the 171st and 173rd degrees of longitude west of Greenwich.

(3) Samoa is a Christian nation founded on God the Father, the Son and the Holy Spirit.

(As to clause (2) see also the Territorial Sea Act 1971, and Article 43.)

2. The Supreme Law - (1) This Constitution shall be the supreme law of Samoa.

(2) Any existing law and any law passed after the date of coming into force of this Constitution which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.

(In respect of the coming into force of the Constitution, see Article 113)

PART II FUNDAMENTAL RIGHTS

3. Definition of the State - In this Part, unless the context otherwise requires, "the State" includes the Head of State, Cabinet, Parliament and all local and other authorities established under any law.

4. Remedies for enforcement of rights - (1) Except for judicial review matters arising from the proceedings in Part IX Land and Titles Courts, any person may apply to the Supreme Court by appropriate proceedings to enforce the rights conferred under the provisions of this Part.

(2) The Supreme Court shall have power to make all such orders as may be necessary and appropriate to secure to the applicant the enjoyment of any of the rights conferred under the provisions of this Part.

5. Right to life - (1) No person shall be deprived of his or her life intentionally, except in the execution of a sentence of a Court following his or her conviction of an offence for which this penalty is provided by Act.

(2) Deprivation of life shall not be regarded as having been inflicted in contravention of the provisions of this Article when it results from the use of force to such extent and in such circumstances as are prescribed by law and as are reasonably justifiable:

- (a) in defence of any person from violence; or
- (b) in order to effect an arrest or to prevent the escape of a person detained, if the person who is being arrested or who is escaping is believed on reasonable grounds to be in the possession of a firearm; or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.

6. Right to personal liberty - (1) No person shall be deprived of his or her personal liberty except in accordance with law.

(2) Where complaint is made to the Supreme Court that a person is being unlawfully detained, the Court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order the person to be produced before the Court and shall release the person.

(3) Every person who is arrested shall be informed promptly of the grounds of his or her arrest and of any charge against the person and shall be allowed to consult a legal practitioner of his or her own choice without delay.

(4) Every person who is arrested or otherwise detained shall be produced before a Judge of the Supreme Court, some other judicial officer, the Registrar of the Supreme Court or of any subordinate Court or any Assistant Registrar of the Supreme Court or of any subordinate Court from time to time approved in writing for this purpose by the Registrar of the Supreme Court (hereinafter collectively referred to as "remanding officers") within a period of 24 hours (excluding the time of any necessary journey), and no such person shall be detained beyond that period without the authority of one of the remanding officers.

7. Freedom from inhuman treatment - No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

8. Freedom from forced labour - (1) No person shall be required to perform forced or compulsory labour.

(2) For the purposes of this Article, the term “forced or compulsory labour” shall not include:

- (a) any work required to be done in consequence of a sentence of a Court; or
- (b) any service of a military character or, in the case of conscientious objectors, service exacted instead of compulsory military service; or
- (c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community; or
- (d) any work or service which is required by Samoan custom or which forms part of normal civic obligations.

9. Right to a fair trial - (1) In the determination of his or her civil rights and obligations or of any charge against him or her for any offence, every person is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established under the law. Judgment shall be pronounced in public, but the public and representatives of news service may be excluded from all or part of the trial in the interests of morals, public order or national security, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the Court in special circumstances where publicity would prejudice the interests of justice.

(2) Nothing in clause (1) shall invalidate any law by reason only that it confers upon a tribunal, Minister or other authority power to determine questions arising in the administration of any law that affect or may affect the civil rights of any person.

(3) Every person charged with an offence shall be presumed innocent until proved guilty according to law.

(4) Every person charged with an offence has the following minimum rights:

- (a) to be informed promptly, in a language which the person understands and in detail, of the nature and cause of the accusation against the person;

*Constitution of the Independent
State of Samoa*

- (b) to have adequate time and facilities for the preparation of his or her defence;
 - (c) to defend himself or herself in person or through legal assistance of his or her own choosing and, if the person has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - (d) to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
 - (e) to have the free assistance of an interpreter, if any doubt exists as to whether the person can understand or speak the language used in Court.
- (5) No person accused of any offence shall be compelled to be a witness against himself or herself.

10. Rights concerning criminal law - (1) No person shall be convicted of an offence other than an offence defined by law.

(2) No person shall be held guilty of any offence on account of any act or omission which did not constitute an offence at the time when it was committed; nor shall a heavier penalty be imposed than the one that was applicable at the time that the offence was committed.

(3) No person who has been tried for any offence shall, after conviction or acquittal, again be tried for that offence except:

- (a) where a retrial is ordered or conducted by a Court or judicial officer exercising a jurisdiction superior to that under which that person was acquitted or convicted; or
- (b) in the case of a conviction entered in a trial conducted by a Judge or Judges of the Supreme Court, where a retrial is ordered by a Judge of that Court on an application made within 14 days of that conviction.

11. Freedom of religion - (1) Every person has the right to freedom of thought, conscience and religion; this right includes freedom to change his or her religion or belief, and freedom,

either alone or in a community with others, and, in public or private, to manifest and propagate his or her religion or belief in worship, teaching, practice and observance.

(2) Nothing in clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that clause in the interests of national security or of public order, health or morals, or for protecting the rights and freedom of others, including their rights and freedom to observe and practice their religion without the unsolicited interference of members of other religions.

12. Rights concerning religious instruction - (1) No person attending any educational institution shall be required to receive religious instruction or take part in any religious ceremony or attend religious worship, if that instruction, ceremony or worship relates to a religion other than his or her own.

(2) Every religious community or denomination shall have the right to establish and maintain educational institutions of its own choice and to provide therein religious instruction for pupils of that community or denomination.

(3) Nothing in clause (2) shall prevent the State from making any law requiring the inspection of educational institutions and the maintenance therein of standards in keeping with the general educational level in Samoa.

13. Rights regarding freedom of speech, assembly, association, movement and residence - (1) All citizens of Samoa shall have the right:

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions; and
- (d) to move freely throughout Samoa and to reside in any part thereof.

(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that sub-clause in the interests of national

security, friendly relations with other States, or public order or morals, for protecting the privileges of the Legislative Assembly, for preventing the disclosure of information received in confidence, or for preventing contempt of Court, defamation or incitement to any offence.

(3) Nothing in sub-clauses (b) or (c) of clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of either or both of the rights conferred under the provisions of those sub-clauses in the interests of national security or public order, health or morals.

(4) Nothing in sub-clause (d) of clause (1) shall affect the operation of any existing law or prevent the State from making any law in so far as that existing law or the law so made imposes reasonable restrictions on the exercise of the right conferred under the provisions of that sub-clause in the interests of national security, the economic well-being of Samoa, or public order, health or morals, for detaining persons of unsound mind, for preventing any offence, for the arrest and trial of persons charged with offences, or for punishing offenders.

14. Rights regarding property - (1) No property shall be taken possession of compulsorily, and no right over or interest in any property shall be acquired compulsorily, except under the law which, of itself or when read with any other law:

- (a) Requires the payment within a reasonable time of adequate compensation therefore;
- (b) Gives to any person claiming that compensation a right of access, for the determination of his or her interest in the property and the amount of compensation, to the Supreme Court; and
- (c) Gives to any party to proceedings in the Supreme Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a Court of original jurisdiction.

(2) Nothing in this Article shall be construed as affecting any general law:

- (a) for the imposition or enforcement of any tax, rate or duty; or
- (b) for the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence; or
- (c) relating to leases, tenancies, mortgages, charges, bills of sale, or any other rights or obligations arising out of contracts; or
- (d) relating to the vesting and administration of the property of persons adjudged bankrupt or otherwise declared insolvent, of infants or persons suffering under some physical or mental disability, of deceased persons, and of companies, other corporate bodies and unincorporated societies, in the course of being wound up; or
- (e) relating to the execution of judgments or orders of Courts; or
- (f) providing for the taking of possession of property which is in a dangerous state or is injurious to the health of human beings, plants or animals; or
- (g) relating to trusts and trustees; or
- (h) relating to the limitation of actions; or
- (i) relating to property vested in statutory corporations; or
- (j) relating to the temporary taking of possession of property for the purposes of any examination, investigation or inquiry; or
- (k) providing for the carrying out of work on land for the purpose of soil conservation or for the protection of water catchment areas.

[Distress of property is unlawful in Samoa; see section 16 of the Alienation of Customary Land Act 1965, subsection. 51 and 87 of the Land Ordinance 1959, and section 362 of the Samoa Act 1921 (N.Z.).]

15. Freedom from discriminatory legislation - (1) All persons are equal before the law and entitled to equal protection under the law.

(2) Except as expressly authorised under the provisions of this Constitution, no law and no executive or administrative

action of the State shall, either expressly or in its practical application, subject any person or persons to any disability or restriction or confer on any person or persons any privilege or advantage on grounds only of descent, sex, language, religion, political or other opinion, social origin, place of birth, family status, or any of them.

(3) Nothing in this Article shall:

- (a) prevent the prescription of qualifications for the service of Samoa or the service of a body corporate directly established under the law; or
- (b) prevent the making of any provision for the protection or advancement of women or children or of any socially or educationally retarded class of persons.

(4) Nothing in this Article shall affect the operation of any existing law or the maintenance by the State of any executive or administrative practice being observed on Independence Day:

PROVIDED THAT the State shall direct its policy towards the progressive removal of any disability or restriction which has been imposed on any of the grounds referred to in clause (2) and of any privilege or advantage which has been conferred on any of those grounds.

PART III HEAD OF STATE

16. O le Ao o le Malo - There shall be a Head of State of Samoa to be known as O le Ao o le Malo.

17. *Repealed by clause (5)*

(Article 17 ceased to be in force on the death of Malietoa Tanumafili II on the 11th day of May 2007 pursuant to clause (5)).

18. Election of Head of State - (1) The Head of State shall be appointed by the Legislative Assembly acting on the recommendation of the party or parties in Government.

(2) A person shall not be qualified to be appointed to the office of Head of State:

- (a) if the person is not a person qualified to be elected as a Member of Parliament; or

- (b) if the person does not possess such other qualifications as the Legislative Assembly may determine from time to time by resolution; or
 - (c) if the person has previously been removed from the office of Head of State under the provisions of clause (2) of Article 21.
- (3) The validity of the appointment of the Head of State shall not be contested in any Court.
- (4) Within 60 days before expiry of the term of appointment of the Head of State or as soon as practicable when there is a vacancy in the office of Head of State, the party or parties in Government shall submit to the Speaker a written Notice recommending the name of only 1 person to be appointed as Head of State.
- (5) The Speaker shall, as soon as possible after receiving the Notice:
- (a) if the Legislative Assembly is sitting, lay the Notice before the Legislative Assembly to appoint the Head of State; or
 - (b) if the Legislative Assembly is not sitting, fix a date for a sitting of the Legislative Assembly to appoint the Head of State.
- (6) The Speaker shall issue and sign the warrant of appointment of the Head of State.

19. Term of office of Head of State - (1) Subject to the provisions of Article 21, the Head of State shall hold office for a term of 5 years from the date on which he or she assumes the functions of his or her office:

PROVIDED THAT, notwithstanding the expiry of his or her term, the Head of State shall continue to hold office until his or her successor assumes the functions of his or her office or for a period of 3 months, whichever is the shorter period.

(2) Subject to the provisions of this Constitution, a person who holds, or who has held for 1 term, office as Head of State, is only eligible for re-appointment to that Office once.

(2A) A person who has held the office as Head of State for 2 terms is not eligible to be re-appointed to that Office.

(3) If a vacancy in the office of Head of State is caused by the death, resignation or removal of the Head of State or by the

expiry of the term of office, Article 18 applies and the person appointed as Head of State holds office for a term of 5 years from the date on which the person takes the oath of office.

20. Disabilities of Head of State - The Head of State shall not hold any other office of profit or any other position carrying the right to remuneration for the rendering of services, or engage in any occupation for reward outside the functions of his or her office; but nothing in this clause shall prevent the Head of State from holding the pule over any customary land, from holding any freehold land or other private property, or from disposing of the produce of any customary or freehold land.

21. Resignation and removal from office - (1) The Head of State may resign his or her office by writing under his or her hand addressed to the Prime Minister, who shall forthwith advise the Speaker of the Legislative Assembly of that resignation.

(2) The Head of State may be removed from office by the Legislative Assembly on the ground of misbehaviour or of infirmity of body or mind.

(3) No proposal for the removal from office of the Head of State under the provisions of clause (2) shall be effective unless:

- (a) notice of motion setting out the grounds for the proposed removal has been given in writing and signed by not less than one-fourth of the total number of Members of Parliament (including vacancies);
- (b) a period of at least 14 days has elapsed between that notice and the debate on the motion; and
- (c) the motion has been agreed to by not less than two-thirds of the total number of Members of Parliament (including vacancies).

(4) A resolution carried under the provisions of clause (3), shall have the effect of removing the Head of State from his or her office as from the date on which the resolution is so carried.

