

SAMOA AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Samoa Act 1921.

Part I provides for the establishment of Cabinet Government in Western Samoa. The proposal has the full support of the Legislative Assembly of Western Samoa, and the approval of the Trusteeship Council of the United Nations.

Part II provides for establishing a Public Service Commission of Western Samoa; and *Part III* makes miscellaneous amendments to the existing legislation.

Clause 1 relates to the Short Title.

PART I

CONSTITUTIONAL PROVISIONS

Clause 2 provides that *Part I* of the Bill shall come into force on 1 October 1959.

Clause 3 re-enacts section 4 of the Samoa Amendment Act 1957, and declares that the executive government of Western Samoa is vested in Her Majesty the Queen in right of the Government of New Zealand.

Clause 4 provides for the office of High Commissioner of Western Samoa, with a status differing in some material respects from the status he at present has under section 5 of the 1957 Act. In particular the High Commissioner is no longer to be the head of the executive government of Western Samoa. The clause provides that he shall be a member of the Council of State which becomes the head of the executive government, and shall also be the representative in Western Samoa of the Government of New Zealand. As such representative he is to exercise such functions, powers, and authorities as will enable him to give effect to the responsibilities of the Government of New Zealand in relation to Western Samoa, and in particular to the responsibilities of the Government of New Zealand in relation to the external affairs and defence of Western Samoa and any land vested in the Crown in right of the Government of New Zealand.

Clause 5 provides for the appointment of a Deputy High Commissioner of Western Samoa. The clause follows substantially section 6 of the 1957 Act.

Clause 6 provides for the Deputy High Commissioner to act in the event of the sickness or absence of the High Commissioner. The clause follows substantially section 7 of the 1957 Act.

Clause 7 provides for the appointment of *Fautua*. The clause re-enacts subsections (1) and (2) of section 9 of the 1957 Act.

Clause 8 makes provision for the Council of State of Western Samoa. This will consist, as at present, of the High Commissioner and the *Fautua*. Under the new scheme the Council of State, and not the High Commissioner alone, is to be head of the executive government of Western Samoa. Members of the Council of State are required to take an oath of office.

Clause 9 provides for the delegation by the Council of State of certain of its powers.

Clause 10 provides for the appointment and control of the staff of the Council of State, and the personal staff of its members (other than the High Commissioner). The clause requires the appointment of a Secretary to the Council of State.

Clause 11 provides for payment out of the Samoan Treasury of—

(a) The salaries and allowances of the *Fautua* at such rate or rates as may be fixed by Ordinance:

(b) The salaries and allowances of the staff of the Council of State and of the personal staff of its members other than the High Commissioner.

The clause does not apply to any person appointed to any such staff under clause 10 (2).

Clause 12 provides for the procedure of the Council of State. Attention is drawn especially to *subclause (5)* which provides that, where advice is tendered in accordance with the normal constitutional conventions to the Council of State and that Council does not within seven days thereafter decide either to accept that advice or to take some other action in relation thereto which in accordance with those constitutional conventions it is entitled to take, the Council of State shall be deemed to have accepted that advice.

Clause 13 provides for the appointment, and defines the functions, of the Cabinet of Western Samoa.

Clause 14 defines the circumstances in which the Prime Minister and other Ministers will vacate the offices that they hold.

Clause 15 provides that all Ministers shall take the official oath or an appropriate affirmation instead of that oath.

Clause 16 provides that the Cabinet shall be summoned only by the Prime Minister or, in his absence, by such Minister as the Prime Minister shall appoint.

Clause 17 lays down rules governing the transaction of business in Cabinet. *Subclause (6)* requires every decision of Cabinet to be communicated within 24 hours of its being made to the members of the Council of State. A Cabinet decision will not normally take effect for seven days unless, on consideration by the Executive Council, it is supported by two members of the Council of State or subsequently reaffirmed by Cabinet. Where Cabinet is of the opinion that the issue involved in any decision is one of extreme urgency, that decision shall take effect on the expiration of 24 hours after the time when the minutes in which the decision of Cabinet is recorded are communicated to the Secretary to the Council of State.

