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# Samoa's Constitution of 1962 with Amendments through 2017

Subsequently amended

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- Preamble

# Preamble

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- God or other deities

IN THE HOLY NAME OF GOD, THE ALMIGHTY, THE EVER LOVING

- God or other deities

WHEREAS sovereignty over the Universe belongs to the Omni-present 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;

- Motives for writing constitution

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

- Motives for writing constitution

WHEREIN should be secured to all the people their fundamental rights;

- Motives for writing constitution

WHEREIN the impartial administration of justice should be fully maintained;

- Motives for writing constitution

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

- Source of constitutional authority

Now THEREFORE, we the people of Samoa in our Constitutional Convention, this twenty-eighth day of October 1960, do hereby adopt, enact, and give to ourselves this Constitution.

## PART I. THE INDEPENDENT STATE OF SAMOA AND ITS SUPREME LAW

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### 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, Savaii, 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.

- Official religion
- God or other deities

### 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.

- Constitutionality of legislation

## PART II. FUNDAMENTAL RIGHTS

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### 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.

- Supreme court powers

### 4. Remedies for enforcement of rights

1. 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.

- Right to life

### 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 possession of a firearm; or
  - c. for the purpose of suppressing a riot, insurrection or mutiny.

- Protection from unjustified restraint

### 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 him or her to be produced before the Court and shall release him.
3. Every person who is arrested shall be informed promptly of the grounds of his or her arrest and of any charge against him or her 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 (herein-after collectively referred to as "remanding officers") within a period of twenty-four 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.

- Principle of no punishment without law

- Right to counsel

### 7. Freedom from inhuman treatment

No person shall be subjected to torture or to inhuman or degrading treatment or punishment.

- Prohibition of torture
- Prohibition of cruel treatment

- Prohibition of slavery

### 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

- Right to conscientious objection
2.
    - 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

- Right to fair trial
  - Judicial independence
  - Right to speedy trial
  - Right to public 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. Judgement 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 he understands and in detail, of the nature and cause of the accusation against him;
    - 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 he 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;
    - e. to have the free assistance of an interpreter, if any doubt exists as to whether he 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.
- Presumption of innocence in trials
  - Trial in native language of accused
  - Right to counsel
  - Right to examine evidence/witnesses
  - Trial in native language of accused
  - Protection from self-incrimination

## 10. Rights concerning criminal law

- Principle of no punishment without law
  - Protection from ex post facto laws
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 fourteen days of that conviction.
- Prohibition of double jeopardy

## 11. Freedom of religion

- Freedom of religion
  - Freedom of opinion/thought/conscience
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 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

2. 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; and
  - b. to assemble peaceably and without arms; and
  - c. to form associations or unions; and
  - d. to move freely throughout Samoa and to reside in any part thereof.
2. Nothing in subclause (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 subclause 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 subclauses (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 subclauses in the interests of national security or public order, health or morals.
4. Nothing in subclause (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 subclause 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.

- Freedom of expression
- Freedom of assembly
- Right to join trade unions
- Freedom of movement

- Protection from expropriation
- Right to own property

## 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; and
  - 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

2.
  - 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 judgements 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.

## 15. Freedom from discriminatory legislation

- General guarantee of equality
  - Equality regardless of origin
  - Equality regardless of religion
  - Equality regardless of social status
  - Equality regardless of gender
  - Equality regardless of parentage
  - Equality regardless of creed or belief
  - Equality regardless of language
  - Equality regardless of political party
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. THE HEAD OF STATE

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- Name/structure of executive(s)

### 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 eleventh day of May 2007 pursuant to clause (5).

- Head of state selection

### 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.

- Eligibility for head of state

2. A person shall not be qualified to be appointed to the office of Head of State
  - a. if he is not a person qualified to be elected as a Member of Parliament; or
  - b. if he does not possess such other qualifications as the Legislative Assembly may determine from time to time by resolution; or
  - c. if he 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 one (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

- Head of state term length

1. Subject to the provisions of Article 21, the Head of State shall hold office for a term of five years from the date on which he assumes the functions of his or her office:

Provided that, notwithstanding the expiry of his or her term, he shall continue to hold office until his or her successor assumes the functions of his or her office or for a period of three months, whichever is the shorter period.

- Head of state replacement

2. Subject to the provisions of this Constitution, a person who holds, or who has held, office as Head of State, shall be eligible for re-appointment 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 five (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 him or her 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.

- Head of state removal

## 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); and
  - b. a period of at least fourteen 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

4. 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 is satisfied by evidence, which shall include, where possible, the evidence of the wife and of at least two 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 he 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 Meaole 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.