22. Salary of Head of State - The salary of the Head of State shall be determined by Act and shall be charged on the Treasury Fund, and that salary shall not be diminished during the period of office of the Head of State, unless as part of a general reduction

of salaries applied proportionately to all persons whose salaries are determined by Act.

23. Absence or incapacity - (1) While any vacancy exists in the office of Head of State or during the absence from Samoa of the Head of State, the Council of Deputies shall perform the functions of the office of Head of State.

(2) Whenever the Chief Justice declares in writing that he or she is satisfied by evidence, which shall include, where possible, the evidence of the wife and of at least 2 physicians, that the Head of State is by reason of infirmity of body or mind incapable for the time being of performing his or her functions as Head of State, or that the Chief Justice is satisfied by evidence that the Head of State is for some definite cause not available for the performance of those functions, then, until it is declared in like manner that the Head of State has so far recovered his or her health as to warrant his or her resumption of the functions of the office of Head of State or has become available for the performance thereof, as the case may be, those functions shall be performed by the Council of Deputies.

24. Special provisions as to absence or incapacity - While Tupua Tamasese Mea'ole and Malietoa Tanumafili II hold jointly the office of Head of State, the following provisions shall apply:

- (a) during any period for which one joint holder of office is absent from Samoa or is incapable of, or not available for, the performance of his or her functions as Head of State, the other joint holder shall perform those functions;
- (b) during any period for which neither of the joint holders is able to perform the functions of the office of Head of State, whether by reason of absence from Samoa, incapacity or unavailability, the Council of Deputies shall perform those functions;
- (c) for the purposes of this Article, the Chief Justice shall determine, under the provisions of clause (2) of Article 23, the period during which a joint holder is incapable of, or not available for, the

performance of his or her functions as Head of State.

25. Council of Deputies - (1) There shall be a Council of Deputies, which shall consist of one, 2 or 3 persons elected by the Legislative Assembly:

PROVIDED THAT, if the Assembly shall not have elected a Council of Deputies, the Chief Justice shall assume the functions of the Council.

(2) A person shall not be qualified to be elected as, or to continue to be, a member of the Council of Deputies unless the person is qualified to be appointed as Head of State under the provisions of Article 18.

(3) An election of members of the Council of Deputies shall be held as soon as possible after each election of a Head of State: **PROVIDED THAT**, while the provisions of Article 17 are in force, an election of members of the Council of Deputies shall be held as soon as possible after Independence Day and, thereafter, at intervals of not less than 4 years and 9 months and not more than 5 years and 3 months.

(4) If at any time the number of members of the Council of Deputies is less than 3, the Legislative Assembly may elect as a member of the Council a person qualified to be elected under the provisions of clause (2), and any person so elected shall hold office until the next ensuing election held under the provisions of clause (3).

(5) Subject to the provisions of clause (2), a member of the Council of Deputies shall be eligible for re-election.

(6) A member of the Council of Deputies may resign his or her office by writing under his or her hand addressed to the Prime Minister, who shall forthwith advise the Speaker of the Legislative Assembly of that resignation.

(7) The Legislative Assembly may, on a motion carried by not less than two-thirds of the total number of Members of Parliament (including vacancies), remove from office a member of the Council of Deputies on the ground of stated misbehaviour or of infirmity of body or mind.

(8) The salaries of members of the Council of Deputies shall be determined by Act and shall be charged on the Treasury Fund, but an Act may provide that no such salary shall be payable to

such a member for any period for which the member is a full-time salaried employee of the Government. The salaries of such members 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.

(9) A member of the Council of Deputies shall not be qualified to be elected as a Member of Parliament:

PROVIDED THAT the provisions of this clause shall not disqualify a member of the Council from being elected to the office of Head of State.

(10) The Council of Deputies shall determine which of its members shall, from time to time, preside over Council.

(11) Subject to the provisions of this Constitution, the Council of Deputies may regulate its procedure in such manner as it thinks fit.

26. Head of State to act on advice - (1) Except as otherwise provided in this Constitution, the Head of State in the performance of his or her functions shall act on the advice of Cabinet, the Prime Minister or the appropriate Minister, as the case may be.

(2) If Cabinet, the Prime Minister or an appropriate Minister tenders advice to the Head of State as to the performance of any function of the Head of State and, if the Head of State does not, within 7 days after the date on which the tendering of that advice comes to the notice of the Secretary to the Head of State, accept that advice or take some other action in relation thereto which the Head of State is entitled to take under the provisions of this Constitution or of any Act, the Head of State shall be deemed to have accepted that advice; and an instrument under the hand of the Secretary to Cabinet, acting on the instruction of the Prime Minister, to that effect shall operate as the performance of the function concerned in accordance with that advice.

27. Information for Head of State - It shall be the duty of the Prime Minister:

- (a) to arrange for the circulation to the Head of State of copies of the agenda and minutes of Cabinet and

*Constitution of the Independent
State of Samoa*

of all other papers laid before Cabinet at the time when they are circulated to Ministers; and

- (b) to furnish such information relating to the administration of the affairs of Samoa and proposals for legislation as the Head of State may call for.

28. Oath of office - The Head of State and each member of the Council of Deputies shall, before assuming the functions of his or her office, take and subscribe before the Chief Justice an oath in the form set out in the Third Schedule.

29. Public Seal - The Head of State shall keep and use the Public Seal of Samoa.

30. Secretary to Head of State - There shall be a Secretary to the Head of State.

**PART IV
EXECUTIVE**

31. Executive power - (1) The executive power of Samoa shall vest in the Head of State and shall be exercised by him or her under the provisions of this Constitution.

(2) Nothing in clause (1) shall prevent Parliament from conferring by Act functions on authorities other than the Head of State.

32. Cabinet - (1) There shall be a Cabinet of Ministers, who shall have the general direction and control of the executive government of Samoa and shall be collectively responsible therefore to Parliament.

(2) Cabinet shall be appointed as follows:

- (a) the Head of State shall appoint a Prime Minister to preside over Cabinet a Member of Parliament who commands the confidence of a majority of the Members of Parliament;
- (b) the Head of State shall, acting on the advice of the Prime Minister, appoint not fewer than eight nor

more than fourteen other Members of Parliament to be Ministers;

- (b.a) the Head of State shall, acting on the advice of the Prime Minister, appoint one of the Ministers appointed under sub-clause (b) to be Deputy Prime Minister;
- (c) if an appointment is to be made while the Legislative Assembly is dissolved, a person who was a Member of Parliament immediately before the Assembly was last dissolved may be appointed to be Prime Minister or a Minister;
- (d) appointments under the provisions of this clause shall be made by the Head of State by instrument under the Public Seal;
- (e) the Head of State shall, acting on the advice of the Prime Minister, appoint another Member or Members of Parliament to be a Minister or Ministers as soon as possible after the number of Ministers falls below the number appointed pursuant to sub-clause (b) of this clause by reason of the office of any Minister or Ministers becoming vacant, so that the number of Ministers (in addition to the Prime Minister) shall be restored to the number appointed pursuant to sub-clause (b) of this clause as soon as possible.

33. Vacation of office - (1) The appointment of the Prime Minister who is in office at the commencement of the first session of the Legislative Assembly following a dissolution thereof shall be terminated by the Head of State on the seventh day of that session if the Prime Minister has not sooner resigned.

(2) The appointment of the Prime Minister shall also be terminated by the Head of State:

- (a) if the Prime Minister ceases to be a Member of Parliament for any reason other than a dissolution of the Legislative Assembly; or
- (b) if the Legislative Assembly passes a motion in express words of no confidence in Cabinet or if Cabinet is defeated on any question or issue which the Prime

*Constitution of the Independent
State of Samoa*

Minister has declared to be a question or issue of confidence:

PROVIDED THAT, if after the passing of such a motion or after that defeat the Prime Minister so requests, the Head of State may dissolve the Legislative Assembly instead of terminating the appointment of the Prime Minister; or

- (c) if the Prime Minister resigns his or her office by writing under his or her hand addressed to the Head of State; or
 - (d) if the Prime Minister is absent from Samoa without written permission given by the Head of State, acting in his or her discretion.
- (3)** The office of any other Minister shall become vacant:
- (a) if the appointment of the Prime Minister has been terminated under the provisions of clause (1) or clause (2); or
 - (b) if the appointment of the Minister to that office is revoked by the Head of State, acting on the advice of the Prime Minister, by instrument under the Public Seal; or
 - (c) if the Minister ceases to be a Member of Parliament for any reason other than a dissolution of the Legislative Assembly; or
 - (d) if the Minister resigns his or her office by writing under his or her hand addressed to the Head of State; or
 - (e) if the Minister is absent from Samoa without written permission given by the Head of State, acting on the advice of the Prime Minister.

(4) Whenever, by reason of illness or of absence from Samoa with the written permission of the Head of State, the Prime Minister is temporarily prevented from performing, in Samoa, the functions of his or her office, the Head of State may, by instrument under the Public Seal, appoint the Deputy Prime Minister to perform those functions, or another Minister where this is not possible, until such time as the Prime Minister is capable of again performing them or has vacated his or her Office.

(5) The power conferred on the Head of State under the provisions of clause (4) shall be exercised by the Head of State,

acting in his or her discretion, if in his or her opinion it is impracticable to obtain the advice of the Prime Minister by reason of the illness or absence of the Prime Minister and, in any other case, shall be exercised by the Head of State, acting on the advice of the Prime Minister.

(6) The Head of State, acting on the advice of the Prime Minister, may by instrument under the Public Seal:

- (a) declare a Minister to be by reason of illness temporarily incapable of performing his or her functions as a Minister; or
- (b) suspend a Minister during the period of any investigation or inquiry into the conduct of that Minister.

(7) Any Minister in respect of whom action has been taken under the provisions of clause (6) shall not perform any of the functions of his or her office or sit in or otherwise take part in the proceedings of Cabinet until the Head of State, acting on the advice of the Prime Minister, has revoked the aforesaid instrument under the Public Seal.

34. Official oath - Every Minister shall, before assuming the functions of his or her office, take and subscribe before the Head of State an oath in the form set out in the Third Schedule.

35. Assignment of responsibilities to Ministers - (1) The Prime Minister may, by direction in writing under his or her hand:

- (a) charge any Minister with the responsibility for any department or subject; and
- (b) revoke or vary any direction given under the provisions of this clause.

(2) The Prime Minister may retain in his or her charge any department or subject.

36. Summoning of Cabinet - Cabinet shall be summoned only by the Prime Minister or, in his or her absence, by such Minister as the Prime Minister shall appoint in that behalf.

37. Cabinet procedure - (1) Subject to the provisions of this Constitution, Cabinet may regulate its procedure (including the fixing of a quorum) in such manner as it thinks fit.

(2) There shall be a Secretary to Cabinet.

(3) Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in the number of its members, and any proceedings of Cabinet shall be valid notwithstanding that some person who was not entitled to do so sat or voted in Cabinet or otherwise took part in the proceedings.

(4) It shall be the duty of the Prime Minister, if the Head of State so requires, to submit for the consideration of Cabinet any matter on which a decision has been taken by a Minister (including the Prime Minister) but which has not been considered by Cabinet.

(5) A decision of Cabinet shall be recorded in minutes which shall, under the hand of the Secretary to Cabinet, be communicated to the Secretary to the Head of State within 24 hours of the making of the decision.

(6) A decision of Cabinet shall not take effect except under the provisions of Article 38.

38. When decisions of Cabinet are to take effect - (1) A decision of Cabinet shall take effect:

- (a) on its approval by the Head of State, acting in his or her discretion; or
- (b) on the expiry of 4 days after the date of the decision, unless a meeting of the Executive Council is sooner held under the provisions of Article 40; or
- (c) if the issue involved in the decision is, in the opinion of a majority of Ministers present and voting at the meeting at which the decision is taken, of extreme urgency, on the expiry of one day after the date of the decision, unless a meeting of the Executive Council is sooner held under the provisions of Article 40; or
- (d) under the provisions of Article 40.

(2) For the purposes of sub-clauses (b) and (c) of clause (1), the date of a decision of Cabinet shall be the date on which the minutes in which the decision is recorded are communicated to

the Secretary to the Head of State under the provisions of clause (5) of Article 37.

(3) An instrument under the hand of the Secretary to Cabinet certifying that a decision of Cabinet has taken effect shall be conclusive evidence that that decision has taken effect.

39. Executive Council - (1) There shall be an Executive Council of Samoa, which shall consist of:

- (a) the Head of State;
- (b) the Prime Minister and Ministers holding office under the provisions of Articles 32 and 33.

(2) Subject to the provisions of this Constitution, the Executive Council may regulate its procedure (including the fixing of a quorum) in such manner as it thinks fit.

(3) The Secretary to Cabinet shall be Clerk of the Executive Council.

40. Consideration of Cabinet decisions by Executive Council - (1) The Head of State, acting in his or her discretion, or the Prime Minister may summon a meeting of the Executive Council to consider any decision recorded in the minutes of a Cabinet meeting.

