



Arrangement of Provisions

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| 1. Short title and commencement | 16. Article 81 substituted |
| 2. Article 4 amended | 17. Article 82A amended |
| 3. Article 65 amended | 18. Article 82B amended |
| 4. Article 66 amended | 19. Article 94 amended |
| 5. Article 67 amended | 20. Heading above Article 104 omitted |
| 6. Article 68 substituted | 21. Article 104 substituted |
| 7. Article 70 amended | 22. Article 104A amended |
| 8. Article 72 amended | 23. Article 104B substituted |
| 9. Article 73 amended | 24. Article 104C substituted |
| 10. Article 74 amended | 25. Article 104D amended |
| 11. Article 75 substituted | 26. Article 104E amended |
| 12. Article 76 amended | 27. Article 104F amended |
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AN ACT to amend the Constitution to provide for matters relating to the Civil and Criminal Courts and the Land and Titles Courts. *[28th February 2025]*

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

1. Short title and commencement-(1) This Act may be cited as the Constitution Amendment Act 2025.

(2) This Act commences on a date nominated by the Prime Minister.

2. Article 4 amended - In Article 4(1) of the Constitution, for “Except for judicial review matters arising from the proceedings in Part IX Land and Titles Courts, any” substitute “Any”.

3. Article 65 amended - In Article 65 of the Constitution, for “the Judicial Service Commission” substitute “Act”.

4. Article 66 amended - In Article 66 of the Constitution:
(a) for the heading of the Article substitute:

“Appointment and Qualifications of the Chief Justice and Judges of the Supreme Court”;

(b) after clause 1 insert:

“(1A) The Chief Justice of the Supreme Court is, on account of holding that office, a Judge of the Supreme Court.

(1B) Any other Judge of the Supreme Court shall be appointed by the Head of State, acting on the advice of the Judicial Service Commission.”; and

(c) in clause (4), for “clause (2) of this Article,” substitute “this Article or clause (3) of Article 73,”.

5. Article 67 amended - In Article 67 of the Constitution:

- (a) in clause (2), for “clause (2)(d) of Article 73” substitute “clause (2) of Article 66”;
- (b) for clause (5) substitute:

“(5) 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 at any time when the Legislative Assembly is not meeting suspend the Chief Justice or a Judge of the Supreme Court 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.”;

- (c) in clause (6), after “The Chief Justice” insert “or a Judge of the Supreme Court”;
- (ca) in clause (6), omit “; or as prescribed by Act”; and
- (d) clause (7) is repealed.

6. Article 68 substituted - For Article 68 of the Constitution substitute:

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

(2) The provisions of Article 67 that relate to the tenure of office, suspension and removal of a Judge of the Supreme Court apply to the Senior Judge of the Supreme Court.

(3) While any vacancy exists in the office of the Chief Justice or during any absence from Samoa of the Chief Justice, the Senior Judge of the Supreme Court (or, if the Senior Judge is unavailable for any reason or there is a vacancy in the office of Senior Judge, the most senior Judge of the Supreme Court that is available) shall have authority to act as Chief Justice and to perform the functions of the office of the Chief Justice.

(4) Wherever by reason of illness or any cause other than absence from Samoa the Chief Justice is unable to perform the functions of the office of Chief Justice, the Head of State, acting on the advice of the Prime Minister, may authorise the Senior Judge of the Supreme Court (or, if the Senior Judge is unavailable for any reason or there is a vacancy in the office of the Senior Judge, the most senior Judge of the Supreme Court that is available) to act as Chief Justice until the Chief Justice resumes those functions, and, during that period, to perform those functions.”.

7. Article 70 amended - In Article 70 of the Constitution:

(a) in clause (1), for “Except for Part IX Land and Titles Court and the laws administered thereunder, the” substitute “The”;

(b) for clause (1)(a) substitute:

“(a) have original, appellate and revisional jurisdiction as provided in this Constitution or by any Act; and”;

(c) in clause (2) for “Except for Part IX Land and Titles Court and without” substitute “Without”; and

(d) in clause (3) for “Except for Part IX Land and Titles Court, the” substitute “The”.

8. Article 72 amended - In Article 72 of the Constitution for “two (2)” substitute “2”.

9. Article 73 amended - In Article 73 of the Constitution:

(a) in clause (1) omit “for this Part,”;

(b) for clause (2) substitute:

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

(a) the Chief Justice;

(b) the Judges of the Supreme Court;

(c) any retired Judge of the Supreme Court appointed by the Head of State, acting on the advice of the Judicial Service Commission; and

(d) such persons possessing the qualifications prescribed under the provisions of clause (2) of Article 66, as may be appointed by the Head of State, acting on the advice of the Judicial Service Commission.”;

(c) in clause (4), omit “, and in his absence, the most senior Judge of the Court of Appeal”;

(d) in clause (5), for “and (d)” substitute “or (d)”.

