

SAMOA AMENDMENT BILL

EXPLANATORY NOTE

THE principal purpose of this Bill is to give effect to some of the proposals for the further constitutional development of Western Samoa by—

- (a) Reconstituting the Executive Council and giving the Council wider powers and defining the powers of the High Commissioner in relation to the Executive Council;
- (b) Amending the existing provisions relating to the functions of the Public Service Commissioner of Western Samoa and the control of the Western Samoan Public Service.

The Bill also contains other miscellaneous amendments.

PART I

THE EXECUTIVE COUNCIL OF WESTERN SAMOA

Clause 3 constitutes the Executive Council and declares it to be the principal instrument of policy of the High Commissioner in his administration of the executive government of Western Samoa, having such functions and powers as may be prescribed by any Act or regulations or Ordinance or law in force in Western Samoa.

Clause 4 defines the membership of the Executive Council. The changes in the existing constitution of the Council are that the three official members are named, being the Secretary to the Government, the Financial Secretary, and the Attorney-General (new statutory positions for which provision is made in *clauses 15* and *16*), and there are to be four Samoan members instead of three and two European members instead of one. The clause also provides for the filling of vacancies, and *subclause (4)* provides that the Samoan and European appointed members are to receive such remuneration and allowances as are prescribed by Ordinance.

Clause 5 provides that, with certain exceptions, the High Commissioner must consult with the Executive Council in the exercise of any of his powers, and must act in accordance with the advice of the Executive Council in any matter in which he is obliged to consult with the Council.

The matters in which the High Commissioner is not obliged to consult with the Executive Council are—

- (a) Matters relating to defence (except the taking of land for defence purposes) or to external affairs or to the title of the Crown to land (these being reserved subjects under section 8 (2) of the Samoa Amendment Act 1947):
- (b) Powers exercised under a reserved enactment:
- (c) Unimportant matters:
- (d) Urgent matters where it is not possible to consult with the Council before the time within which it is necessary for him to act:
- (e) Powers exercised under any future enactment which specifically states that the High Commissioner may act at his discretion.

Clause 6 provides that the High Commissioner shall as far as practicable attend and preside at all meetings of the Executive Council. In his absence a member nominated by the High Commissioner is to preside. Subject to these provisions, the procedure of the Executive Council is to be prescribed by regulations or, while there are no such regulations or so far as the regulations do not provide, is to be determined by the High Commissioner.

Clause 7 empowers the High Commissioner to charge any member of the Executive Council (other than members of the Council of State) with the responsibility for any department or subject, and for that purpose to delegate powers to that member, and the clause also makes provision for temporary appointments where any member so charged is temporarily unable to administer his department or subject.

Clause 8 provides for the appointment of a Clerk of the Executive Council, and defines his functions.

Clause 9 provides for the making of regulations for the purposes of this Part of the Bill. The clause includes power to prescribe the procedure of the Executive Council, and to provide for the settlement of disagreements between the member of the Executive Council charged with the responsibility for any department and the head of that department.

Clause 10 provides for consequential repeals.

PART II

THE WESTERN SAMOAN PUBLIC SERVICE

Clause 11 defines in an amended form the functions of the Public Service Commissioner for Western Samoa, and specifies the matters in relation to the Service for which the Public Service Commissioner is responsible. The clause repeals the existing provisions that in matters concerning the Government of New Zealand as the administering authority the Public Service Commissioner must act in accordance with directions given to him by the Minister of Island Territories, but provides that in the exercise of his powers he must have regard to the policies and objectives of the Government of Western Samoa and of the Government of New Zealand as the administering authority.

Clause 12: The effect of this clause is that a copy of the annual list of the persons employed in the Western Samoan Public Service showing particulars of their salaries is to be laid before the Legislative Assembly.

Clause 13: Section 18 (1) of the Samoa Amendment Act 1949 provides that salaries in the Western Samoan Public Service are to be fixed by the Public Service Commissioner, but no salary may be fixed at a rate exceeding £1,060 a year without the prior approval of the Minister of Island Territories. The effect of this amendment is that salaries will continue to be fixed by the Public Service Commissioner, but no salary may be fixed at a rate exceeding £1,450 a year without the prior approval of the High Commissioner.