(2) If at a meeting of the Executive Council thus summoned the Head of State supports the decision concerned, that decision shall take effect as a decision of Cabinet.

(3) If at a meeting of the Executive Council thus summoned the Head of State opposes the decision concerned or requests any amendment thereto, Cabinet shall thereupon be summoned under the provisions of Article 36 and requested to reconsider that decision.

(4) If Cabinet after that reconsideration reaffirms its original decision or accepts the amendment requested by the Head of State, the original decision or the decision as so amended, as the case may be, shall forthwith take effect as a decision of Cabinet.

(5) If Cabinet after that reconsideration adopts a decision which incorporates an amendment to its original decision, other than an amendment requested by the Head of State under the provisions of clause (3), the decision as so amended shall operate as a new decision of Cabinet to which the provisions of clauses (5) and (6) of Article 37 shall apply.

41. Attorney-General - (1) The Head of State, acting on the advice of the Prime Minister, shall appoint an Attorney General, who shall be a person qualified to be a Judge of the Supreme Court.

(2) The Attorney General shall advise on legal matters referred to him or her by the Head of State, Cabinet, the Prime Minister or a Minister and shall have power, exercisable in his discretion to institute, conduct or discontinue any proceedings for an offence alleged to have been committed.

(3) The Attorney General shall have a right of audience in, and shall take precedence over any other person appearing before, any Court or tribunal.

(4) The powers of the Attorney General may be exercised by the Attorney General in person or by officers subordinate to the Attorney General, acting under and in accordance with his or her general or special instructions.

(5) The Attorney General shall hold office for such term or terms and under such conditions as may be determined by the Head of State, acting on the advice of the Prime Minister.

PART V PARLIAMENT

42. Parliament - There shall be a Parliament of Samoa, which shall consist of the Head of State and the Legislative Assembly.

43. Power to make laws - Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of Samoa and laws having effect outside as well as within Samoa.

44. Members of the Legislative Assembly - (1) Subject to the provisions of this Article, the Legislative Assembly shall consist of one member elected for each of 51 electoral constituencies having names, and comprising of villages or sub-villages as are prescribed from time to time by Act.

(Note – clauses (1) and (3) commence on the day the Head of State dissolves the Legislative Assembly under Article 63(4) of the Constitution for the 2021 general elections as per Article 1(2) of the Constitution Amendment Act (No.3) 2019, No. 10)

(1A) Subject to this Article, women Members of the Legislative Assembly shall:

- (a) consist of a minimum of 10% of the Members of the Legislative Assembly specified under clause (1) which for the avoidance of doubt is presently 5; and
- (b) be elected pursuant to clause (1) or become additional Members pursuant to clause (1B), (1D) or (1E).

(1B) If, following any general election:

- (a) all members elected under clause (1) are men, the prescribed number of women candidates (if any) with the highest number of votes shall become additional Members; or
- (b) less than the prescribed number of women candidates are elected under clause (1), the remaining prescribed number of women candidates (if any) with the highest number of votes shall become additional Members for the purposes of clause (1A).

(1C) Clause (1B) does not apply if the prescribed number of women are all elected under clause (1).

(1D) If the seat of an additional Member becomes vacant, it shall, despite Article 48, be filled by the woman candidate (if any) who has the next highest number of votes at the last election or general election.

(1E) Subject to Article 48, if a seat under clause (1) held by a woman becomes vacant, to which a man is elected to fill that vacant seat, the woman candidate (if any) with the highest number of votes from that election or the last election or general election shall become the additional Member.

(1F) If, in the selection of the required number of women under clause (1B), (1D) or (1E), two (2) or more candidates have equal number of votes, the additional Member shall be selected by lot before the Electoral Commissioner with the presence of the candidates or their authorised representatives and at least two (2) police officers.

(1G) If a woman candidate becomes an additional Member of a constituency (irrespective of a woman candidate being elected to that constituency), no other woman candidate from the same constituency shall become an additional Member unless

there is no other woman candidate from any other constituency to make up the required prescribed number.

(2) *(repealed by the Constitution Amendment Act 2015, No.19).*

(3) Subject to the provisions of this Constitution, the mode of electing members of the Legislative Assembly, the terms and conditions of their membership, the qualifications of voters, and the manner in which the roll for each electoral constituency shall be established and kept shall be prescribed by law.

(4) Members of the Legislative Assembly (including additional Members) shall be known as Members of Parliament.

(5) In this Article, unless the context otherwise requires:

“Additional Member” means a woman who is a Member of Parliament by virtue of clause (1B), (1D), or (1E) for the purposes of clause (1A);

“Highest number of votes” means the percentage of the total valid votes in a constituency polled by a woman candidate;

“Prescribed number” means the minimum number of woman Members of Parliament specified under clause (1A).

(Note: Amendments consolidated in Article 44(1A) to (1G) and (5)) commence on polling day of the next general election (2016), as appointed by the Head of State under Article 64 of the Constitution, pursuant to section 1(3) of the Constitution Amendment Act 2013, No. 17).

45. Qualifications for membership - (1) A person shall be qualified to be elected as a Member of Parliament who:

(a) is a citizen of Samoa; and

(b) is not disqualified under the provisions of this Constitution or of any Act.

(2) If a person other than a person qualified under the provisions of clause (1) is elected as a Member of Parliament, the election of that person shall be void.

46. Tenure of office of members - (1) Every Member of Parliament shall cease to be a Member at the next dissolution of the Legislative Assembly after the Member has been elected or previously thereto if his or her seat becomes vacant under the provisions of clause (2).

(2) The seat of a Member of Parliament shall become vacant:

(a) upon his or her death; or

- (b) if the Member resigns his or her seat by writing under his or her hand addressed to the Speaker; or
 - (c) if the Member ceases to be a citizen of Samoa; or
 - (d) if the Member becomes disqualified under the provisions of this Constitution or of any Act.
- (3) Despite Articles 13 and 15, an Act may provide that the seat of a Member of Parliament becomes vacant during his or her term of office:
- (a) where in certain circumstances the Member -
 - (i) resigns or withdraws from or changes his or her political party;
 - (ii) joins a political party if he or she is not a member of the political party;
 - (b) where the Member holds himself or herself out to be a member or a representative of –
 - (i) a party or organisation that has political aims and is desirous of taking part in an election where such party or organisation is not registered as a political party under an act; or
 - (ii) a political party other than the political party of which he or she is a member.

47. Decisions on questions as to membership - All questions that may arise as to the right of any person to be or to remain a Member of Parliament shall be referred to and determined by the Supreme Court.

48. Filling vacancies - Whenever the seat of a Member of Parliament becomes vacant under the provisions of clause (2) of Article 46, the Speaker shall, by writing under his or her hand, report that vacancy to the Head of State, and the vacancy shall be filled by election in the manner provided by law.

49. Election of Speaker - (1) The Legislative Assembly shall, immediately when it first meets after a general election and as soon as possible after any vacancy occurs in the office of Speaker otherwise than by reason of a dissolution of the Assembly, elect a Member of Parliament to be Speaker of the Legislative Assembly.

(1A) As an exception to clause (1), the Member nominated, by the party that wins majority of all the seats in the Legislative Assembly after a general election, is taken to have been duly elected by the Legislative Assembly pursuant to clause (1) and shall be endorsed by the Legislative Assembly as Speaker.

(1B) For any vacancy under clause (1), the Member nominated, by the party or parties in Government, is taken to have been duly elected under clause (1) and shall be endorsed by the Legislative Assembly as Speaker.

(2) The Speaker, upon being elected and before assuming the functions of his or her office, shall take and subscribe before the Head of State an Oath of Allegiance in the form set out in the Third Schedule.

(3) The Speaker may at any time resign his or her office by writing under his or her hand addressed to the Clerk of the Legislative Assembly and shall vacate his or her office:

- (a) if the Speaker ceases to be a Member of Parliament;
- or
- (b) if the Speaker is appointed to be a Minister.

50. The Deputy Speaker - (1) The Legislative Assembly may elect a Member of Parliament, not being a Minister, to be Deputy Speaker.

(1A) As an exception to clause (1), the Member nominated, by the party that wins majority of all the seats in the Legislative Assembly after a general election, is taken to have been duly elected by the Legislative Assembly pursuant to clause (1) and shall be endorsed by the Legislative Assembly as Deputy Speaker.

(1B) For any vacancy in the office of Deputy Speaker, the Member nominated, by the party or parties in Government, is taken to have been duly elected under clause (1) and shall be endorsed by the Legislative Assembly as Deputy Speaker.”.

(2) The Deputy Speaker may at any time resign his or her office by writing under his or her hand addressed to the Clerk of the Legislative Assembly and shall vacate his or her office, if the Deputy Speaker:

- (a) ceases to be a Member of Parliament; or
- (b) is appointed to be a Minister; or
- (c) is elected to be Speaker.

(3) Subject to the provisions of this Constitution, the functions conferred under the provisions of this Constitution upon the Speaker shall, if there is no person holding the office of Speaker or if the Speaker is absent from Samoa or is otherwise unable to perform those functions, be performed by the Deputy Speaker.

51. Clerk of the Legislative Assembly - There shall be a Clerk of the Legislative Assembly.

52. Meetings of the Legislative Assembly - The Legislative Assembly shall meet at such times and at such places as the Head of State appoints from time to time in that behalf by notice published in the Samoa Gazette and recorded in the *Savali*:

PROVIDED THAT the Assembly shall meet not later than 45 days after the holding of a general election and at least once in every year thereafter, so that a period of 12 months shall not intervene between the last sitting of the Assembly in one session and the first sitting thereof in the next session.

53. Standing Orders - Subject to the provisions of this Constitution, the Legislative Assembly may make, amend and repeal Standing Orders regulating its procedure.

54. Languages - (1) All debates and discussions in the Legislative Assembly shall be conducted in the Samoan language and the English language.

(2) The Minutes and the debates of the Legislative Assembly, every bill introduced therein, every paper presented thereto, and all minutes of proceedings, minutes of evidence, and reports of committees of the Assembly shall be in the Samoan language and the English language.

55. Presiding over Legislative Assembly - The Speaker, or in his or her absence the Deputy Speaker, shall preside over sittings of the Legislative Assembly. In the absence from any sitting of both the Speaker and the Deputy Speaker, the Members of Parliament present shall choose one of their number (not being a Minister) to preside over that sitting.

56. Proceedings are valid - The Legislative Assembly shall not be disqualified for the transaction of business by reason of any vacancy among the Members of Parliament, including any vacancy not filled at a general election, and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in the proceedings.

57. Quorum - No business shall be transacted at any sitting of the Legislative Assembly if objection is taken by any Member of Parliament present that the number of Members present is (besides the Speaker or other Member presiding) fewer than one-half of the total number of Members of Parliament (excluding vacancies).

58. Voting - (1) Except as otherwise provided in this Constitution, every question before the Legislative Assembly shall be decided by a majority of the votes of the Members of Parliament present.

(2) The Speaker, or the Deputy Speaker or any other Member of Parliament while presiding over a sitting of the Legislative Assembly in the absence of the Speaker, shall not have a deliberative vote but, in the case of an equality of votes, shall have a casting vote.

59. Introduction of bills, etc., into Legislative Assembly - Subject to the provisions of this Part and of the Standing Orders of the Legislative Assembly, any Member of Parliament may introduce any bill or propose any motion for debate in the Assembly or present any petition to the Assembly, and the same shall be considered and disposed of under the provisions of the Standing Orders:

PROVIDED THAT, except upon the recommendation or with the consent of the Head of State, the Assembly shall not proceed upon any bill which, in the opinion of the Speaker, the Deputy Speaker or other Member of Parliament presiding, would dispose of or charge the Treasury Fund or any other public fund or account, or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeal any tax, rate or duty.

60. Bills assented to become Acts of Parliament - (1) No bill shall become a law until the Head of State has given his or her assent thereto.

(2) Whenever a bill which has been passed by the Legislative Assembly is presented to the Head of State for his or her assent, the Head of State shall, acting on the advice of the Prime Minister, declare that he or she assents to the bill or that he or she refuses his or her assent to the bill.

(3) A law assented to by the Head of State as herein provided shall be known as an Act of Parliament and shall come into force either on the day on which it is assented to, or on any date (whether earlier or later than the date on which it is assented to) specified in that behalf in the Act.

61. Oath of allegiance - Except for the purpose of enabling this Article to be complied with and for the election of a Speaker, no Member of Parliament shall sit or vote in the Legislative Assembly until the Member shall have taken and subscribed before the Assembly an Oath of Allegiance in the form set out in the Third Schedule.

62. Privileges of Legislative Assembly - The privileges, immunities and powers of the Legislative Assembly, of the committees thereof and of Members of Parliament may be determined by Act:

PROVIDED THAT no such privilege or power may extend to the imposition of a fine or to committal to prison for contempt or otherwise, unless provision is made by Act for the trial and punishment of the person concerned by the Supreme Court.