10. Article 74 amended - In Article 74 of the Constitution:

(a) in clause (1), for “three (3)”, wherever occurring substitute “3”;

(b) in clause (1)(b), for “sub-clause (2)(c) of Article 74” substitute “clause (2)(d) of Article 73”;

(c) in clause (2), for “Judgment” substitute “judgment”; and

(d) in clause (5), for “two (2)” substitute “2”.

11. Article 75 substituted - For Article 75 of the Constitution substitute:

“**75. Jurisdiction of Court of Appeal-(1)** Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction as may be provided by Act to hear and determine:

(a) a proceeding removed by order of the Supreme Court to the Court of Appeal; and

(b) an appeal from any decision of the Supreme Court whether in its civil or criminal jurisdiction.

(2) 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.

(3) Where the Supreme Court has refused to give such a certificate under clause (2), the Court of Appeal may, if it is satisfied that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution, grant special leave to appeal from that decision.

(4) Where such a certificate is given under clause (2) or such leave is granted under clause (3), any party in the case may appeal to the Court of Appeal on the ground that any such question of law has been wrongly decided and, with the leave of that Court, on any other ground.”.

12. Article 76 amended - In Article 76(a) of the Constitution, for “judgment” substitute “decision”.

13. Article 77 amended - In Article 77 of the Constitution, after “75” insert “, 76, 104A, 104B”.

14. Article 79 amended - In Article 79 of the Constitution:

(a) in clause (1)(c), for “the Minister of Justice;”, substitute “Cabinet on the recommendation of the Minister of Justice; and”;

(b) omit clauses (1)(d) and (e);

(c) for clause (2) substitute:

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

- (ca) in clause (3), for “by three (3) members except the Registrar” substitute “by any 2 members (excluding the Registrar)”; and
(d) for clause (4) substitute:

“(4) Matters relating to the membership and business of the Judicial Service Commission, including appointment, tenure, and removal of the member referred to in clause (1)(c), may be provided for in an Act.”; and

- (e) after clause (4) insert:

“(5) The power of appointing, promoting and transferring any judicial officer, other than the Chief Justice, and of dismissing any judicial officer, other than a Judge of the Supreme Court, is vested in the Head of State, acting on the advice of the Judicial Service Commission.”.

15. Article 80 amended - In Article 80(1) of the Constitution, for “Senior Supreme Court Judge and every” substitute “the Senior Judge of the Supreme Court and every other”.

16. Article 81 substituted - For Article 81 of the Constitution substitute:

“81. Salaries of Judges of the Supreme Court-(1) The salaries of the Chief Justice and Judges of the Supreme Court to whom clause (1) of Article 67 applies shall be determined by Act and shall be charged on the Treasury Fund.

(2) The salaries of such Judges of the Supreme Court shall not be diminished during their period of office, unless it is a part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.”.

17. Article 82A amended - In Article 82A of the Constitution, for “82A” substitute “82”.

18. Article 82B amended - In Article 82B of the Constitution, for “82B” substitute “82A”.

19. Article 94 amended - In Article 94(4)(a) of the Constitution, for “81 and 98” substitute “81, 99A and 104G”.

20. Heading above Article 104 omitted - Omit the heading immediately above Article 104 of the Constitution.

21. Article 104 substituted - For Article 104 of the Constitution substitute:

“104. Land and Titles Courts-(1) There shall be Land and Titles Courts comprising:

- (a) the Land and Titles First Court;
- (b) the Land and Titles High Court; and
- (c) the Land and Titles Court of Appeal.

(2) The Land and Titles Courts have the jurisdiction and powers in relation to Matai titles and customary land as is provided by this Constitution or any Act.

(3) Subject to clause (2), any person may apply to the Land and Titles First Court by appropriate proceedings to enforce rights derived from custom and usage in accordance with this Part.”.

22. Article 104A amended - In Article 104A of the Constitution:

- (a) in clause (1), after “record” insert “with original jurisdiction”;
- (b) in clause (2)(a), for “the Vice President on behalf of the President” substitute “a Vice President”;
- (c) in clause (2)(b), for “two (2)” substitute “two”;
- (d) in clause (3), for “this” substitute “the”;
- (e) clause (4) is repealed;

- (f) in clause (5), for “In particular the Land and Titles First Court shall have jurisdiction:” substitute “The Land and Titles First Court shall have exclusive jurisdiction.”;
- (g) in clause (5)(c), for “all claims” substitute “in all claims”;
- (h) after clause (5) insert:

“(5A) Despite clause (5), any disputes relating to or arising from a lease or licensing agreement over customary land made under an Act must be determined by the Supreme Court (other than a dispute that relates to ownership of such lands which may be determined by the Land and Titles Courts).”;

- (i) in clause (7), for “The” substitute “Subject to clause (6), the”;
- (j) in clause (8)(b), for “make orders that take effect” substitute “to make orders that take effect on a date”;
- (k) in clause (9), for “is” substitute “shall be”; and
- (l) in clause (10), for “reviewed through an appeal to” substitute “appealed to the”.