Clause 14: Section 33 (1) of the Samoa Amendment Act 1949 empowers the Public Service Commissioner, with the approval of the Minister of Island Territories, to make regulations for the control of the Western Samoan Public Service. This clause provides that the Public Service Commissioner, with the approval of the High Commissioner, may make regulations in respect of those matters concerning the Western Samoan Public Service for which the Public Service Commissioner is responsible under section 3 (2) of the Act (as substituted by *clause 11* of this Bill), and a copy of any such regulations must be laid before the Legislative Assembly.

PART III

MISCELLANEOUS

Clause 15 provides for the appointment of the Financial Secretary, and defines his functions. The same person may be appointed to be both the Financial Secretary and the Treasurer.

Clause 16 provides for the appointment of the Attorney-General, and defines his functions. The Attorney-General is to perform the duties of Crown Solicitor.

Clause 17: Section 364 of the principal Act provides for the issue of Samoan Treasury notes. The section includes provisions that the notes are to be issued by the Minister of Island Territories, who is to give security to the New Zealand Treasury for the liability incurred by the New Zealand Treasury under the notes, and the notes are to be countersigned by the Secretary of the New Zealand Treasury, or as he directs. The effect of this clause is to transfer to the High Commissioner the functions of the Minister of Island Territories under the section and to provide that the notes are to be countersigned by the Financial Secretary, or as he directs.

Hon. Mr Macdonald

SAMOA AMENDMENT

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A BILL INTITULED

An Act to amend the Samoa Act 1921

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title and commencement—(1) This Act may be cited as the Samoa Amendment Act 1956, and shall be read together with and deemed part of the Samoa Act 1921 (hereinafter referred to as the principal Act).

(2) Parts I and II of this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Proclamation.

2. Reserved enactment—Parts I and II of this Act are hereby declared to be reserved enactments for the purposes of section nine of the Samoa Amendment Act 1947. 5

PART I

THE EXECUTIVE COUNCIL OF WESTERN SAMOA

3. Executive Council of Western Samoa—(1) There shall be an Executive Council in and for Western Samoa, to be called the Executive Council of Western Samoa. 10

(2) The Executive Council shall be the principal instrument of policy of the High Commissioner in his administration of the executive government of Western Samoa, and shall perform such functions and exercise such powers as may from time to time be prescribed by this Act or any regulations thereunder or by any Ordinance or by any other enactment or law in force in Western Samoa. 15

4. Members of Executive Council—(1) The Executive Council shall consist of— 20

(a) The High Commissioner:

(b) The Samoans for the time being holding office as *Fautua*:

(c) The Secretary to the Government:

(d) The Financial Secretary of Western Samoa: 25

(e) The Attorney-General of Western Samoa:

(f) Four Samoan members, who shall be appointed by the High Commissioner from among the Samoan elected members of the Legislative Assembly on the nomination of the Samoan elected members of that Assembly, made in accordance with such procedure as they may from time to time adopt for that purpose: 30

(g) Two members, who shall be appointed by the High Commissioner from among the European elected members of the Legislative Assembly on the nomination of the European elected members of that Assembly, made in accordance with such procedure as they may from time to time adopt for that purpose. 40

(2) The appointed members of the Executive Council shall hold office during the pleasure of the High Commissioner:

5 Provided that every appointed member of the Executive Council shall vacate his office within twenty-eight days if he ceases to be a member of the Legislative Assembly, but no person who is in office as an appointed member of the Council immediately before any dissolution of the Assembly shall be deemed on that dissolution to have vacated his office on the Council by reason of this proviso.

10 (3) Any vacancy in the office of an appointed member of the Executive Council shall be filled in the manner in which the appointment to the vacant office was originally made.

(4) The appointed members of the Executive Council may receive from the Samoan Treasury such remuneration and
15 allowances as may from time to time be prescribed by Ordinance.