(See the Legislative Assembly Powers and Privileges Ordinance 1960.)

63. Prorogation and dissolution of Legislative Assembly - (1) The Head of State may at any time, by notice published in the Samoa Gazette, prorogue the Legislative Assembly.

(2) If, at any time, the office of Prime Minister is vacant, the Head of State shall, by notice published in the Samoa Gazette, dissolve the Legislative Assembly as soon as the Head of State is satisfied, acting in his or her discretion, that a reasonable period

has elapsed since that office was last vacated and that there is no Member of Parliament likely to command the confidence of a majority of the Members.

(3) The Head of State may at any time, by notice published in the Samoa Gazette, dissolve the Legislative Assembly, if the Head of State is advised by the Prime Minister to do so, but shall not be obliged to act in this respect in accordance with the advice of the Prime Minister unless the Head of State is satisfied, acting in his or her discretion, that, in tendering that advice, the Prime Minister commands the confidence of a majority of the Members of Parliament.

(4) The Head of State shall dissolve the Legislative Assembly at the expiry of 5 years from the date of the last preceding general election, if it has not been sooner dissolved.

64. General elections - There shall be a general election of the Legislative Assembly at such time within 3 months after every dissolution of the Assembly as the Head of State appoints by notice in the Samoa Gazette.

PART VI JUDICIARY

Division 1 - Supreme Court

65. Establishment of the Supreme Court – There shall be a Supreme Court of Samoa which, is a superior Court of record and shall consist of a Chief Justice, and such number of other Judges as may be determined by the Judicial Service Commission.

66. Constitution of the Supreme Court - (1) The Chief Justice of the Supreme Court shall be appointed by the Head of State, acting on the advice of the Prime Minister.

(2) A person shall not be qualified for appointment as a Judge of the Supreme Court unless the person:

- (a) possesses such qualifications as the Head of State, acting on the advice of the Judicial Service Commission, may prescribe; and
- (b) has been in practice as a barrister in Samoa, or in an approved country, or partly in the one and

partly in the other, for a period of, or periods amounting in the aggregate to, not less than 10 years.

(3) In computing, for the purposes of sub-clause (b) of clause (2), the period or periods during which any person has been in practice as a barrister, any period or periods during which the person has held judicial office in a Court of superior or subordinate jurisdiction in Samoa or an approved country shall be included.

(4) For the purposes of clause (2) of this Article, the Head of State, acting on the advice of the Judicial Service Commission, may designate as an approved country any country which, in the opinion of the Commission, has a legal system similar to that existing in Samoa.

67. Tenure, suspension and removal of office- (1) Except in the case of an appointment made under the provisions of clause (2), a Judge of the Supreme Court shall hold office until the Judge reaches the age of 68 years:

PROVIDED THAT the Head of State, acting (in the case of the Chief Justice) on the advice of the Prime Minister or (in the case of any other Judge of the Supreme Court) on the advice of the Judicial Service Commission, may extend the period of office of a Judge who has reached the age of 68 years.

(2) A person of any age who is not a citizen of Samoa and who is qualified for appointment under the provisions of clause (2)(d) of Article 73 may be appointed to hold office as a Judge of the Supreme Court for a term of years.

(3) Nothing done by a Judge of the Supreme Court in the performance of his or her functions shall be deemed to be invalid by reason only that the Judge has reached the age at which he or she is required by this Article to retire or that his or her term of office has expired, as the case may be.

(4) The Chief Justice or a Judge of the Supreme Court may resign from his or her office in writing addressed to the Head of State.

(5) The Head of State may, acting on the advice of the Prime Minister, suspend at any time the Chief Justice from his or her office when the Legislative Assembly is not meeting, and such suspension continues in force until the end of the next ensuing session and no longer.

(6) The Chief Justice shall not be removed from office, except by the Head of State on an address of the Legislative Assembly carried by not less than two-thirds of the total number of Members of Parliament (including vacancies), praying for his or her removal from office on the grounds of stated misbehaviour or infirmity of the body or mind, or as prescribed by Act.

(7) The conditions for tenure, suspension and removal of a Judge of the Supreme Court from office is provided for in Article 79.

68. Senior Judge of the Supreme Court - (1) The Head of State acting on the advice of the Chief Justice, may appoint a Judge of the Supreme Court as a Senior Judge of the Supreme Court.

(2) The terms and conditions of tenure of office, suspension and removal of a Senior Judge of the Supreme Court is provided for in Article 79.

(3) Where any vacancy exists in the office of the Chief Justice, or during any absence from Samoa of the Chief Justice due to illness or any other reason, the Head of State acting on the advice of the Prime Minister, may authorise the Senior Judge of the Supreme Court, to act and perform the functions of the office of Chief Justice, until the Chief Justice resumes his or her functions.

69. Acting Judge of the Supreme Court – (1) If the office of any Judge of the Supreme Court (other than the Chief Justice) is vacant or if any such Judge is unable to perform the functions of his or her office, the Head of State, acting on the advice of the Judicial Service Commission, may appoint a person qualified under clause (2) of Article 66 to be temporarily a Judge of the Supreme Court:

PROVIDED THAT a person may be so appointed notwithstanding that the person has attained the age of 68 years.

(2) A person appointed under the provisions of clause (1) to be temporarily a Judge of the Supreme Court shall hold office for the period of his or her appointment or, if no such period is specified, until his or her appointment is revoked by the Head of State, acting on the advice of the Judicial Service Commission:

PROVIDED THAT the person may at any time resign his or her office by writing under his or her hand addressed to the Head of State.

70. Jurisdiction of the Supreme Court - (1) Except for Part IX Land and Titles Court and the laws administered thereunder, the Supreme Court shall:

- (a) have such original, appellate and, revisional jurisdiction; and
- (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws of Samoa.

(2) Except for Part IX Land and Titles Court and without prejudice to any appellate or revisional jurisdiction of the Supreme Court, where in any proceedings before another Court (except the Court of Appeal) a question arises as to the interpretation or effect of any provision of this Constitution, the Supreme Court may, on the application of any party to the proceedings, determine that question and either dispose of the case or remit it to that other Court to be disposed of in accordance with the determination.

(3) Except for Part IX Land and Titles Court, the Head of State, acting on the advice of the Prime Minister, may refer to the Supreme Court for its opinion any question as to the interpretation or effect of any provision of this Constitution which has arisen or appears likely to arise, and the Court shall pronounce its opinion on any question so referred to it.

71. Judicial Guidance - Subject to the provisions of this Constitution, customs may be taken into account in all courts under this Part.

72. Powers of Judges of the Supreme Court - Each Judge of the Supreme Court or any two (2) or more Judges may, in any part of Samoa and at any time or place, exercise all the powers of the Supreme Court.

73. Establishment and constitution of Court of Appeal -

(1) There shall be a Court of Appeal of Samoa, which for this Part, shall be a superior Court of record.

(2) Subject to the provisions of this Part, the Judges of the Court of Appeal shall be:

- (a) The Chief Justice of Samoa;
- (b) Judges of the Supreme Court of Samoa;
- (c) Retired Judge of the Supreme Court of Samoa; and
- (d) such persons possessing similar qualifications as those persons under clause (2) of Article 66, as may be appointed by the Head of State from time to time, acting on the advice of the Judicial Service Commission.

(3) Judges of the Court of Appeal shall take seniority according to the respective dates of their first appointment as Judges of a superior Court in Samoa or in any approved country.

(4) The Chief Justice, and in his absence, the most senior Judge of the Court of Appeal shall be President of the Court of Appeal, but, in his or her absence, the senior Judge of the Court present at the appeal or, if the Judges so present are of the same seniority, a Judge designated by the Chief Justice shall preside.

(5) An appointment under the provisions of sub-clause (c) and (d) of clause (2) shall be for a period of time or for the trial or hearing of particular causes or matters, as may be specified in the instrument of appointment.

74. Number of Judges - (1) Any three (3) Judges of the Court of Appeal may exercise all the powers of the Court:

PROVIDED THAT:

- (a) for every sitting of the Court of Appeal, the majority of Judges shall be retired Supreme Court Judges or Supreme Court Judges; and
- (b) in the interest of justice, one of the three (3) Court of Appeal Judges may be an overseas non Samoan Court of Appeal Judge appointed under sub-clause (2)(c) of Article 74; and
- (c) the Court may have its judgment delivered by any one of its members, and if there is no such

member then through the Registrar of the Court of Appeal.

(2) The Judgment of the Court of Appeal shall be in accordance with the opinion of the majority of the Judges present.

(3) A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by the Judge or by a Court on which the Judge sat as a member.

(4) The decision of the Court of Appeal on any appeal from the Supreme Court shall be final.

(5) Any two (2) Judges of the Court may exercise all the powers of the Court of Appeal on the certificate of the President of the Court that it is in the interests of justice that they should do so.

75. Jurisdiction of Court of Appeal - (1) Except for Part IX Land and Titles Court and subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to hear and determine:

- (a) such appeals including proceedings removed by order of the Supreme Court to the Court of Appeal; and
- (b) all appeals from any judgment, decree, or order of the Supreme Court whether in its civil or criminal jurisdiction, under an Act; and
- (c) an appeal from any decision of the Supreme Court in any proceedings under the provision of Article 4.

(2) Except for Part IX Land and Titles Court, an appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceeding, if the Supreme Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution; and:

- (a) where such a certificate is given or such leave granted, any party in the case may appeal to the Court of Appeal on the ground that any such question has been wrongly decided and, with the leave of that Court, on any other ground; or
- (b) where the Supreme Court has refused to give such a certificate, the Court of Appeal may, if it is satisfied that the case involves a substantial

*Constitution of the Independent
State of Samoa*

question of law as to the interpretation or effect of any provision of this Constitution, grant special leave to appeal from that decision.

76. Powers of the Court of Appeal - On any appeal from the Supreme Court, the Court of Appeal may:

- (a) affirm, reverse, or vary the judgment appealed from; or
- (b) order a new trial; or
- (c) dismiss the appeal; or
- (d) make any such order with respect to the appeal as the Court thinks fit; and
- (e) award such costs as it thinks fit.

77. Definition of “decision”- In Articles 74, 75 and 119, “decision” includes judgment, decree, order, writ, declaration, conviction, sentence, opinion or other determination.

Division 3 - Subordinate Courts

78. Subordinate Courts - There shall be such subordinate Courts possessing such jurisdiction and powers as may be provided by Act.

Division 4 - Judicial Service Commission

79. Judicial Service Commission – (1) There shall be a Judicial Service Commission consisting of:

- (a) the Chief Justice, as Chairperson;
- (b) the Attorney General;
- (c) a member of the public appointed by the Minister of Justice;
- (d) the Ombudsman (*Komesina o Sulufaiga*);
- (e) a retired Judge of the Supreme Court appointed by the Head of State, acting on the advice of Cabinet and consultations with the Chief Justice; and
- (f) the Registrar of the Supreme Court as the secretary of the Commission who shall have no voting rights.

(2) No business shall be transacted by the Judicial Service Commission unless any three (3) members appointed under clause (1)(a)-(e) are present, and all questions proposed for decision by the Commission shall be decided by a majority of the votes of those members.

(3) A meeting of the Judicial Service Commission may be called by three (3) members except the Registrar.

(4) The Head of State acting on the advice of the Judicial Service Commission and focusing on standards within the Act to provide for conditions of tenure, suspension and removal of office from:

- (a) Judge of the Supreme Court as provided for in Article 67(7); and
- (b) the Senior Judge of the Supreme Court as provided for in Article 68(2); and
- (c) a Judge of the Subordinate Court.

80. Oath of office - (1) The Chief Justice, Senior Supreme Court Judge and every Judge of the Supreme Court shall, before assuming the functions of his or her office take and subscribe before the Head of State an oath in the form set out in the Third Schedule.

(2) A person appointed as a Judge of the Court of Appeal shall, on first appointment, take and subscribe before the Head of State an oath in the form set out in the Third Schedule.

81. Salaries and benefits - The salaries, allowances or any other benefits for the Chief Justice and Judges of the Supreme Court are expenditures provided by law and shall be paid out of moneys appropriated by the Legislative Assembly, as provided by Act.

PART VIA

OMBUDSMAN (KOMESINA O SULUFAIGA)

82A. Ombudsman - (1) There is to be an Ombudsman (*Komesina o Sulufaiga*) appointed by the Head of State acting on the recommendation of the Legislative Assembly.

(2) The Ombudsman is to be appointed pursuant to the selection and appointment criteria and other terms and conditions

provided by Act.

(3) The Ombudsman:

- (a) is to be appointed for 6 years; and
- (b) is eligible for re-appointment; and
- (c) on expiry of the term, continues in office until re-appointed or a successor assumes the function of the office.

(4) The salary, allowances and other benefits of the Ombudsman:

- (a) are to be determined by Act; and
- (b) are to be charged on the Treasury Fund, without further appropriation than this subclause; and
- (c) are not to be reduced during the term of office of the Ombudsman, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

(5) The Ombudsman may be removed from office pursuant to the grounds and procedures provided by Act.