- Advisory bodies to the head of state

## 25. Council of Deputies

1. There shall be a Council of Deputies, which shall consist of one, two or three 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 he 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 four years and nine months and not more than five years and three months.

4. If at any time the number of members of the Council of Deputies is less than three, 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 he 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 disqualified 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 the 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 seven 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 he 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 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.

- Oaths to abide by constitution

## 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. THE EXECUTIVE

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- Name/structure of executive(s)

## 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.

- Establishment of cabinet/ministers
- Powers of cabinet

## 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 therefor to Parliament.
2. Cabinet shall be appointed as follows:
  - a. the Head of State shall appoint as 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 twelve Members of Parliament to be Ministers.
  - ba. the Head of State shall, acting on the advice of the Prime Minister, appoint one of the Ministers appointed under subclause (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 subclause (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 subclause (b) of this clause as soon as possible.

- Cabinet removal

- Name/structure of executive(s)
- Head of government selection

- Eligibility for cabinet
- Cabinet selection

- Deputy executive

- Cabinet removal
- Head of government removal

## 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

- Head of government's role in the legislature

2. 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 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.

- Oaths to abide by constitution

## 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.

- Head of government powers

## 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 twenty-four 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 discretion; or
  - b. on the expiry of four 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 subclauses (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.

- Advisory bodies to the head of state

## 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.

- Advisory bodies to the head of state

## 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.

- Attorney general

## 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 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 him in person or by officers subordinate to him, acting under and in accordance with his 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.

## 41A. Repealed by Constitution Amendment Act (No. 1) of 2017

# PART V. PARLIAMENT

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- Structure of legislative chamber(s)

## 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.

- First chamber selection

## 44. Members of the Legislative Assembly

- Size of first chamber

1. Subject to the provisions of this Article, the Legislative Assembly shall consist of:
  - a. one member elected for each of 41 territorial constituencies having such names and boundaries and including such villages or sub-villages or villages and sub-villages as are prescribed from time to time by Act:
  - aa. six additional members being one additional member elected for each of such 6 of those territorial constituencies as are prescribed from time to

- First chamber representation quotas
  1.
    - aa. time by Act;
    - b. two (2) members respectively elected, under the two (2) urban constituencies provided by Act, by persons whose names appear on the urban constituency roll;
  - 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 five (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.
- First chamber representation quotas
  2. [Repealed by Act 19 of 2015]
  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 electors, and the manner in which the roll for each territorial constituency and the urban constituency roll 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 women Members of Parliament specified under clause (1A).
- Replacement of legislators
  6. 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 electors, and the manner in which the roll for each territorial constituency and the urban constituency roll shall be established and kept shall be prescribed by law.
- Replacement of legislators
  7. 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 electors, and the manner in which the roll for each territorial constituency and the urban constituency roll shall be established and kept shall be prescribed by law.
- Restrictions on voting
  8. 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 electors, and the manner in which the roll for each territorial constituency and the urban constituency roll shall be established and kept shall be prescribed by law.

## 45. Qualifications for membership

- Eligibility for first chamber
  - Eligibility for cabinet
  - Eligibility for head of state
1. Any 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 any 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

- Term length for first chamber

1. Every Member of Parliament shall cease to be a Member at the next dissolution of the Legislative Assembly after he 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 he resigns his or her seat by writing under his or her hand addressed to the Speaker; or
  - c. if he ceases to be a citizen of Samoa; or
  - d. if he becomes disqualified under the provisions of this Constitution or of any Act.
3. Notwithstanding 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.

- Removal of individual legislators

## 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.

- Replacement of legislators

## 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.

- Leader of first chamber

## 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 he ceases to be a Member of Parliament; or
  - b. if he 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
  - a. if he ceases to be a Member of Parliament; or
  - b. if he is appointed to be a Minister; or
  - c. if he 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 forty-five days after the holding of a general election and at least once in every year thereafter, so that a period of twelve 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.

- Official or national languages

## 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.

- Legislative committees

- Leader of first chamber

## 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.

- Quorum for legislative sessions

## 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.

- Initiation of general legislation
- Spending bills
- Tax bills

## 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.

- Approval or veto of general legislation

## 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, he shall, acting on the advice of the Prime Minister, declare that he assents to the bill or that he 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 he shall have taken and subscribed before the Assembly an Oath of Allegiance in the form set out in the Third Schedule.