Clause 18 provides for the appointment of a Secretary to the Cabinet, and defines his duties.

Clause 19 authorises the Prime Minister of Western Samoa to assign responsibilities to the Ministers of his Cabinet and to retain in his charge any Department or subject.

Clause 20 makes provision for an Executive Council of Western Samoa consisting of:

- (a) The members for the time being of the Council of State; and
- (b) The Ministers of the Cabinet.

The clause defines the functions of the Executive Council and makes provision for its meetings.

Clause 21 provides for the appointment of a Clerk of the Executive Council. The same person may be appointed to be both Clerk of the Executive Council and Secretary to Cabinet.

Clause 22 provides for the review of Cabinet decisions by the Executive Council. The Executive Council is given power to delay for a short period the taking effect of decisions of the Cabinet.

Clause 23 provides for the appointment of a Secretary to the Government of Western Samoa, who shall have such duties and functions as may from time to time be determined by the Prime Minister or prescribed by Ordinance.

Clause 24 provides for the appointment of an Attorney-General of Western Samoa, and defines his functions.

Clause 25 provides for the appointment of a Financial Secretary of Western Samoa, and specifies his functions.

PART II

PUBLIC SERVICE COMMISSION OF WESTERN SAMOA

Clause 26 provides that Part II of the Bill, which provides for the setting up of a Public Service Commission of Western Samoa in place of the present sole Commissioner, shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Proclamation.

Clause 27 provides for the constitution of a Public Service Commission of Western Samoa. The Commission is to consist of not more than three persons, who shall be appointed by the Council of State on the recommendation of the Executive Council. Every member shall be appointed for a term of not more than three years, but may from time to time be reappointed.

Clause 28 provides that the members of the Public Service Commission shall be paid such salaries as may from time to time be appropriated by the Legislative Assembly of Western Samoa.

Clause 29 defines the functions of the Public Service Commission.

Clause 30 contains provisions governing meetings of the Commission.

Clause 31 provides that the Commission may regulate its procedure in such manner as it thinks fit.

Clause 32 provides that the Commission may delegate its powers to any of its members or to any other persons, and may delegate to the Board of Directors of the Western Samoa Trust Estates Corporation such of its powers in relation to the appointment and control of employees of the Corporation as the Commission thinks fit.

Clause 33 protects the status in the Western Samoa Public Service or the New Zealand Government Service of any member thereof who is appointed to be a member of the Public Service Commission of Western Samoa.

Clause 34 provides that any member of the Commission may be removed or suspended from office for misbehaviour or incompetence or for engaging without the approval of the Council of State in any paid private employment.

Clause 35 requires the Public Service Commission to furnish to the Council of State an annual report on the efficiency and condition of the Western Samoan Public Service. The Commission is also required to publish annually a list of persons permanently employed in that service together with particulars of their salaries and allowances. The Commission is directed, consonant with the efficient conduct of the Government service, to take such action as it thinks necessary to ensure that citizens of Western Samoa are afforded a progressively increasing share in the administrative and other services of Western Samoa.

Clause 36 gives the Commission power to appoint a deputy of the holder of any position under the control of the Commission.

Miscellaneous

Clause 37 makes consequential amendments to section 2 of the Samoa Amendment Act 1949, which relates to the control of the Western Samoan Public Service.

Clause 38 provides for the protection of officers engaged by the Public Service Commission for a specified time.

PART III

MISCELLANEOUS AMENDMENTS

Clause 39 relates to the currency of Western Samoa. It provides in particular that, on and after a date to be fixed by the Council of State by Proclamation, the Bank of Western Samoa may make and issue bank notes. Until that date the Council of State of Western Samoa is authorised to make and issue Treasury notes. Safeguards are provided in connection with the issue of notes.