82B. Functions of Ombudsman - The functions of the Ombudsman are:

- (a) to carry out the functions relating to promotion of good governance in public administration provided by Act; and
- (b) to carry out the functions relating to human rights provided by Act; and
- (c) to carry out any other functions provided by Act.

**PART VII
PUBLIC SERVICE**

83. Interpretation - The "Public Service" means the service of Samoa; but does not include service remunerated by way of fees or commission only, honorary service, or service in any of the following capacities, namely as:

- (a) Head of State; or
- (b) a member of the Council of Deputies; or
- (c) Prime Minister or a Minister; or
- (d) Speaker or Deputy Speaker; or
- (e) a Member of Parliament; or

- (f) a Judge of the Supreme Court or any other judicial officer; or
- (g) Attorney-General, and officers and employees of the Attorney-General, whose office shall be called the Office of the Attorney-General; or
- (h) Controller and Auditor General, and other officers and employees of the Audit Office specified under Article 97; or
- (i) a member of the Public Service Commission who is not an employee of the Public Service at the time of his or her appointment to be a member of the Public Service Commission; or
- (j) an officer of police or an officer of prisons; or
- (k) a member of any uniformed branch of any defense force; or
- (l) a sui o le nuu; or
- (m) the Clerk of the Legislative Assembly, and the other officers and employees of the Legislative Assembly.

84. Public Service Commission - (1) There shall be a Public Service Commission of Samoa, which shall consist of not more than 3 persons appointed by the Head of State, acting on the advice of the Prime Minister.

(2) The Head of State, acting on the advice of the Prime Minister, shall appoint one of the members of the Public Service Commission to be Chairman.

(3) No person shall be appointed to be or shall remain a member of the Public Service Commission, if the person:

- (a) is not or ceases to be a citizen of Samoa; or
- (b) is or becomes a Member of Parliament.

(4) No member of the Public Service Commission shall hold concurrently any other office in the Public Service.

(5) The powers of the Public Service Commission shall not be affected by any vacancy in the number of its members, and any proceedings of the Commission shall be valid notwithstanding that some person who was not entitled to do so took part in those proceedings.

85. Term of office - (1) A member of the Public Service Commission shall be appointed to hold office for a term of not more than 3 years but shall be eligible for reappointment.

(2) A member of the Public Service Commission may at any time resign his or her office by writing under his or her hand addressed to the Prime Minister but shall not be removed from office except on the like grounds and in the like manner as a Judge of the Supreme Court.

(3) The Head of State, acting on the advice of the Prime Minister, may at any time when the Legislative Assembly is not meeting suspend a member of the Public Service Commission from his or her office, and such suspension, unless previously revoked, shall continue in force until the end of the next ensuing session and no longer.

86. Salaries - The salaries of members of the Public Service Commission shall be determined by the Head of State, acting on the advice of the Prime Minister.

87. Functions of the Commission - (1) The Public Service Commission shall –

(a) be responsible for –

- (i) human resource planning
- (ii) human resource management policy; and
- (iii) human resources monitoring and evaluation,
for the Public Service; and

(b) have such other functions as may be provided by Act.

(2) In the performance of its functions, the Public Service Commission shall have regard to the general policy of Cabinet relating to the Public Service, and shall give effect to any decision of Cabinet defining that policy conveyed to the Commission in writing by the Prime Minister.

(3) An Act of Parliament may designate as a special post any post of head of department or any post of a corresponding grade; and the Head of State, acting on the advice of Cabinet after Cabinet has consulted the Public Service Commission, shall be responsible, in respect of any post so designated, for appointments, gradings, salaries, promotions, transfers, retirements, terminations of appointments, dismissals and discipline.

88. Procedure and Annual Report - (1) Subject to the provisions of this Constitution and of any law, the Public Service Commission may:

- (a) regulate its procedure (including the fixing of a quorum) in such manner as it thinks fit; and
- (b) delegate any of its functions to any of its members or to any person or persons.

(2) The Commission shall make an annual report on its activities to the Head of State, who shall cause a copy of that report to be laid before the Legislative Assembly.

89. Public Service Board of Appeal - (1) There shall be a Public Service Board of Appeal, which shall consist of:

- (a) the Chief Justice or –
 - (i) a judicial officer nominated by the Chief Justice; or
 - (ii) a barrister and solicitor of the Supreme Court nominated by the Judicial and Legal Services Commission.
- (b) one person appointed by, and holding office at the pleasure of the Head of State, acting on the advice of the Prime Minister;
- (c) one person, being an officer of the Public Service, elected by the officers of the Public Service and holding office for a term not exceeding 3 years.

(2) The Chief Justice or the person nominated by the Chief Justice shall be Chairman of the Public Service Board of Appeal.

(3) An Act of Parliament may:

- (a) prescribe the manner of election of the person to be elected under the provisions of sub-clause (c) of clause (1);
- (b) provide for the appointment of deputies to act for members of the Public Service Board of Appeal appointed under the provisions of sub-clauses (b) and (c) of clause (1);
- (c) prescribe the jurisdiction of the Board of Appeal to hear and determine appeals from decisions about human resource management matters in the Public Service.

**PART VIII
FINANCE**

90. Public funds - There shall be a Treasury Fund and such other public funds or accounts as may be provided by Act.

91. Restriction on taxation - No taxation shall be imposed except by Parliament.

92. Public revenue - All taxes and other revenues and money raised or received by Samoa shall be paid into the Treasury Fund unless required or permitted by Act to be paid into any other public fund or account.

93. Payment out of public funds - No money shall be issued out of the Treasury Fund or any other public fund or account except in pursuance of a warrant under the hand of the Head of State.

94. Appropriation of expenditure - (1) The Minister responsible for finance shall, in respect of every financial year, cause to be laid before the Legislative Assembly a statement of the estimated receipts and expenditure for that year, and, unless Parliament in respect of any year otherwise provides, that statement shall be so laid before the commencement of that year.

(2) The proposals for all expenditure contained in the estimates (other than statutory expenditure) shall be submitted to the vote of the Legislative Assembly by means of an Appropriation Bill.

(3) If, in respect of any financial year, it is found:

- (a) that any expenditure is incurred or is likely to be incurred upon any service which is in excess of the sum provided for that service by the Appropriation Act relating to that year; or
- (b) that any expenditure (other than statutory expenditure) is incurred or is likely to be incurred upon any service not provided for by the Appropriation Act relating to that year; the Minister responsible for finance shall cause to be

laid before the Legislative Assembly supplementary estimates in respect of that expenditure, and the proposals for expenditure therein contained shall be submitted to the vote of the Assembly by means of a Supplementary Appropriation Bill.

(4) Statutory expenditure, which shall not be submitted to the vote of the Legislative Assembly under the provisions of this Article, means:

- (a) the expenditure charged on the Treasury Fund under the provisions of Articles 22, 25, 81 and 98; and
- (b) such other expenditure as may by Act be charged upon the Treasury Fund or any other public fund or account and in such Act be expressly stated to be statutory expenditure.

(5) The Legislative Assembly may approve or refuse its approval to any proposal for expenditure contained in an Appropriation or Supplementary Appropriation Bill, but may not increase the amount or alter the destination of any proposed expenditure.

95. Expenditure in anticipation of appropriation - If an Appropriation Bill has not become law by the first day of the financial year to which it relates, the Minister responsible for finance may, with the prior approval of Cabinet, authorise such expenditure (not otherwise authorised by Act) as the Minister may consider essential for the continuance of any services, until an Appropriation Bill becomes law:

PROVIDED THAT the expenditure so authorized shall not exceed an amount equal to one-fourth of the relevant vote approved in the Appropriation Act for the preceding year.

96. Unforeseen expenditure – A vote for unforeseen expenditure not exceeding 3% of the total Appropriation Bill shall be included in the annual estimates laid before the Legislative Assembly. Where, during the period between the passing of the Appropriation Act for any financial year and the end of the year, it is desirable that money should be expended in excess of or without appropriation of the Legislative Assembly, Cabinet or, to the extent that Cabinet so authorizes, the Minister

responsible for Finance may authorise the transfer of funds to one or more nominated votes from the unforeseen expenditure vote: **PROVIDED THAT** the amount is available to be transferred from the unforeseen expenditure vote **AND** the total amount of all sums appropriated by the Appropriation Act for that year.”

97. Controller and Auditor General – (1) There shall be a Controller and Auditor General:

- (a) who shall be appointed by the Head of State, acting on the advice of the Prime Minister; and
- (b) whose office shall be called the Audit Office.

(2) Before advising the Head of State, the Prime Minister shall consult the parliamentary committee responsible for Officers of Parliament on the proposed appointment of the Controller and Auditor General.

(3) No person shall be appointed as Controller and Auditor General unless the person satisfies the eligibility criteria provided by Act.

(4) A person shall not be appointed as Controller and Auditor General if the person has previously been appointed as Controller and Auditor General or as Controller and Chief Auditor under this Part.

(5) Subject to Article 97A(4), the Controller and Auditor General is an independent officer of Parliament.

(6) There are no implied functions, powers, rights, immunities or obligations of the Controller and Auditor General arising from the Controller and Auditor General’s status as an independent officer of Parliament.

(7) There are no implied powers of the Legislative Assembly arising from the Controller and Auditor General’s status as an independent officer of Parliament and the powers of the Legislative Assembly to act in respect of the Controller and Auditor General are only those provided under or by this Part or Act.

(8) Except as provided by Act, the Controller and Auditor General is not subject to the Act regulating the Public Service.

(9) Other terms of the appointment of the Controller and Auditor General and the establishment and composition and functions of the Audit Office are provided by Act.

97A. Responsibilities of Controller and Auditor General

– (1) The Controller and Auditor General is responsible for auditing public assets, liabilities and equity including public money.

(2) Without limiting clause (1), the Controller and Auditor General shall audit the Treasury Fund, other public funds and public accounts as may be established by law, funds and accounts of all Ministries and other Government and State Offices (including departments of Ministries, and overseas missions), and funds and accounts of other public, statutory authorities, local authorities and other bodies as may be provided by Act.

(3) For the purpose of exercising functions under this Part, the Controller and Auditor General has other functions, powers, immunities and independence provided by Act.

(4) Except as provided by Act, the Controller and Auditor General has complete discretion in carrying out his or her functions, duties and powers and is not subject to any direction from any person as to:

- (a) whether or not to conduct a particular audit; or
- (b) the way in which the Controller and Auditor General is to conduct a particular audit; or
- (c) the priority to be given to any particular audit or other matter.

98. Duty of Controller and Auditor General to report to Legislative Assembly – (1) Subject to clause (2), the Controller and Auditor General shall:

- (a) report, at least once annually and at such other times as may be provided by Act, to the Legislative Assembly -
 - (i) on the results of all audits conducted under this Part or by Act; and
 - (ii) draw attention to any irregularities in the accounts, transactions, processes, systems or operations of the Treasury Fund or of a public fund, public account, Ministry, office or body audited by the Controller and Auditor General under Article 97A(2); and

- (b) report generally and at least once annually to the Legislative Assembly on the performance of his or her functions, duties and powers under this Part or by Act and the operations of the Audit Office.
- (2) A report under clause (1) shall be presented by the Speaker to the Legislative Assembly.

99. Term of office – (1) Subject to this Part, a person appointed as Controller and Auditor General holds office for a term of 12 years.

(2) If the term for which a person who has been appointed as Controller and Auditor General expires, that person continues to hold office until a successor to that person is appointed unless removed or suspended during the period of expiry.

99A. Conditions of service – (1) The Controller and Auditor General is entitled to salary, allowances and other benefits provided by Act.

(2) The salary of the Controller and Auditor General shall not be reduced during the period of office of the Controller and Auditor General, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

(3) The allowances and other benefits of the Controller and Auditor General's service are not to be altered in any way which reduces any allowance and benefit conferred on the Controller and Auditor General arising from the appointment.

(4) The salary, allowances and other benefits under this Part shall be charged on the Treasury Fund.

99B. Other employment – Except as provided by Act or authorised by resolution of the Legislative Assembly, the Controller and Auditor General shall not:

- (a) hold any appointment in the Public Service (including in any of the other capacities under Article 83), other than that of Controller and Auditor General; or
- (b) be a member of any authority or body mentioned under Article 97A(2); or

- (c) engage in any paid employment outside the functions of his or her office.

99C. Rights preserved – (1) A person who was an officer or employee in the Public Service and who is appointed as Controller and Auditor General is entitled to retain all existing and accruing rights as if the service of that person as Controller and Auditor General were a continuation of service as an officer or employee in the Public Service.

(2) During the term of appointment as Controller and Auditor General, the Controller and Auditor General is entitled to retain existing and accruing rights as if the Controller and Auditor General had continued in service as an officer or employee in the Public Service.