23. Article 104B substituted - For Article 104B of the Constitution substitute:

“104B. Land and Titles High Court-(1) There shall be a Land and Titles High Court which is a superior court of record with original, appellate and revisional jurisdiction.

(2) The Land and Titles High Court is constituted by:

(a) the President as the presiding Judge and Head of the Bench or, on the direction of the President, the Deputy President as the presiding Judge; and

(b) two other members, appointed by the President, as follows -

(i) two Vice Presidents of the Land and Titles Courts; or

(ii) if only 1 Vice President is available,
1 Vice President and 1 other Judge of the
Land and Titles First Court; or

(iii) if no Vice Presidents are available,
2 other Judges of the Land and Titles First
Court.

(3) A Judge is disqualified from sitting on an appeal 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 have:

(a) jurisdiction to hear any appeals from the Land and Titles First Court in accordance with the procedure, and on the grounds, provided by an Act; and

(b) for the purposes of an appeal, all the powers and jurisdiction of the Land and Titles First Court.

(6) The Land and Titles High Court has the power to:

(a) dismiss or uphold the appeal; or

(b) set aside, vary or reverse the decision of the Land and Titles First Court; or

(c) order the Land and Titles First Court to rehear the matter; or

(d) make any such order in respect of the issues on appeal as the Land and Titles High Court thinks fit; and

(e) award such costs as it thinks fit.

(7) A decision of the Land and Titles High Court may be appealed to the Land and Titles Court of Appeal on grounds provided by an Act.”.

24. Article 104C substituted - For Article 104C of the Constitution substitute.

“104C. Land and Titles Court of Appeal-(1) There shall be a Land and Titles Court of Appeal which is a superior court of record with original, appellate and revisional jurisdiction.

- (2) The Land and Titles Court of Appeal is constituted by:
 - (a) the President of the Land and Titles Courts to be the Chairperson of the Court;
 - (b) one or more Judges of the Supreme Court, to be nominated by the Chief Justice, one of whom may act as the Chairperson in the absence of the President or where the President is unavailable (including in circumstances requiring the President to recuse himself or herself); and
 - (c) a Vice President, to be nominated by the President of the Land and Titles Court.
- (3) Any 2 members of the Land and Titles Court of Appeal may exercise the powers of that Court.
- (4) A member of the Land and Titles Court of Appeal is disqualified from sitting on an appeal if, in relation to any hearing of the matter, he or she was a member of the Land and Titles First Court or the Land and Titles High Court.
- (5) The Land and Titles Court of Appeal shall have:
 - (a) jurisdiction to hear any appeals from the Land and Titles High Court in accordance with the procedure, and on the grounds, provided by an Act; and
 - (b) for the purposes of an appeal, all the powers and jurisdiction of the Land and Titles High Court and the Land and Titles First Court.
- (6) The Land and Titles Court of Appeal has the power to:
 - (a) dismiss or uphold the appeal; or
 - (b) set aside, vary or reverse the decision of the Land and Titles High Court; or
 - (c) order the Land and Titles High Court to rehear the matter; or

(d) make any such order in respect of the issues on appeal as the Land and Titles Court of Appeal thinks fit; and

(e) award such costs as it thinks fit.

(7) Subject to Article 4, a decision of the Land and Titles Court of Appeal is final.”.

25. Article 104D amended - In Article 104D of the Constitution:

(a) for clause (1) substitute:

“(1) The Head of State, acting on the advice of the Prime Minister, may appoint as the President of the Land and Titles Courts, a person:

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

(b) who holds a matai title and has rendered matai services to his or her village for a period of, or periods amounting in the aggregate to, not less than 7 years.

(1A) The President holds office until he or she reaches the age of 68 years, provided that the Head of State, acting on the advice of the Prime Minister, may extend the period of office for not more than 12 months or for successive periods, each of not more than 12 months.

(1B) 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 retirement age under this Article.

(1C) The President may resign from his or her office in writing addressed to the Head of State.”; and

(b) in clause (2), after “such suspension,” insert “unless previously revoked,”.