Clause 40 enables the Council of State, by notice in the *Western Samoa Gazette*, to authorise persons to take and receive statutory declarations.

Clause 41 amends the Schedule of reserved enactments in the 1957 Act, and provides for its further amendment by Order in Council.

Clause 42 validates the Citizenship of Western Samoa Ordinance 1959, and also all Ordinances that come into force on or after 1 October 1959 in cases where they were passed before that date and would have been valid if they had been passed on or after that date.

Clause 43 provides for consequential repeals and savings.



Hon. Mr Mathison

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, as follows:

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1. Short Title—This Act may be cited as the Samoa Amendment Act 1959, and shall be read together with and deemed part of the Samoa Act 1921 (hereinafter referred to as the principal Act).

PART I

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CONSTITUTIONAL PROVISIONS

2. Commencement—This Part of this Act shall come into force on the first day of October, nineteen hundred and fifty-nine.

3. Executive government vested in the Crown—The executive government of Western Samoa is hereby declared to be vested in Her Majesty the Queen in right of the Government of New Zealand.

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Cf. 1957, No. 22, s. 4

4. High Commissioner of Western Samoa—(1) There shall be a High Commissioner of Western Samoa, who shall be appointed by the Governor-General, and shall in the exercise of his powers and the discharge of his functions be subject to the general control of the Minister of Island Territories of New Zealand.

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(2) The High Commissioner shall be a member of the Council of State in accordance with the provisions of section eight of this Act.

(3) The High Commissioner shall also be the representative in Western Samoa of the Government of New Zealand, and as such representative he shall exercise such functions, powers, and authorities as will enable him to give effect to the responsibilities of the Government of New Zealand in relation to Western Samoa and in particular to the responsibilities of the Government of New Zealand in relation to the external affairs and defence of Western Samoa and to any land vested in the Crown in right of the Government of New Zealand.

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(4) The High Commissioner shall be paid out of the Samoan Treasury such salary and allowances as may be fixed from time to time by the Minister of Island Territories of New Zealand.

5 Cf. 1957, No. 22, s. 5

5. Deputy High Commissioner of Western Samoa—(1) The Governor-General may from time to time appoint a fit person to be Deputy High Commissioner of Western Samoa.

10 (2) While the office of High Commissioner is vacant, the Deputy shall, without further authority or appointment, assume and exercise all the powers and authorities and perform all the functions of the High Commissioner, and all the provisions of the principal Act and its amendments (including this Act) and of any regulations thereunder and of any
15 Ordinance and of any other enactment or law in force in Western Samoa with respect to the High Commissioner shall extend and apply to the Deputy accordingly.

(3) The authority of the Deputy to act as aforesaid shall continue until a new High Commissioner has been appointed
20 and has assumed the duties of his office in Western Samoa.

Cf. 1957, No. 22, s. 6

6. Sickness or absence of High Commissioner—(1) If at any time the High Commissioner is incapable by reason of sickness or otherwise of performing the office of High Commissioner, or is or proposes to be absent from Western Samoa, or is or proposes to be absent from Apia, he may, by instrument
25 in writing, authorise the Deputy High Commissioner to act on his behalf during the period of that incapacity or absence.

(2) Any such instrument may limit, in such manner as
30 the High Commissioner thinks fit, the authority of the Deputy with respect to the matters to which that authority extends.

(3) Subject to any limitations so expressed in the instrument, the Deputy so authorised may exercise all the powers and authorities and perform all the functions of the High Commissioner, and all the provisions of the principal Act and
35 its amendments (including this Act) and of any regulations thereunder and of any Ordinance and of any other enactment or law in force in Western Samoa with respect to the High Commissioner shall extend and apply to the Deputy accordingly.
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(4) Any such instrument may be at any time revoked by the High Commissioner.