(3) If a person ceases to hold office as Controller and Auditor General and becomes an officer in another capacity or an employee in the Public Service, the service of that person as Controller and Auditor General is to be regarded as service in that other capacity or as an employee in the Public Service for the purpose of determining accruing rights.

99D. Absence of Controller and Auditor General – (1) If the Controller and Auditor General is unable to carry out his or her functions, duties and powers under this Constitution or any other Act or law because of illness, absence on leave or from Samoa or any other reason, the person who is appointed by an Act as the Assistant Auditor must carry out those functions, duties and powers.

(2) If the Assistant Auditor is unable to carry out the functions, duties and powers of the office of the Controller under clause (1) because of illness, absence on leave or from Samoa or any other reason, the Controller must in writing appoint a senior officer of the Audit Office to carry out those functions, duties and powers.

99E. Resignation of Controller and Auditor General - The Controller and Auditor General may resign from office by giving the Head of State a signed letter of resignation.

99F. Removal from office of Controller and Auditor

General – (1) The Head of State may, acting on the advice of the Prime Minister given pursuant to clause (3), remove the Controller and Auditor General only in accordance with this Article and only under any of the grounds set out under clause (2).

(2) The Controller and Auditor General may only be removed if he or she:

- (a) has been convicted of an offence involving dishonesty punishable by imprisonment for 12 months or more, or of an offence under an Act involving evasion of tax;
- (b) has become bankrupt or commits an act of bankruptcy under an Act regulating bankruptcy;
- (c) has become, by reason of physical or mental disability, incapable of performing the functions of the office of Controller and Auditor General as provided by this Part or by Act;
- (d) has, without any lawful or reasonable justification, failed to discharge any function of the Controller and Auditor General under or by this Part or by Act;
- (e) has engaged in any conduct which places the Controller and Auditor General in conflict with the functions of the office of Controller and Auditor General.

(3) Before advising the Head of State under clause (1), the Prime Minister shall:

- (a) consult the parliamentary committee responsible for Officers of Parliament on the proposed removal of the Controller and Auditor General; and
- (b) lay before the Legislative Assembly a full statement of the grounds for the removal of the Controller and Auditor General for a resolution of the Legislative Assembly to be passed by at least two-thirds of the total number of Members of Parliament (excluding any vacancy).

(4) The Controller and Auditor General is deemed to be suspended from office from the date the Prime Minister consults the parliamentary committee responsible for Officers of

Parliament under clause (3)(a), until a final decision for removal is made.

**PART IX
LAND AND TITLES**

100. Matai titles - A Matai title shall be held in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.

101. Land in Samoa - (1) All land in Samoa is customary land, freehold land or public land.

(2) Customary land means land held from Samoa in accordance with Samoan custom and usage and with the law relating to Samoan custom and usage.

(3) Freehold land means land held from Samoa for an estate in fee simple.

(4) Public land means land vested in Samoa being land that is free from customary title and from any estate in fee simple.

102. No alienation of customary land - It shall not be lawful or competent for any person to make any alienation or disposition of customary land or of any interest in customary land, whether by way of sale, mortgage or otherwise howsoever, nor shall customary land or any interest therein be capable of being taken in execution or be assets for the payment of the debts of any person on his or her decease or insolvency:

PROVIDED THAT an Act of Parliament may authorise:

- (a) the granting of a lease or licence of any customary land or of any interest therein;
- (b) the taking of any customary land or any interest therein for public purposes.

103. Land below high-water mark – (1) Subject to the provision of any Act, all land lying below the line of high-water mark shall be public land.

(2) For the purposes of this Article, the term “**high-water mark**” means the line of median high tide between the spring and neap tides.

LAND AND TITLES COURT

104. Customary Land and Titles Protection - (1) There shall be a Land and Titles Court comprising of:

- (a) Land and Titles First Court;
 - (b) Land and Titles High Court; and
 - (c) Land and Titles Court of Appeal and Review,
- and all appointments and with such jurisdiction in relation to matai title and customary lands provided in this 'Part IX Land and Titles Court' of the Constitution, or an Act of Parliament.

(2) The Courts in this Part IX Land and Titles Court has special jurisdiction, it governs a legal system different and separate from that of the Civil and Criminal Courts in Part VI; and has special individual jurisdiction over the subject of Samoan customs and usages in relation to matai titles and customary lands.

(3) All persons are entitled to the protection of their custom rights the subject of the jurisdiction of the courts in this Part.

104A. Land and Titles First Court – (1) There shall continue to be a Land and Titles First Court which shall be a court of record.

(2) A sitting of the Land and Titles First Court consists of:

- (a) the Vice President on behalf of the President as the presiding Judge; and
- (b) two (2) or more Judges.

(3) The Land and Titles First Court shall continue to have all the jurisdiction it exercised prior to this Constitution Amendment Act 2020 coming into force.

(4) The Land and Titles First Court shall:

- (a) have the original jurisdiction; and
- (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws under this Part IX Land and Titles Court.

(5) In particular the Land and Titles First Court shall have jurisdiction:

- (a) in all matters relating to Samoan names and titles;

- (b) to make orders or declarations in respect of Samoan names and titles as may be necessary to preserve or define the same, or the rights or obligations attaching to those names and titles in accordance with the customs and usages of the Samoan race and all laws in force in Samoa with reference to customs and usages;
 - (c) all claims and disputes between Samoans relating to customary land, and the right of succession to property held in accordance with the customs and usages of the Samoan race;
 - (d) in all the powers that are inherent in a Court of record; and
 - (e) as may be conferred by Act.
- (6) In all matters before it, the Court shall apply:
- (a) custom and usage of the Samoan people;
 - (b) the law relating to custom and usage;
 - (c) this Constitution and any other enactment expressed to apply to the Court.
- (7) The Court shall decide all matters in accordance with what it considers to be fair and just between the parties.
- (8) The Court in determining any petition before it has the power:
- (a) to make a decision on a petition brought before it; and
 - (b) make orders that take effect to be specified in the order or on the date on which it is made.
- (9) The decision of the Land and Titles First Court is in accordance with the opinion of the majority of the members of the Court.
- (10) The decision of the Land and Titles First Court may be reviewed through an appeal to Land and Titles High Court.

104B. Land and Titles High Court – (1) There shall be a Land and Titles High Court which, for this Part is a superior court of record.

- (2) The Land and Titles High Court is constituted by:
- (a) the President as the presiding Judge and Head of Bench or, on the direction of the President, the Deputy President as the presiding Judge; and

*Constitution of the Independent
State of Samoa*

- (b) the two (2) Vice Presidents of the Land and Titles High Court appointed by the President; and if one or two Vice President is not present, Judges of the Land and Titles First Court may be appointed.
- (3) A Judge is disqualified from sitting on an appeal review if he or she was a member of the Land and Titles First Court in the first hearing of the petition in the matter on appeal.
- (4) Subject to the direction of the President, a Deputy President may preside over sittings of the Land and Titles High Court, and exercise such other functions of the President as may in respect of a particular case or matter be directed by the President.
- (5) The Land and Titles High Court shall:
 - (a) have such original, appellate and, revisional jurisdiction; and
 - (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws under this Part IX Land and Titles Court..
- (6) The Land and Titles High Court shall have jurisdiction to hear any appeals from the Land and Titles Court, and has all the powers and jurisdiction of the Land and Titles Court.
- (7) The Land and Titles High Court has the power to:
 - (a) uphold the appeal; or
 - (b) set aside, vary or reverse the decision of the Land and Titles Court; or
 - (c) order the Land and Titles Court to rehear the matter; or
 - (d) make any such order with respect to the appeal as the Court thinks fit; and
 - (e) award such costs as it thinks fit.
- (8) The decision of the Land and Titles High Court is subject to a further appeal to the Land and Titles Court of Appeal and Review.

104C. Land and Titles Court of Appeal and Review –

- (1) There shall be a Land and Titles Court of Appeal and Review which shall be a superior court of record.
- (2) The composition of the Land and Titles Court of Appeal and Review is as follows:

- (a) a retired Judge of the Supreme Court or a retired President to be the Chairperson of the Court, as appointed by the Head of State on the advice of the Cabinet;
- (b) one (1) Judge of the Supreme Court:
 - (i) to be appointed by the Head of State on the advice of the Chief Justice; and
 - (ii) to be as Chairperson in the absence of the Chairperson; and
- (c) the President, or a retired Deputy President, or a retired Vice President of the Land and Titles Court to be appointed by the Head of State acting on the advice of the President; and
- (d) a Samoan Lawyer who is a matai and is eligible to be a Judge of the Supreme Court, to be appointed by the Head of State on the advice of the President.

(3) Any three (3) members of the Land and Titles Court of Appeal and Review may at any one (1) sitting exercise the powers of the Land and Titles Court of Appeal and Review.

(4) A member of the Land and Titles Court of Appeal and Review is disqualified from sitting on an appeal or a review if he or she was a member of the Land and Titles High Court at the appeal hearing, or the Land and Titles Court hearing at the first instance.

(5) The Land and Titles Court of Appeal and Review shall:

- (a) have original, appellate and, revisional jurisdiction; and
- (b) possess and exercise all the jurisdiction, power, and authority, which may be necessary to administer the laws under this Part IX Land and Titles Court.

(6) The Land and Titles Court of Appeal and Review in particular shall have jurisdiction to hear and determine:

- (a) an appeal from a decision of the Land and Titles High Court the procedures and grounds of such petition as provided by an Act; and
- (b) an application for judicial review or a review of a decision of the Land and Titles Court or the Land

*Constitution of the Independent
State of Samoa*

and Titles High Court the procedures and grounds of such petition as provided by an Act.

(7) The Court of Final Appeal and Review has the power to:

- (a) for an appeal -
 - (i) uphold the appeal; or
 - (ii) set aside, vary or reverse the decision of the Land and Titles High Court; or
 - (iii) order the Land and Titles High Court to rehear the matter; or
 - (iv) make any such order with respect to the appeal as the Court thinks fit.
- (b) for a review -
 - (i) grant the remedy sought; or
 - (ii) grant the prerogative writ sought (mandamus, prohibition and certiorari, and for relief in the form of an injunction); or
 - (iii) dismiss the application; or
 - (iv) make relevant order with respect to the review.

(8) The decisions of the Land and Titles Court of Appeal and Review are final and must not be questioned in any other Court by way of appeal, review or investigation, or any other means.

(9) Where in any proceedings before any Courts in this Part IX Land and Titles Court, a question arises as to the interpretation or effect of any provision of this Constitution under this Part, the Land and Titles Court of Appeal and Review may, on the application of any party to the proceedings, determine that question and either dispose of the case or remit it to that other Court to be disposed of in accordance with the determination.

(10) The Head of State, acting on the advice of the Prime Minister, may refer to the Land and Titles Court of Appeal and Review for its opinion any question as to the interpretation on the effect of any provision of this Part which has arisen or appears likely to arise, and the Land and Titles Court of Appeal and Review Court shall pronounce its opinion on any question so referred to it.

104D. Appointment, removal, tenure of office – (1)

The Head of State, acting on the advice of the Prime Minister,

may appoint a President of the Court under Part IX Land and Titles Court, referred to as the President of the Land and Titles Court:

- (a) a Samoan lawyer practicing, has practiced under an Act for Lawyers in Samoa for a period of not less than 10 years; and
- (b) who holds a matai title and has rendered matai services to his or her village for a period of not less than 7 years;
- (c) he or she holds office until the age of 68 years, provided that, the Head of State may, acting on the advice of the Komisi o le Faamasinoga o Fanua ma Suafa may extend for not more than 12 months or for successive period each of not more than 12 months; and
- (d) nothing done by the President in the performance of his or her functions is taken to be invalid by reason only that he or she has reached the retiring age under this Article.

(2) The Head of State may, acting on the advice of the Prime Minister, suspend at any time the President from office when the Legislative Assembly is not meeting, and such suspension, continues in force until the end of the next ensuing session and no longer.

(3) The President shall not be removed from office, except by the Head of State on an address of the Legislative Assembly carried by not less than two-thirds of the total number of Members of Parliament (including vacancies), praying for his or her removal from office on the grounds of stated misbehaviour or of infirmity of body or mind, or as prescribed by an Act.

104E. Komisi o le Faamasinoga o Fanua ma Suafa –

(1) There shall be a Komisi o Auaunaga a le Faamasinoga o Fanua ma Suafa, which shall consist of:

- (a) the President of the Land and Titles Court, as Chairperson; and
- (b) a Supreme Court Judge as nominated by the Chief Justice; and
- (c) the Chairperson of the Public Service Commission;

*Constitution of the Independent
State of Samoa*

(d) the Registrar of the Land and Titles Court to be the Secretary of the Komisi, who has no voting rights.

(2) No business shall be transacted by the Komisi unless all three (3) members are present, and all questions proposed for decision by the Commission shall be decided by a majority of the votes of those members.

(3) A meeting of the Komisi may be called by any of the two (2) members in clause (1)(a) - (c).