26. Article 104E amended - In Article 104E of the Constitution:

- (a) in clause (1), omit “Auaunaga a”;
- (b) in clause (1)(a), for “Court” substitute “Courts”;
- (c) for clause (1)(b) substitute:

“(b) a Judge of the Supreme Court nominated by the Chief Justice;”;

- (d) for clause (1)(c) substitute:

“(c) a member of the public appointed by Cabinet on the recommendation of the Minister of Justice;”;

- (e) for clause (3) substitute:

“(3) A meeting of the Komisi may be called by any 3 members other than the Registrar.”; and

- (f) in clause (4), omit “o le Faamasinoga o Fanua ma Suafa”.

27. Article 104F amended - In Article 104F of the Constitution:

- (a) in clause (1), for “Land and Titles High Court” substitute “Land and Titles Courts”;
- (b) clause (2) is repealed; and
- (c) in clause (3), for “Land and Titles High Court” substitute “Land and Titles Courts”.

28. Article 104G substituted - For Article 104G of the Constitution substitute:

“104G. Salaries of the Judges of the Land and Titles Courts-(1) The salaries of the President, the Deputy President or a Vice President of the Land and Titles Courts, or a Judge of the Land and Titles First Court, shall be determined by Act and shall be charged on the Treasury Fund.

(2) The salaries of the President, the Deputy President or a Vice President of the Land and Titles Courts, or a Judge of the Land and Titles First Court, shall not be diminished during their period of office, unless it is a part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.”.

29. Article 111 amended - In Article 111(1) of the Constitution, after the definition of “Act” insert:

““approved country” means a country designated as an approved country under clause (4) of Article 66.”.

30. New Article 125 inserted - After Article 124 of the Constitution insert:

“125. Transitional provision relating to commencement of Constitution Amendment Act 2025-(1)

In this Article:

- (a) “Amendment Act” means the Constitution Amendment Act 2025;
- (b) “commencement date” means the date on which the Amendment Act comes into force;
- (c) “existing proceeding” means any proceeding that, immediately before the commencement date, was before the Lands and Titles Court of Appeal and Review (at any point between the filing of an appeal or an application in that Court and the final determination of that proceeding); and
- (d) “original”, in relation to a provision of the Constitution that is amended by the Amendment Act, means the provision as it was immediately before the commencement date.

(2) The Land and Titles Court of Appeal and Review is, on and from the commencement date, replaced by the Land and Titles Court of Appeal.

(3) Despite the amendments made by the Amendment Act, the Constitution as it was immediately before the commencement date continues to apply in respect of an existing proceeding, subject to the modifications specified in clause (5).

(4) In respect of an existing proceeding:

- (a) every reference to the Land and Titles Court of Appeal and Review in the Constitution as it was immediately before the commencement date must be treated as a reference to the Land and Titles Court of Appeal (subject to paragraph (c));
- (b) the Land and Titles Court of Appeal has the jurisdiction and powers described under original Article 104C(6)(a), 7(a) and (8);
- (c) the Supreme Court has the jurisdiction and powers described in original Article 104C(6)(b), (7)(b), (9) and (10);
- (d) section 57 of the Land and Titles Act 2020 (now repealed) must be treated as if it had never been enacted; and
- (e) a party may apply to the Land and Titles Court of Appeal for directions if there is uncertainty about which Court has jurisdiction or about the next steps in the proceedings.

(5) Clauses (2) to (5) do not limit or affect any party's right to withdraw or discontinue existing proceeding in accordance with rules of the Court.

(6) Subject to clause (2), a person who, immediately before the commencement date, held office in accordance with the Constitution (as it was immediately before the commencement date), continues to hold that office on and from the commencement date in accordance with the Constitution as amended.

(7) In particular, the person who, immediately before the commencement date, is:

- (a) the President of the Land and Titles Court is, on and from the commencement date, the President of the Land and Titles Courts; and

(b) the Judge of the Supreme Court that is a member of the Komisi o le Faamasinoga o Fanua ma Suafa under original Article 104E(1)(b) remains, on and from the commencement date, the Judge of the Supreme Court that is a member of the Komisi under that paragraph (as amended).

(8) Subject to clause (2), a Court that, immediately before the commencement date, was constituted and named in accordance with the Constitution (as it was immediately before the commencement date) continues, on and from the commencement date, as that Court subject to the Constitution as amended.

(9) A country that, immediately before the commencement date, was designated as an approved country in accordance with Article 66(4) is, on and from the commencement date, an approved country for the purposes of Articles 66 and 73.

(10) No act done under or in accordance with a provision of the Constitution before the commencement date is to be treated as invalid merely because the provision was amended or repealed by the Amendment Act.”.

31. Third Schedule amended - In the Third Schedule of the Constitution:

- (a) in the heading of the Third Schedule, for “67 and 78” substitute “34, 80 and 104F”; and
- (b) in the heading of item 5, omit “of the Supreme Court and Court of Appeal”.

The Constitution Amendment Act 2025
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