5. Exercise of High Commissioner's powers—(1) The High Commissioner shall consult with the Executive Council in the exercise of all powers conferred on him by the principal Act
20 or by any regulations or by any Ordinance or by any other Act or law in force in Western Samoa:

Provided that he shall not be obliged to consult with the Executive Council—

25 (a) In the exercise of any powers relating to defence (except in relation to the taking of land for defence purposes) or to external affairs or to the title of the Crown to any land:

(b) In the exercise of any powers conferred on him by a reserved enactment:

30 (c) In any case in which the matter to be decided is, in his judgment, too unimportant to require the advice of the Council:

(d) In any case in which the matter to be decided is, in his
35 judgment, too urgent to admit of the advice of the Council being given by the time within which it may be necessary for him to act, but in such a case he shall, as soon as is practicable, communicate to the Council the measures that he has adopted with the reasons therefor:

40 (e) In the exercise of any powers conferred on him by any Act passed or regulations made after the commencement of this Part of this Act in which it is specifically provided that he may act at his discretion.

(2) The High Commissioner shall act in accordance with the advice of the Executive Council in any matter on which he is by this section obliged to consult with the Executive Council.

(3) No action by the High Commissioner may be challenged or called into question in any Court upon the ground that he has failed to comply with or has acted in contravention of the provisions of this section. 5

6. Procedure—(1) The High Commissioner shall, as far as practicable, attend and preside at all meetings of the Executive Council. 10

(2) In the absence of the High Commissioner from any meeting, such other member of the Executive Council as the High Commissioner appoints shall preside.

(3) The Executive Council shall not be disqualified for the transaction of business by reason of any vacancy among its members, and no proceedings may be challenged or called into question in any Court upon the ground that some person who sat and voted in the Executive Council or otherwise took part in its proceedings was not qualified to act as a member of the Council. 15 20

(4) Where all the members for the time being of the Council of State are also members of the Executive Council, any member of the Council of State may require that any matter arising for discussion in the Executive Council which is also within the competence of the Council of State shall be referred to the Council of State, and thereupon, unless the High Commissioner otherwise directs, it shall not be competent for the Executive Council to consider the matter until the Council of State has advised upon it. 25 30

(5) Subject to the provisions of this section, the procedure of the Executive Council shall be as prescribed by regulations made under section *nine* of this Act or, while there are no such regulations or so far as the regulations do not provide, shall be determined from time to time by the High Commissioner. 35

7. Assignment of departments to members of the Executive Council—(1) The High Commissioner may from time to time, by directions in writing,—

(a) Charge any member of the Executive Council (not being also a member of the Council of State) with the responsibility for any department or subject: 40

(b) Delegate to that member such of the powers of the High Commissioner as the High Commissioner considers necessary or convenient for the exercise of that responsibility:

5 (c) Revoke or vary any directions under this subsection.

(2) Where the High Commissioner considers that any member of the Executive Council is for any cause temporarily unable to administer any department or subject with the responsibility for which he is charged, the High Commissioner
10 may from time to time, by directions in writing,—

(a) Charge any other member of the Executive Council (not being also a member of the Council of State) with the responsibility for that department or subject until such time as the first-mentioned member is
15 declared by the High Commissioner again to be able to administer that department or subject:

(b) Delegate to that other member such of the powers of the High Commissioner as the High Commissioner considers necessary or convenient for the exercise
20 of that responsibility:

(c) Revoke or vary any directions under this subsection.

8. Clerk of the Executive Council—There shall be an officer of the Western Samoan Public Service to be called the Clerk of the Executive Council of Western Samoa, who shall
25 be responsible for arranging the business for, and keeping the minutes of, meetings of the Executive Council, and for conveying decisions of the High Commissioner in Executive Council to the appropriate person or authority, and shall have such other functions and duties as the High Commissioner
30 from time to time directs.