(4) The power to appoint, remove, and to determine the terms and conditions of the appointment of any Deputy President, Vice President, and a Judge of the Land and Titles First Court, is vested in the Head of State, acting on the advice of the Komisi o le Faamasinoga o Fanua ma Suafa as may be provided by Act..

(5) In this Part, “Komisi” means the Komisi o le Faamasinoga o Fanua ma Suafa, as provided by an Act.

104F. Oath – (1) The President of the Land and Titles High Court, shall, before assuming the functions of his or her office take and subscribe before the Head of State an oath in the form set out in the Third Schedule.

(2) The Chairperson and members of the Land and Titles Court of Appeal and Review shall, before assuming the functions of office take and subscribe before the President an oath in the form set out in the Third Schedule.

(3) A Deputy President and a Vice President, a Judge of the Land and Titles First Court shall, before assuming the functions of his or her office take and subscribe before the President of the Land and Titles High Court an oath in the form set out in the Third Schedule .

104G. Salaries and benefits – The salaries, allowances or any other benefits for the President or Deputy President of the Land and Titles High Court, Vice President or a Judge of the Land and Titles First Court, are expenditures by law and shall be paid out of moneys appropriated by the Legislative Assembly, and as provided in the Act.

**PART X
EMERGENCY POWERS**

105. Proclamation of Emergency - (1) If the Head of State is satisfied, acting in his or her discretion after consultation with Cabinet, that a grave emergency exists whereby the security or economic life of Samoa or of any part thereof is threatened, whether by war, external aggression, internal disturbance or natural catastrophe, the Head of State may by proclamation (hereinafter referred to as a Proclamation of Emergency) declare that a state of emergency exists.

(2) A Proclamation of Emergency shall remain in force for a period of 30 days, if not sooner revoked, but the provisions of this clause shall not preclude the issue of a further Proclamation before the expiry of the period for which the immediately preceding Proclamation is in force.

(3) If the Legislative Assembly is meeting at the time the Proclamation of Emergency is made, the Proclamation shall forthwith be laid before the Assembly.

(4) If the Legislative Assembly is not meeting at the time the Proclamation of Emergency is made, the Head of State shall appoint a time for the Assembly to meet which time shall be as soon as the Head of State, acting in his or her discretion, considers that conditions make it practicable, and the Proclamation shall forthwith be laid before the Assembly:

PROVIDED THAT, if not less than one-half of the total number of Members of Parliament (excluding vacancies) by notice in writing to the Head of State require that a time for the meeting of the Assembly be appointed for the purposes of this clause, the Head of State shall appoint such a time which shall be not later than 7 days after the date of receipt of that notice.

106. Emergency Orders - (1) When a Proclamation of Emergency has been made and so long as it remains in force, the Head of State may from time to time make such Orders (hereinafter referred to as Emergency Orders) as appear to him or her to be necessary or expedient for securing the public safety, the defence of Samoa and the efficient prosecution of any war in which Samoa may be engaged, for maintaining public order and the supplies and services essential to the life of the community, and generally for

safeguarding the interests and maintaining the welfare of the community.

(2) Emergency Orders may empower or provide for empowering such authorities, persons or classes of persons as may be specified in the Orders to make regulations, rules or by-laws for any of the purposes for which Emergency Orders are authorised under the provisions of this Article to be made, and may contain such incidental and supplementary provisions as appear to the Head of State to be necessary or expedient for making effective the powers conferred under the provisions of clause (1).

(3) Every Emergency Order, if otherwise valid, shall have effect notwithstanding anything contained in Part II.

(4) No provision of any Emergency Order, and no regulation, rule or by-law duly made under the provisions of any such Order, shall be invalid because it deals with any matter already provided for under any law or because of any inconsistency with any such law.

107. Orders to be laid before Legislative Assembly - (1) If the Legislative Assembly is meeting at the time an Emergency Order is made under the provisions of Article 106, the Order shall forthwith be laid before the Assembly; and, if the Assembly is not then meeting, the Order shall be laid before the Assembly as soon as the next meeting thereof commences.

(2) When an Emergency Order has been laid before the Legislative Assembly under the provisions of clause (1), a notice of motion, signed by 6 Members of Parliament and made within 10 days of the day the Order was laid before the Assembly, praying that the order be revoked shall be debated in the Assembly at the first convenient opportunity within 4 sitting days next after the day on which notice of motion was given and, if the Assembly resolves that the Order be revoked, it shall cease to be in force.

(3) All Emergency Orders made under the provisions of Article 106, if not sooner revoked, shall expire on the date on which the Proclamation of Emergency ceases to be in force or, where more than one such Proclamation is made in respect of the emergency, when the last of those Proclamations ceases to be in force.

(4) The revocation or expiry of an Emergency Order shall not affect the previous operation thereof, the validity of anything done

or omitted to be done thereunder, or any offence committed or any penalty or punishment incurred.

108. Restriction on detention - (1) For the purposes of this Article, there shall be an advisory board, which shall consist of:

- (a) a Chairman appointed by the Head of State from among the persons who are or have been Judges of the Supreme Court or are qualified to be Judges of the Supreme Court;
- (b) two other members appointed by the Head of State, acting in his or her discretion after consultation with the Chief Justice.

(2) Where an Emergency Order made under the provisions of Article 106 authorises the detention of any person:

- (a) any person detained under the provisions of that Order shall, as soon as possible, be informed of the grounds for his or her detention and, subject to the provisions of clause (3), of the allegations of fact on which it is based, and be given an opportunity of making representations to the advisory board against his or her detention; and
- (b) no person shall be detained under the provisions of that Order for a period exceeding 3 months unless the advisory board has considered any representations made by the person under the provisions of subclause (a) and has reported, before the expiry of that period, that there is in its opinion sufficient cause for the detention.

(3) This Article shall not require any authority or person who is authorised to detain any person under any Emergency Order made under the provisions of Article 106 to disclose facts whose disclosure would in its or his or her opinion be against the national interest.

PART XI GENERAL AND MISCELLANEOUS

109. Amendment of Constitution - (1) Any of the provisions of this Constitution may be amended or repealed by Act, and new provisions may be inserted in this Constitution by Act, if a bill for

any such purpose is supported at its third reading by the votes of not less than two-thirds of the total number of Members of Parliament (including vacancies) and if not fewer than 90 days elapse between the second and third readings of that bill:

PROVIDED THAT no bill amending, repealing or adding to the provisions of Article 102 or the provisions of this proviso shall be submitted to the Head of State for assent until it has been submitted to a poll of the electors on the rolls for the electoral constituencies established under the provisions of Article 44 and unless it has been supported by two-thirds of the valid votes cast in such a poll.

(Note – the use of the term “electoral constituencies” formerly known as “territorial constituencies” as amended by the Constitution Amendment Act (No.3) 2019, No.10 only comes into effect on the day the Head of State dissolves the Legislative Assembly under Article 63(4) of the Constitution for the 2021 general elections as per Article 1(2) of the Constitution Amendment Act (No.3) 2019, No. 10).

(2) A certificate under the hand of the Speaker that a bill has been passed under the provisions of clause (1) shall be conclusive and shall not be questioned in any Court.

110. Power of pardon - (1) The Head of State shall have power to grant pardons, reprieves and respites, and to remit, suspend or commute any sentence passed by any Court, tribunal or authority established under the law.

(2) In the exercise of the powers conferred on him or her under the provisions of clause (1), the Head of State shall act in his or her discretion after consultation with such Minister as the Prime Minister shall designate from time to time.

111. Interpretation - (1) In this Constitution, unless it is otherwise provided or the context otherwise requires:

“Act” or “Act of Parliament” means an Act of the Parliament of Samoa; and includes any Ordinance of the Legislative Assembly of the Trust Territory constituted under the provisions of the Samoan Amendment Act 1957.

“Cabinet” means the Cabinet of Ministers.

“Chief Justice” means the Chief Justice of the Supreme Court of Samoa.

“Court of Appeal” means the Court of Appeal of Samoa.

“Employee of the Public Service” means a person employed in the Public Service.

“Existing law” means any law in force in the Trust Territory of Samoa or any part thereof immediately before Independence Day.

“Head of State” means the Head of State of Samoa.

“High Court” means the High Court of Samoa constituted under the provisions of the Samoa Act 1921.

“Independence Day” means the day on which this Constitution comes into force under the provisions of Article 113.

“Judicial officer” means the holder of any judicial office, but does not include an employee of the Public Service who exercises all or any of the functions of a judicial office.

“Law” being in force in Samoa; and includes this Constitution, any Act of Parliament and any proclamation, regulation, order, by-law or other act of authority made thereunder, the English common law and equity for the time being in so far as they are not excluded by any other law in force in Samoa, and any custom or usage which has acquired the force of law in Samoa or any part thereof under the provisions of any Act or under a judgment of a Court of competent jurisdiction.

“Legislative Assembly” means the Legislative Assembly constituted under the provisions of Article 44.

“Legislative Assembly of the Trust Territory” means the Legislative Assembly constituted under the provisions of the Samoa Amendment Act 1957 and in being immediately before Independence Day.

“Minister” includes the Prime Minister.

“Office of profit” means any office in the service of Samoa carrying the right to salary, and includes any office declared by Act to be an office of profit.

“Officer of the Public Service” means an employee of the Public Service other than a person employed in a temporary capacity or on probation.

“Parliament” means the Parliament of Samoa.

“Proclamation” means a proclamation made by the Head of State under his or her hand and the Public Seal of Samoa and published in the Samoa Gazette.

“Property” includes real and personal property, any estate or interest in any real or personal property, any debt, any thing in action, and any other right or interest.

“Public Seal” means the Public Seal of Samoa.

“Public Service Commission” means the Public Service Commission of Samoa.

“Salary” includes salary or wages, allowances, superannuation rights, free or subsidised housing, free or subsidised transport, and other privileges capable of being valued in money.

“Service of Samoa” means service in any capacity of Samoa; and includes service in any of the capacities named in sub-clauses (a) to (k) inclusive of Article 83, but not service in respect of the Samoa Trust Estates Corporation.

“Speaker” means the Speaker of the Legislative Assembly.

“Supreme Court” means the Supreme Court of Samoa.

“Samoa Trust Estates Corporations” means the corporation constituted under that name on Independence Day.

(2) Where in this Constitution reference is made to the Samoa Act 1921 or to any amendment to that Act, that reference shall be construed as a reference to the Act of the Parliament of New Zealand bearing the short title "the Samoa Act 1921" or to the relevant amendment thereto, including any amendment to that Act of the Parliament of New Zealand or that relevant amendment.

(3) Unless the context otherwise requires, where in this Constitution reference is made to a specified Part, Article or Schedule, that reference shall be construed as a reference to that Part or Article of, or that Schedule to, this Constitution; and, where reference is made to a specified clause, sub-clause or paragraph, that reference shall be construed as a reference to that clause of the Article, that sub-clause of the clause, or that paragraph of the sub-clause in which the reference occurs.

(4) Where under the provisions of this Constitution a person is required to take and subscribe an oath, the person shall be permitted, if the person so desires, to comply with that requirement by taking and subscribing an affirmation.

(5) Where in this Constitution reference is made to the functions of any office, that reference shall, unless the context otherwise requires, be construed as a reference to the functions of that office and to any powers and authorities that may lawfully be

exercised by, and any duties that may be required to be performed by, the holder of that office.

(6) Where in this Constitution reference is made to any officer by the term designating his or her office, that reference shall, unless the context otherwise requires, be construed as a reference to the officer for the time being lawfully performing the functions of that office.

(7) Where this Constitution confers any power to make any appointment to any office, the person or authority having power to make the appointment shall, unless the context otherwise requires, have power, exercisable in a like manner:

- (a) to direct that a person other than the person appointed shall, during any period that the person appointed is unable to perform the functions of his or her office owing to absence or inability to act from illness or any other cause, perform the functions of that office;
- (b) to appoint another person substantively to an office notwithstanding that there is a substantive holder thereof, when that substantive holder is on leave of absence pending relinquishment of his or her office;
- (c) to direct that a person shall perform the functions of that office when no person has been appointed thereto, either until a contrary direction shall be given by the person or authority having power to make the appointment or until a person shall have been appointed substantively thereto, whichever shall be the earlier.

112. Authoritative texts - The Samoan and English texts of this Constitution are equally authoritative but, in case of difference, the English text shall prevail.

113. Coming into force - This Constitution shall come into force on the day approved by the General Assembly of the United Nations as the date of the termination of the Trusteeship Agreement for the Territory of Samoa approved by the General Assembly on 13 December 1946.

*Constitution of the Independent
State of Samoa*
PART XII
TRANSITIONAL

114. Existing law to continue - Subject to the provisions of this Constitution:

- (a) the existing law shall, until repealed by Act, continue in force on and after Independence Day;
- (b) all rights, obligations and liabilities arising under the existing law shall continue to exist on and after Independence Day and shall be recognised, exercised and enforced accordingly; and
- (c) proceedings in respect of offences committed against the existing law may be instituted on and after Independence Day in that Court, established under the provisions of this Constitution, having the appropriate jurisdiction, and offenders shall be liable to the punishments provided by the existing law.