(5) No such instrument, and no act done in pursuance thereof by the Deputy, shall be questioned or invalidated on the ground that the occasion for the instrument or for the exercise of the powers and authorities or the performance of the functions of the Deputy had not arisen or had ceased, and no act done by the High Commissioner shall be questioned or invalidated on the ground that any such instrument was still in force.

Cf. 1957, No. 22, s. 7

7. *Fautua*—(1) The Governor-General may from time to time, by Order in Council, appoint Samoans to be *Fautua*.

(2) The manner of recommending Samoans for appointment as *Fautua*, and the terms and conditions of their appointment, and the number of *Fautua* that may from time to time be appointed may be prescribed by the Governor-General by Order in Council or, where there is no such Order in Council or so far as any such Order in Council does not extend, by Ordinance.

Cf. 1957, No. 22, s. 9

8. Council of State of Western Samoa—(1) There shall be a Council of State of Western Samoa.

(2) The Council of State shall consist of the High Commissioner and of the Samoans for the time being holding office as *Fautua*.

(3) Subject to the provisions of subsection four of this section, the Council of State shall be the head of the executive government of Western Samoa, and shall exercise—

(a) All the functions, powers, and authorities conferred on the High Commissioner by the principal Act or its amendments or by any regulations thereunder or by any Ordinance or by any other enactment or law in force in Western Samoa; and

(b) The functions, powers, and authorities conferred upon the Council of State by this Act or by any Ordinance.

(4) The Council of State shall not exercise the functions, powers, and authorities which may be exercised by the High Commissioner as representative of the Government of New Zealand in accordance with the provisions of section four of this Act.

(5) All functions, powers, and authorities exercised by the Council of State under this section shall be exercised as far as may be on advice in accordance with the constitutional conventions for the time being applicable to the exercise of similar functions, powers, and authorities in the United Kingdom by her Majesty.

(6) Every member of the Council of State shall, before entering on the duties of his office, take and subscribe before the Chief Judge of the High Court of Western Samoa an oath in the form set out in the First Schedule to this Act, or make before the said Chief Judge an appropriate affirmation instead of that oath.

Cf. 1957, No. 22, s. 10

9. Delegation of powers by Council of State—(1) The Council of State may from time to time, either generally or particularly, delegate any of the functions, powers, and authorities conferred on it by subsection three of section eight of this Act to any Minister:

Provided that no function, power, or authority conferred by the Samoa Amendment Act 1957 or this Act shall be so delegated.

(2) Every such delegation shall be made by Order of the Council of State acting on the advice and with the consent of the Executive Council, and shall be revocable in like manner.

(3) Where any Minister purports to act pursuant to any delegation under this section, he shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

10. Personal staff of the Council of State—(1) Except as provided in subsection two of this section, the appointment, terms of service, disciplinary control, termination of appointment, and dismissal of the staff of the Council of State, and of the personal staff of its members (other than the High Commissioner), shall be matters for the Council of State acting in its discretion.

(2) The Council of State, if it so desires, may appoint to its staff, or to the personal staff of one of its members other than the High Commissioner, such public servants as it may select, acting in its discretion but after consultation with the Prime Minister of Western Samoa, from a list submitted by the Public Service Commission of Western Samoa; and the

provisions of subsection one of this section (except so far as they relate to appointment) shall apply in relation to a person so appointed as respects his service on the staff of the Council of State or the personal staff of one of its members (other than the High Commissioner), but not as respects his service as a public servant. 5

(3) One of the members of the staff of the Council of State shall be appointed as Secretary to the Council of State.

11. Remuneration of *Fautua* and staff of the Council of State—There shall be paid out of money to be appropriated by the legislative assembly— 10

(a) The salaries and allowances of the *Fautua* at such rate or rates as may be fixed by Ordinance:

(b) The salaries and allowances of the staff of the Council of State, and of the personal staff of its members other than the High Commissioner, at such rate or rates as may be fixed from time to time by the Council of State: 15

Provided that this paragraph shall not apply to any person appointed to any such staff under subsection two of section ten of this Act. 20

12. Procedure of Council of State—(1) Any decision as to the exercise of any function, power, or authority of the Council of State shall be taken at a meeting of the Council of State summoned by any member of the Council of State. 25

(2) No decision shall be taken at any meeting of the Council of State unless the High Commissioner and one of the *Fautua* are present.