- Immunity of legislators

## 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.

- Dismissal of the legislature

## 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 he 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 he 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 he 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 five years from the date of the last preceding general election, if it has not been sooner dissolved.

- Term length for first chamber

- Scheduling of elections

## 64. General elections

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

# PART VI. THE JUDICIARY

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- Structure of the courts

## 65. Constitution of the Supreme Court

1. There shall be a Supreme Court of Samoa, which shall be a superior court of record and shall consist of a Chief Justice and such number of other Judges as may be determined by Act.
2. The Chief Justice of the Supreme Court shall be appointed by the Head of State, acting on the advice of the Prime Minister.
3. A person shall not be qualified for appointment as a Judge of the Supreme Court unless
  - a. he possesses such qualifications as the Head of State, acting on the advice of the Judicial Service Commission, may prescribe; and
  - b. he 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 eight years.
4. In computing, for the purposes of subclause (b) of clause (3), the period or periods during which any person has been in practice as a barrister, any period or periods during which he has held judicial office in a court of superior or subordinate jurisdiction in Samoa or an approved country shall be included.
5. For the purposes of this Article or of clause (4) of Article 75 or of both of them, 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.

- Number of supreme court judges

- Supreme court selection

- Eligibility for supreme court judges

- Establishment of judicial council

- Establishment of judicial council

## 66. Powers of Judges of the Supreme Court

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

- Oaths to abide by constitution

## 67. Oath of office

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.

- Mandatory retirement age for judges
- Supreme court term length

## 68. Tenure 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 he 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. Any person of any age who is not a citizen of Samoa and who is qualified for appointment under the provisions of clause (3) of Article 65 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 he has reached the age at which he is required by this Article to retire or that his or her term of office has expired, as the case may be.
4. A Judge of the Supreme Court may resign his or her office by writing under his or her hand addressed to the Head of State.
5. A Judge of the Supreme Court 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 ground of stated misbehaviour or of infirmity of body or mind.
6. 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 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.

- Establishment of judicial council

- Supreme/ordinary court judge removal

- Establishment of judicial council

- Protection of judges' salaries

## 69. Salaries of Judge of the Supreme Court

The salaries of Judges of the Supreme Court to whom clause (1) of Article 68 applies shall be determined by Act and shall be charged on the Treasury Fund. The salaries of such Judges shall not be diminished during their period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

## 70. Acting Chief Justice

1. While any vacancy exists in the office of Chief Justice or during any absence from Samoa of the Chief Justice, the senior Judge of the Supreme Court shall have authority to act as Chief Justice and to perform the functions of the office of Chief Justice.
2. 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 to act as Chief Justice until the Chief Justice resumes those functions, and, during that period, to perform those functions.

3. The authority conferred on the Acting Chief Justice under the provisions of this Article shall not include power to preside over the Court of Appeal unless he is qualified by virtue of his or her seniority to preside thereover under the provisions of clause (3) of Article 75.

- Establishment of judicial council

## 71. 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 the provisions of clause (3) of Article 65 to be temporarily a Judge of the Supreme Court:

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

2. Any 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 he may at any time resign his or her office by writing under his or her hand addressed to the Head of State.

- Establishment of judicial council

## 72. Judicial Service Commission

1. There shall be a Judicial Service Commission, which shall consist of:
  - a. the Chief Justice, as President:
  - b. the Attorney-General or, if for any reason the Attorney-General is unable to act, the Chairman of the Public Service Commission:
  - c. a person nominated from time to time by the Minister of Justice.
2. No business shall be transacted by the Judicial Service Commission unless three 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. 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 hereby vested in the Head of State, acting on the advice of the Judicial Service Commission.

- Supreme court selection
- Ordinary court selection
- Supreme/ordinary court judge removal

## 73. Jurisdiction of the Supreme Court

1. The Supreme Court shall have such original, appellate and revisional jurisdiction as may be provided by Act.
2. 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. 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.

- Right to appeal judicial decisions

- Constitutional interpretation

- Constitutional interpretation

- Structure of the courts

## 74. Subordinate courts

There shall be such subordinate courts possessing such jurisdiction and powers as may be provided by Act.

- Structure of the courts

## 75. Constitution of Court of Appeal

- Supreme court selection

- Establishment of judicial council

- Supreme court selection

1. There shall be a Court of Appeal of Samoa, which 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 and the other Judges of the Supreme Court;
  - b. such persons, possessing the qualifications prescribed under the provisions of clause (3) of Article 65, as may be appointed from time to time by the Head of State, acting on the advice of the Judicial Service Commission.
3. The Chief Justice 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.
4. 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.
5. An appointment under the provision of subclause (b) 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.