115. Functions of Council of State - Where the existing law confers any function on the Council of State of Samoa constituted under the provisions of the Samoa Amendment Act 1959, that function shall be performed by the Head of State, and where any such function is to be performed by the Council of State, acting by and with the advice of the Executive Council, that function shall be performed by the Head of State, acting by and with the advice of Cabinet.

116. Tenure of office of Ministers - Any person holding office as Prime Minister or as a Minister immediately before Independence Day shall be deemed to have been duly appointed thereto under the provisions of Part IV.

117. First Legislative Assembly - (1) The Legislative Assembly of the Trust Territory shall continue in being on and after Independence Day as the Legislative Assembly, and the members of the Legislative Assembly of the Trust Territory shall be deemed to have been duly elected as Members of Parliament under the provisions of this Constitution.

(2) The Speaker and the Deputy Speaker of the Legislative Assembly of the Trust Territory who are in office immediately before Independence Day shall be deemed to have been duly elected as Speaker and Deputy Speaker, respectively, under the provisions of this Constitution.

(3) The first session of the Legislative Assembly shall commence within 3 months of Independence Day.

(4) For the purposes of the provisions of clause (4) of Article 63, the general election at which the Legislative Assembly of the Trust Territory was elected shall be the date of the last preceding election in respect of the Legislative Assembly in being on and after Independence Day.

(5) Subject to the provisions of this Constitution, the Standing Orders of the Legislative Assembly of the Trust Territory in force immediately before Independence Day shall be the Standing Orders of the Legislative Assembly, and they may be amended, repealed or added to under the provisions of Article 53.

(6) If the seat of a Member of Parliament becomes vacant before the date of the first general election to be held after Independence Day, that vacancy shall be filled under the law in force immediately before Independence Day in relation to the filling of vacancies in the membership of the Legislative Assembly of the Trust Territory.

118. Existing Judges - Subject to the provisions of this Constitution, a person holding office as a Judge of the High Court immediately before Independence Day shall, on and after that day, hold the office of Judge of the Supreme Court on the same terms and conditions as were applicable to him or her immediately before Independence Day.

119. Existing legal proceedings - (1) All legal proceedings pending in the High Court immediately before Independence Day shall, on and after that day, stand transferred to, and be deemed to be pending for determination before, that Court, established under the provisions of this Constitution, having the appropriate jurisdiction.

(2) All appeals from the High Court which immediately before Independence Day lay to, or were pending in, any Court having jurisdiction to hear such appeals shall, on and after that day, lie to

or stand transferred to, and be deemed to be pending for determination before, the Court of Appeal.

(3) Any decision of the High Court or of any Court having jurisdiction to hear appeals from the High Court shall have the same force and effect as if it had been delivered or made by the Supreme Court or the Court of Appeals, respectively.

120. Existing officers to continue in office - Subject to the provisions of this Constitution:

- (a) a person who, immediately before Independence Day, holds the office of Attorney-General or of a member of the Public Service Commission shall, on and after that day, hold the corresponding office established under the provisions of this Constitution on the same terms and conditions as were applicable to him or her immediately before Independence Day; and
- (b) a person who, immediately before Independence Day, is an employee of the Samoan Public Service referred to in the Samoa Amendment Act 1949 shall, on and after that day, hold the like employment in the Public Service.

121. Laws not brought into force before Independence Day - Where any Ordinance was enacted or made by the Legislative Assembly of the Trust Territory and the coming into force of that Ordinance was suspended, that Ordinance may, on or after Independence Day, come into force on the date specified therein or as may be specified by any authority empowered to bring it into force; and, in such case, the Ordinance shall, on and after that date, take effect as an Act or Parliament.

122. Adaptation of existing law - Where in the existing law reference is made to Her Majesty the Queen in right of the Trust Territory of Samoa, to the Crown in right of the Trust Territory of Samoa, to the Trust Territory of Samoa, to Samoa, or to Samoa, that reference shall, unless the context otherwise requires, be construed as a reference to Samoa.

123. Vesting of property - (1) All property which immediately before Independence Day is vested in Her Majesty the Queen in right of the Trust Territory of Samoa or in the Crown in right of the Trust Territory of Samoa shall, on Independence Day, vest in Samoa.

(2) Subject to the provisions of clause (3), land which immediately before Independence Day is, under the provisions of the Samoa Act 1921, Samoan land, European land or Crown land shall, on and after Independence Day, be held, under the provisions of this Constitution, as customary land, freehold land or public land, respectively.

(3) All land in Samoa which immediately before Independence Day is vested in the Crown in right of the Government of New Zealand shall, on Independence Day, become freehold land held by Her Majesty the Queen in right of the Government of New Zealand for an estate in fee simple.

124. Transitional amendments to Constitution - No amendments to the provisions of this Constitution shall be made before Parliament is constituted under the provisions of Part V, except such as the Legislative Assembly of the Trust Territory may make by Ordinance to remove any difficulties in the transition from the constitutional arrangements in force immediately before Independence Day to those provided for in this Constitution; and any Ordinance made under the provisions of this Article shall, unless sooner repealed, cease to be in force at the expiry of a period of 9 months beginning with the day on which the Legislative Assembly first meets.

SCHEDULES

FIRST AND SECOND SCHEDULES – *(Repealed by
Constitution Amendment Act 2015, No.19)*

THIRD SCHEDULE
Articles 28, 49(2), 61, 67 and 78)

FORMS OF OATH

1. Oath of Head of State

I,.....
....., swear by Almighty God that I will uphold the dignity of the office of Head of State, and will justly and faithfully carry out my duties in the administration of the Independent State of Samoa in accordance with the Constitution and the law. So help me God.

2. Oath of Members of the Council of Deputies

I,.....
....., swear by Almighty God that I will well and truly serve the Independent State of Samoa, and will justly and faithfully carry out my duties as a member of the Council of Deputies in accordance with the Constitution and the law. So help me God.

3. Oath of the Prime Minister and other Ministers

I,.....
....., being chosen and accepted as Prime Minister [a Minister] and member of Cabinet, swear by Almighty God that I will to the best of my judgment, at all times when thereto required, freely give my counsel and advice to the Head of State, for the good management of the affairs of the Independent State of Samoa, and that I will not directly or indirectly reveal such matters as shall be debated in Cabinet and Committee and in Executive Council and committed to my secrecy, but that I will in all things be a true and faithful Prime Minister [Minister]. So help me God.

4. Oath of allegiance to be taken and subscribed by the Speaker and Members of Parliament

I,.....
....., swear by Almighty God that I will be faithful and bear true allegiance to the Independent State of Samoa, and that I will justly and faithfully carry out my duties as a Member of the Parliament of Samoa. So help me God.

**5. Judicial oath to be taken by Judges of the Supreme Court
and Court of Appeal**

I.....
....., swear by Almighty God that I will well and truly serve
the Independent State of Samoa in accordance with the
Constitution and the law; and I will do right to all manner of
people, without fear or favour, affection or ill will. So help me
God.

(As to affirmations instead of these oaths, see Article 111
(4).)

REVISION NOTES 2008 – 2024

This is the official version of the Constitution as at 31 December 2024.

This Act has been revised by the Legislative Drafting Division from 2008 to 2024 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

No general editing has been done to the Constitution in the exercise of the powers given under section 5 of the *Revision and Publication of Laws Act 2008*, except the insertion of correct empowering provisions for the Schedules.

The following amendments have been made:

By the Constitution Amendment Act 2008 –

- | | |
|-------------------|--|
| Article 17 | - Repealed |
| Article 95 | - The proviso in Article 95 was deleted and substituted with a new proviso [but the amending Act incorrectly refers to “that year”.] |
| Article 96 | - Article 96 was deleted and substituted by its current form. |

By the Constitution Amendment Act 2010, No .4:

- | | |
|----------------------|----------------------------------|
| Article 46(3) | - A new clause (3) was inserted. |
|----------------------|----------------------------------|

By the Constitution Amendment Act 2013, No .17:

- | | |
|-------------------|---|
| Article 44 | - Changes to clause (1) and insertion of clauses (1A) |
|-------------------|---|

***Constitution of the Independent
State of Samoa***

– (1G)

NB – This amendment commences on polling day of the next general election as appointed by the Head of State under Article 64 of the Constitution. (See Section 1(3) of the Constitution Amendment Act 2013, No. 17)

- Article 83(g)** - Clause (g) substituted with its current form.
NB – This amendment commenced 25th June 2013

By the Constitution Amendment Act 2014, No.2:

- Article 83(h)** Clause (g) substituted with its current form
- Article 97** substituted
- Article 97A** new Article inserted after Article 97
- Article 98** substituted
- Article 99** substituted
- Articles 99A to 99F** new Articles inserted after Article 99

By the Constitution Amendment Act 2015, No.19:

- Article 6** “Deputy Registrar” replaced with “Assistant Registrar”
- Article 18** Clause (1) substituted and new clauses (4) to (6) added
- Article 19** New clause (3) added
- Article 44** clause (1)(b) substituted and clause (2) repealed
- Articles 49 & 50** New clauses (1A) and (1B) added
- Part VIA** New Part (Ombudsman) added with new Articles 82A and 82B
- Article 83** “Pulenuu” replaced with “Sui o le nuu”

First and Second Schedules repealed.

General amendments on gender neutral terms. In some cases, reference to “person” or designation of office has been used instead.

By the Constitution Amendment Act (No.2) 2015, No. 44 (commences on 1

January 2016):

- Article 41** amended to remove the Attorney General's prosecutorial powers
- Article 41A** New Article inserted after Article 41 for the appointment of the Director of Public Prosecutions
- Article 83** New sub-clause (ga) inserted exempting the National Prosecution Office from the Public Service.

By the Constitution Amendment Act (No. 1) 2017, No. 8:

- Article 41** substituted
- Article 41A** repealed.

By the Constitution Amendment Act (No. 2) 2017, No. 9:

- Article 1** new sub Article (3) inserted.

By the Constitution Amendment Act 2019, No.6 (commenced on 31 January 2019):

- Article 19** clause (2) substituted with new clauses (2) and (2A).

By the Constitution Amendment Act (No.2) 2019, No.9 (commenced on 31 January 2019):

- Article 72** clause (1)(a) substituted "President" with "Chairperson"
new clauses (1)(d) – (f) inserted;
clauses (2) and (3) substituted with new clauses (2), (3) and (4).

By the Constitution Amendment Act (No.3) 2019, No.10 (commences on the day the Head of State dissolves the Legislative Assembly under Article 63(4) of the Constitution for the 2021 general elections as per Article 1(2) of the Constitution Amendment Act (No.3) 2019, No. 10 except for Article 4 which is the transitional provision of the No.10 Amendment Act to commence on the date of assent which is 31 January 2019):

- Article 44** clauses (1)(a)(aa) and (b) substituted;
Clause (3), "electors" substituted with "voters" and
"territorial or urban" substituted with "electoral";
- Article 109(1)** reference to "territorial" substituted with "electoral".

*By the Constitution Amendment Act 2020, No. 22 (commences on 15 March 2021 except for the change in the number of Ministers made to Article 32(2)(b) to commence on the first day of the meeting of the 17th Parliament of Samoa): [Please note this Constitution Amendment Act 2020, No.22 (originally assented on 5 January 2021) was **de-assented** and **re-assented** on **14 October 2022**, but the commencement date remains to be on 15 March 2021]*

Article 4	reference to “Any person” at the beginning of the Article has been substituted with “Except for a judicial review matters arising from the proceedings in Part IX Land and Titles Courts, any person”;
Article 32(2)(b)	substitute reference “twelve” with “fourteen”;
Part VI	substituted;
Article 94(4)(a)	substitute reference to “69” with “81”;
Article 103	substituted with a new Article 103;
Article 104	substituted with a new Article 104;
New Articles 104A to 104G inserted	new Articles 104A to 104G inserted after Article 104.

*By the Constitution Amendment Act 2020, No. 22 (**re-assented on 14 October 2022**, with the **commencement date** to be **remained on 15 March 2021**):*

Article 4(1)	the whole phrase before “may apply” has been substituted with the current wording;
Article 32(2)(b)	remained as is as the changes made by the Constitution Amendment Act 2020 (assented on 5 January 2021 and de-assented in 2022) were correct and it was not changed following the de-assent. (This amendment commences on the 1 st day of the meeting of the 17 th Parliament of Samoa);
Part VI (Articles 65 to 81)	substituted in its current form;
Article 94(4)(a)	remained as is as the changes made by the Constitution Amendment Act 2020 (assented on 5 January 2021 and de-assented in 2022) were correct and it was not changed following the de-assent.

*Constitution of the Independent
State of Samoa*

79

Article 103 substituted in its current form;

Article 104 substituted in its current form;

Articles 104A to 104G substituted in its current form.



Su'a Hellene Wallwork
Attorney General of Samoa

*This Constitution is administered by
the Office of the Attorney-General.*