(3) The High Commissioner shall preside at all meetings of the Council of State. 30

(4) Decisions taken at any meeting of the Council of State shall require the affirmative vote of at least two members of the Council of State, and shall be authenticated by an instrument under the hand of the High Commissioner and at least one other member of the Council of State. 35

(5) Notwithstanding anything to the contrary in the principal Act or this Act, if any person or authority, in accordance with the provisions of subsection five of section eight of this Act, tenders advice to the Council of State as to the exercise of any function, power, or authority of the Council of State, and if the Council 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 Council of State, decide either 40

to accept that advice or to take some other action in relation thereto which it is entitled to take in accordance with that subsection, the Council of State shall be deemed to have accepted that advice; and an instrument under the hand of
5 the High Commissioner to that effect shall operate as the exercise of the function, power, or authority concerned in accordance with that advice.

(6) The members of the Council of State shall be provided with:

10 (a) Copies of the agenda and minutes of the Cabinet and of all other papers laid before the Cabinet at the time when they are circulated to Ministers; and

(b) Such other information relating to the administration of the affairs of Western Samoa as shall be deter-
15 mined after consultation with the Prime Minister.

(7) Subject to the provisions of this section, the procedure of the Council of State shall be determined from time to time by the Council.

13. The Cabinet—(1) There shall be a Cabinet of Minis-
20 ters collectively responsible to the Legislative Assembly, which shall—

(a) Advise the Council of State in the exercise of its func-
tions, powers, and authorities; and

25 (b) Be charged with the general direction and control of the Government of Western Samoa.

(2) The Cabinet shall be appointed as follows:

(a) The Council of State shall appoint as Prime Minis-
30 ter to preside over the Cabinet a member of the Legislative Assembly who commands the confidence of the majority of the members of that Assembly;

(b) The Council of State shall, on the advice of the Prime Minister, appoint eight other members of the Legis-
lative Assembly as Ministers:

35 (c) If an appointment is to be made while the Legislative Assembly is dissolved, a person who was a member of the Legislative Assembly immediately before it was last dissolved may be appointed Prime Minister or a Minister, but shall cease to hold office at the begin-
40 ning of the next session of the Legislative Assembly if he is not then a member thereof:

(d) At least one member of the Cabinet shall be a European elected member of the Legislative Assembly:

- (e) Appointments under this subsection shall be made by the Council of State by instrument under the Seal of Western Samoa.

14. Vacation of office—(1) The Council of State shall terminate the appointment of the Prime Minister— 5

- (a) If the Prime Minister ceases to be a member of the Legislative Assembly for any reason other than a dissolution thereof; or
- (b) If the Legislative Assembly passes a motion in express words of no confidence in the Government or if the Government is defeated on any question or issue which the Prime Minister has declared to be a question or issue of confidence: 10

Provided that, if in the event of such motion or defeat the Prime Minister so requests, the Council of State may dissolve the Legislative Assembly instead of terminating the appointment of the Prime Minister; or 15

- (c) If the Prime Minister resigns his office by writing under his hand addressed to the Council of State; or 20
- (d) If the Prime Minister is absent from Western Samoa without written permission given by the Council of State.

(2) The office of any other Minister shall become vacant—

(a) If the appointment of the Prime Minister has been terminated; or 25

- (b) If the appointment of the Minister to that office is revoked by the Council of State, acting on the advice of the Prime Minister, by instrument under the Seal of Western Samoa; or 30

(c) If the Minister ceases to be a member of the Legislative Assembly for any reason other than the dissolution thereof; or

- (d) If the Minister resigns his office by writing under his hand addressed to the Council of State; or 35

(e) If the Minister is absent from Western Samoa without written permission given by the Council of State acting in accordance with the advice of the Prime Minister.