9. Regulations—The Governor-General may from time to time, by Order in Council, make regulations—

(a) Prescribing the procedure for summoning and holding meetings of the Executive Council for the conduct of
35 the business of the Council:

(b) Providing for the settlement of disagreements between the member of the Executive Council charged with the responsibility for any department and the officer who is the head of that department on questions
40 relating to the administration of that department:

- (c) Providing for such other matters as the Governor-General considers necessary or advisable to give full effect to the provisions of this Part of this Act and for the due performance by the Executive Council of its functions and the exercise of its powers. 5

10. Repeals—The following enactments are hereby repealed—

- (a) Section five A of the Samoa Amendment Act 1947:
 (b) Section two of the Samoa Amendment Act 1952.

PART II 10

THE WESTERN SAMOAN PUBLIC SERVICE

11. Functions of Public Service Commissioner—Section three of the Samoa Amendment Act 1949 is hereby amended by repealing subsections two and three, and substituting the following subsections: 15

“(2) Subject to the provisions of the principal Act (including this Act), the Public Service Commissioner shall be responsible for—

“(a) Recruitments, appointments, promotions, transfers, and retirements in the Western Samoan Public Service; 20

“(b) The gradings and salaries to which officers or employees should be appointed, promoted, or transferred; and

“(c) Discipline, dismissals, leave conditions, working conditions, staff training, departmental organisation, and working methods in the Western Samoan Public Service. 25

“(3) The Public Service Commissioner shall have all the powers necessary for the proper performance of the duties and functions imposed or conferred on him by this Act or by any other Act or by any Ordinance: 30

“Provided that, in the exercise of his powers, he shall at all times have regard to the policies and objectives of the Government of Western Samoa and of the Government of New Zealand as the administering authority.” 35

12. Duties of Public Service Commissioner—Section ten of the Samoa Amendment Act 1949 is hereby amended by adding to subsection three the words “and a copy thereof shall be laid before the Legislative Assembly of Western Samoa 40

within twenty-eight days after the publication thereof if the Legislative Assembly is then meeting and, if it is not then meeting, shall be laid before it during its next meeting”.

13. **Salaries of employees**—Section eighteen of the Samoa Amendment Act 1949 is hereby amended by omitting from the proviso to subsection one the words “one thousand and sixty pounds a year without the prior approval of the Minister”, and substituting the words “one thousand four hundred and fifty pounds a year without the prior approval of the High Commissioner”.

14. **Regulations**—(1) Section thirty-three of the Samoa Amendment Act 1949 is hereby amended by repealing subsection one, and substituting the following subsection:

“(1) The Public Service Commissioner, with the approval of the High Commissioner, may from time to time make regulations in respect of those matters concerning the Western Samoan Public Service for which the Public Service Commissioner is responsible.”

(2) Section thirty-three of the Samoa Amendment Act 1949 is hereby further amended by adding the following subsection:

“(6) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is then meeting, and, if it is not then meeting, shall be laid before it during its next meeting.”

PART III

MISCELLANEOUS

15. **Financial Secretary**—(1) There shall be an officer of the Western Samoan Public Service to be called the Financial Secretary of Western Samoa, who shall be the principal financial adviser to the Government of Western Samoa, and shall have such other functions in relation to financial matters as may from time to time be determined by the High Commissioner or prescribed by Ordinance.

(2) The same person may be appointed to be both the Financial Secretary and the Treasurer of Western Samoa.

16. Attorney-General—(1) There shall be an officer of the Western Samoan Public Service to be called the Attorney-General of Western Samoa, who shall be the principal legal adviser to the Government of Western Samoa, and shall have such legal and other functions as may from time to time be determined by the High Commissioner or prescribed by Ordinance. 5

(2) Except as may otherwise be provided by Ordinance, the Attorney-General shall perform the duties of Crown Solicitor.

17. Samoan currency notes—Section three hundred and sixty-four of the principal Act (as amended by subsection six of section five of the Island Territories Act 1943) is hereby further amended as follows: 10

- (a) By omitting from subsection two and also from subsection five the words “Minister of Island Territories”, and substituting in each case the words “High Commissioner”: 15
- (b) By omitting from subsection three the words “Secretary of the New Zealand Treasury”, and substituting the words “Financial Secretary of Western Samoa”. 20