



SAMOA

VILLAGE FONO ACT 1990

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VILLAGE FONO ACT 1990

1990

No. 3

AN ACT to validate and empower the exercise of power and authority by Village Fono in accordance with the custom and usage of their villages and to confirm or grant certain powers and to provide for incidental matters.

[Assent date: 30 July 1999]

[Commencement date: 16 October 1990]

1. Short title and commencement - (1) This Act may be cited as the Village Fono Act 1990.

(2) This Act comes into force on such date as shall be specified by the Head of State acting on the advice of Cabinet, by Order.

2. Interpretation - In this Act unless the context otherwise requires:

“village Fono” in relation to any village means the assembly of the Alii and Faipule of that village

meeting in accordance with the custom and usage of such village and includes the plural;

“registrar” means the Registrar of the Land and Titles Court;

“village land” does not include government land or freehold or leasehold land;

“village misconduct” in relation to any village means any act conduct or behaviour which is or has been traditionally punished by the Village Fono of that village in accordance with its custom and usage and has the extended meaning required by section 5.

3. Village Fono continue - (1) The Registrar shall compile and keep up to date a register of Village Fono in which shall be recorded the name of every village in which a Village Fono is functioning.

(2) Every Village Fono in the exercise of any power or authority shall exercise the same in accordance with the custom and usage of that village.

(3) The past and future exercise of power and authority by every Village Fono with respect to the affairs of its village in accordance with the custom and usage of that village is hereby validated and empowered.

(4) In addition to the power and authority preserved or granted under this Act, every Village Fono shall have such other powers, authorities and functions as may be provided in any other Act.

(5) A certificate under the hand of the Registrar to the effect that a Fono is entered on this register under this Act shall be *prima facie* evidence of the existence of such Fono.

4. Written records not required - No written record of any enquiry by a Village Fono into any allegation of village misconduct, or of any punishment imposed, need be kept and no person found by any Village Fono to have been guilty of village misconduct is, by reason only of that fact, deemed to be guilty of a crime or offence under any other enactment, nor except with the consent of that person shall evidence be given in any Court of the decision of the Village Fono or of any punishment imposed by it.

5. Powers of Village Fono relating to hygiene and economic development - (1) Every Village Fono shall in respect to its village have the powers set out in subsection (2) even if the powers may not in a particular village form part of its custom and usage.

(2) The powers referred to in subsection (1) are:

- (a) the power to make rules for the maintenance of hygiene in the village; and
- (b) the power to make rules governing the development and use of village land for the economic betterment of the village; and
- (c) the power to direct any person or persons to do any work required to be done pursuant to rules made in accordance with the powers granted or preserved by paragraphs (a) and (b).

(3) A person is guilty of village misconduct and may be punished by his Village Fono who fails to obey any rule or direction made or given under the powers granted or preserved by this section.

6. Punishments - Without limiting the power of Village Fono preserved by this Act to impose punishments for village misconduct, the powers of every Village Fono to impose punishment under the custom and usage of its village are deemed to include the following powers of punishments:

- (a) the power to impose a fine in money, fine mats, animals or food; or partly in one or partly in others of those things;
- (b) the power to order the offender to undertake any work on village land.

7. Power of Delegation - A Village Fono may delegate to a committee of its members all or any of its powers.

8. Courts to take account of penalty imposed by Village Fono - Where punishment has been imposed by a Village Fono in respect of village misconduct by any person and that person is convicted by a Court of a crime or offence in respect of the same matter the Court shall take into account in mitigation of sentence the punishment imposed by that Village Fono.

9. Limitation of jurisdiction of Village Fono - The jurisdiction of any Village Fono does not extend to include:

- (a) any person who does not ordinarily reside in its village; or
- (b) any person who not being a Matai of its village ordinarily resides in its village on Government, freehold, or leasehold land and is not liable in accordance with the custom and usage of that village to render tautua to a Matai of that village.

10. Exemption from Income Tax - The income of a Village Fono shall be wholly exempted from income tax.

11. Right of appeal - (1) Subject to subsection (6), a person adversely affected by a decision of a Fono (including a decision as to punishment) has a right of appeal to the Court against such decision and the Court shall have jurisdiction to hear and determine the matter.

(2) An appeal is to be commenced by a petition in accordance with section 44 of the Land and Titles Act 1981.

(3) An appeal is to be commenced within one month of the date on which the decision was made, or within such further time as the Court may allow on application made either before or after the expiration of that month.

(4) Despite anything contained in the Land and Titles Act the Court shall have jurisdiction to hear and determine every appeal under this section.

(5) The Court may determine the appeal in one of the following ways:

- (a) it may allow the appeal and the decision appealed from is thereupon void;
- (b) it may dismiss the appeal;

it may refer the decision back to the Fono for reconsideration, but it does not have power to impose any punishment or penalty to substitute one punishment or penalty for another.

(6) There is no right of appeal from a decision of a Fono given after reconsideration pursuant to subsection (5)(c).

(7) In all other respects, the procedure shall be as prescribed by the Land and Titles Act 1981 or as directed by the Court.

(8) For the purposes of this section, "Court" means the Land and Titles Court continued under the Land and Titles Act 1981.

REVISION NOTES 2008-2011

This Act has been revised under section 5 of the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Insertion of the commencement date
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” changed to “a/an”
 - (ii) Present tense drafting style:
 - o “shall be” changed to “is/are” or “is/are to be”
 - o “shall have” changed to “has”
 - (iii) Removal/replacement of obsolete and archaic terms with plain language
 - o “notwithstanding” changed to “despite”
 - o “notwithstanding that” changed to “even if”
 - o “in accordance with (the provisions of)” changed to “under”
 - (iv) Removal of superfluous terms such as “the provisions of”
 - (v) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate.
 - (vi) Section 6 and 9 re-paragraphed to create paragraphs (a) and (b)

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

This Act has been consolidated and revised in 2008, 2009, 2010 and 2011 by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is the official version of this Act as at 31 December 2011. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.



Aumua Ming Leung Wai
Attorney General of Samoa

Revised and consolidated in 2008 by the Legislative Drafting Division under the supervision of Teleiai Lalotoa Sinaalamaimaleula Mulitalo (Parliamentary Counsel)

Revised in 2009, 2010 and 2011 by the Legislative Drafting Division under the supervision of Papalii Malietau Malietoa (Parliamentary Counsel).

**The Village Fono Act 1990 is administered by the
Ministry of Women, Community and Social Development.**