(3) Whenever, by reason of illness or absence from Western Samoa with the written permission of the Council of State, the Prime Minister is temporarily prevented from discharging his functions in Western Samoa, the Council of State may, by 40

instrument under the Seal of Western Samoa, appoint another Minister to discharge the functions of the Prime Minister until such time as the Prime Minister is capable of again discharging those functions or has vacated his office.

5 (4) The powers conferred on the Council of State by subsection three of this section shall be exercised by it acting in its discretion if in its opinion it is impracticable to obtain the advice of the Prime Minister owing to the Prime Minister's illness or absence, and in any other case shall be exercised by
10 the Council of State acting on the advice of the Prime Minister.

(5) The Council of State, acting on the advice of the Prime Minister, may, by instrument under the Seal of Western Samoa,—

15 (a) Declare a Minister to be by reason of illness temporarily incapable of discharging his functions as a Minister:
(b) Suspend a Minister during the period of any investigation or inquiry into the conduct of that Minister.

(6) Any Minister in respect of whom action has been taken
20 under subsection five of this section shall not discharge any of the functions of his office or sit or vote in the Cabinet until the Council of State, acting on the advice of the Prime Minister, has revoked the aforesaid instrument under the Seal of Western Samoa.

25 **15. Official Oath**—Every Minister shall, before entering on the duties of his office, take and subscribe before the Council of State an oath in the form set out in the Second Schedule to this Act or make before the Council of State an appropriate affirmation instead of that oath.

30 **16. Summoning of the Cabinet**—The Cabinet shall be summoned only by the Prime Minister or, in his absence, by such Minister as the Prime Minister shall appoint in that behalf.

17. Transaction of business in Cabinet—(1) The Prime Minister shall, so far as practicable, attend and preside at
35 all meetings of the Cabinet, and in his absence such other Minister as the Prime Minister shall appoint shall preside.

(2) Subject to the provisions of subsection three of this section, the Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in the number of the
40 Cabinet, and any proceedings of Cabinet shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Cabinet or otherwise took part in the proceedings.

(3) No business shall be transacted in the Cabinet if there are less than four Ministers present besides the Minister presiding.

(4) Where any matter is dependent upon the decision of the Cabinet, any decision shall be regarded as the decision of Cabinet if a majority of votes of the Ministers present and voting is cast in its favour. Each Minister shall have an original vote and, if upon any question the votes are equally divided, the Minister presiding may exercise a casting vote. 5

(5) A decision of the Cabinet shall be recorded in minutes which shall, under the hand of the Secretary to Cabinet, be communicated within twenty-four hours after its being made to the Secretary to the Council of State. 10

(6) Subject to the provisions of subsection seven of this section, a decision of Cabinet shall not take effect until the expiration of seven days after the date of the meeting at which it was made, unless it takes effect in accordance with the provisions of section twenty-two of this Act. 15

(7) In any case in which the issue involved in a decision of Cabinet is, in the opinion of a majority of the Ministers present and voting at the meeting at which that decision is taken, of extreme urgency, that decision shall take effect on the expiration of twenty-four hours after the time when the minutes in which the decision of Cabinet is recorded are communicated to the Secretary to the Council of State under the provisions of subsection five of this section, unless a meeting of the Executive Council is sooner summoned in accordance with the provision of section twenty-two of this Act. 20 25

(8) Subject to the provisions of this Act, the Cabinet may regulate its procedure in such manner as it thinks fit. 30

18. Secretary to the Cabinet—(1) There shall be an officer of the Western Samoan Public Service to be called the Secretary to the Cabinet.