## 76. Number of Judges

1. Any three Judges of the Court of Appeal may exercise all the powers of the Court:

Provided that the Court may have its judgment delivered by any one of its members who is also a Judge of the Supreme Court, 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.

## 77. Judges not to sit on appeals from own decisions

A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by him or her or by a court on which he sat as a member.

- Oaths to abide by constitution

## 78. Oath of office

Any person appointed under the provisions of subclause (b) of clause (2) of Article 75 to be 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.

- Right to appeal judicial decisions

## 79. General jurisdiction of Court of Appeal

Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to hear and determine such appeals (including proceedings removed by order of the Supreme Court to the Court of Appeal) as may be provided by Act.

- Constitutional interpretation
- Right to appeal judicial decisions

## 80. Jurisdiction on constitutional questions

1. 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.
2. 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 question of law as to the interpretation or effect of any provision of this Constitution, grant special leave to appeal from that decision.

3. Where such a certificate is given or such leave is granted, any party in the case may appeal to the Court of Appeal on the ground that any such question as aforesaid has been wrongly decided and, with the leave of that Court, on any other ground.

- Right to appeal judicial decisions

## 81. Jurisdiction in respect of fundamental rights

An appeal shall lie to the Court of Appeal from any decision of the Supreme Court in any proceedings under the provisions of Article 4.

## 82. Definition of "decision"

In Articles 77, 80, 81 and 119, "decision" includes judgment, decree, order, writ, declaration, conviction, sentence, opinion or other determination.

- Ombudsman

# PART VIA. OMBUDSMAN (KOMESINA O SULUFAIGA)

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## 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 six (6) years; and
  - b. is eligible for re-appointment; and
  - c. on expiry of the term, continues in office until reappointed 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. THE PUBLIC SERVICE

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## 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
- ga. Director of Public Prosecutions and other prosecutors and officers and employees of an office of prosecutions established by Act;
- 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 defence force;
- l. sui o le nuu;
- 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 three 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
  - a. if he is not or ceases to be a citizen of Samoa; or
  - b. if he 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 three 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

2. 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; and
    - ii. human resource management policy; and
    - iii. human resource 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 or solicitor of the Supreme Court nominated by the Judicial 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 three 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 subclause (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 subclauses (b)

3.
  - 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

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### 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, 69 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,

- Budget bills
- Spending bills

5. 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 he may consider essential for the continuance of any services, until an Appropriation Bill becomes law:

PROVIDED THAT the expenditure so authorised 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 authorises, 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 issued and paid under the provisions of this Article shall not exceed three percent of 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 preserve**

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:
  - 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

3.
  - a. 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

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- Right to culture

### 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 and Titles Court

There shall be a Land and Titles Court with such composition and with such jurisdiction in relation to Matai titles and customary land as may be provided by Act.

### 104. Land below high-water mark

1. Subject to the provisions 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.

- Emergency provisions

## PART X. EMERGENCY POWERS

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## 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, he 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 thirty 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 seven 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 bylaws 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 six Members of Parliament and made within ten 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 four sitting days next after the day on

2. 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 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 three months unless the advisory board has considered any representations made by him or her 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

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- Constitution amendment procedure

### 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 ninety 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 territorial 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.

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.

- Power to pardon

## 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 upon 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 -
  - o "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 Samoa 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" means any law for the time 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 judgement 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:

1.
  - "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, anything 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 subclauses (a) to (m) 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 the name "Western Samoa Trust Estates Corporation" 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, subclause or paragraph, that reference shall be construed as a reference to that clause of the Article, that subclause of the clause or that paragraph of the subclause in which the reference occurs.
4. Where under the provisions of this Constitution a person is required to take and subscribe an oath, he shall be permitted, if he so desires, to comply with that requirement by taking and sub-scribing 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;

7. 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.

- Transitional provisions

# PART XII. TRANSITIONAL

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## 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; and
- 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 three 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 Appeal, 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 of 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.

- Reference to country's history

## 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 nine months beginning with the day on which the Legislative Assembly first meets.

## FIRST SCHEDULE

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[Repealed by Act 19 of 2015].

## SECOND SCHEDULE

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[Repealed by Act 19 of 2015].

- Oaths to abide by constitution
- God or other deities

## THIRD SCHEDULE. FORMS OF OATH

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### 1. Oath of Head of State (Article 28)

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 (Article 28**

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 (Article 34**

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 (Articles 49 and 61**

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 (Articles 61 and 78**

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.

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