(2) The Secretary to the Cabinet shall, in accordance with such instructions as may be given to him by the Prime Minister, arrange the business for and keep the minutes of the Cabinet, and convey the decisions of the Cabinet to the appropriate person or authority, and shall have such other functions as the Prime Minister may direct. 35

19. Assignment of responsibilities to Ministers—(1) The Prime Minister may, by direction in writing,—

- (a) Charge any Minister with the responsibility for any Department or subject; and
 - 5 (b) Revoke or vary any direction given under this subsection.
- (2) The Prime Minister may retain in his charge any Department or subject.

20. Executive Council of Western Samoa—(1) There shall be an Executive Council of Western Samoa consisting of:

- (a) The members for the time being of the Council of State; and
 - (b) The Ministers holding office in accordance with the provisions of section thirteen of this Act.
- 15 (2) Subject to the provisions of section twenty-two of this Act, meetings of the Executive Council may be summoned by the Prime Minister or by any one member of the Council of State to perform such functions and to exercise such powers or authorities as may from time to time be prescribed by the principal Act or its amendments (including this Act) or any regulations thereunder or by any Ordinance or by any other enactment or law in force in Western Samoa.

20 (3) No business shall be transacted in the Executive Council if there are less than four Ministers or less than two members of the Council of State present, including the member presiding.

(4) The members of the Council of State present at any meeting of the Executive Council shall select one of their members to preside.

30 (5) Subject to the provisions of subsection three of this section, the Executive Council shall not be disqualified for the transaction of business by reason of any vacancy in the number of its members; and any proceedings of the Executive Council shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Executive Council or otherwise took part in the proceedings.

35 (6) Subject to the provisions of section twenty-two of this Act, where any matter is dependent upon the decision of the Executive Council, any decision shall be regarded as the decision of the Executive Council if a majority of votes of members of the Executive Council present and voting is cast in its favour. Each such member shall have an original vote and, if upon any question the votes shall be equally divided, 40 the person presiding may exercise a casting vote.

(7) Subject to the provisions of this Act, the Executive Council may regulate its procedure in such manner as it thinks fit.

Cf. 1957, No. 22, ss. 11, 12

21. Clerk of Executive Council—(1) 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 arrange the business for and keep the records of the Executive Council. 5

(2) The same person may be appointed to be both the Clerk of the Executive Council and Secretary to the Cabinet. 10

Cf. 1957, No. 22, s. 19

22. Decisions of Cabinet—(1) The Prime Minister or any one member of the Council of State may summon a meeting of the Executive Council to consider any decision recorded in the minutes of a Cabinet meeting. 15

(2) If such a decision, on consideration by the Executive Council, is supported by two members of the Council of State, that decision shall take effect both as a decision of the cabinet and as a decision of the Executive Council. 20

(3) If on consideration by the Executive Council of a decision referred to that Council under the provisions of subsection one of this section any two members of the Council of State oppose that decision or request any amendment thereto, Cabinet shall thereupon be summoned in accordance with the provisions of section sixteen of this Act and requested to reconsider the decision concerned. 25

(4) If Cabinet after such reconsideration reaffirms its original decision or accepts the amendment requested by the two members of the Council 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 and as a decision of the Executive Council. 30

(5) If Cabinet, after reconsideration as aforesaid, adopts a decision which incorporates an amendment to its original decision, other than the amendment requested by the two members of the Council of State under subsection two of this section, the decision as so amended shall operate as a new decision of Cabinet and the provisions of subsections five, six, and seven of section seventeen of this Act, and of this section shall apply to that decision. 35 40

(6) An instrument under the hand of either the Secretary to the Cabinet or the Clerk of the Executive Council certifying—

5 (a) That a decision of the Cabinet has taken effect under the provisions of subsection six or subsection seven of section seventeen of this Act or under the provisions of this section; or

(b) That a decision of Cabinet has taken effect as a decision of the Executive Council under the provisions of
10 this section—

shall be conclusive evidence that that decision of the Cabinet or of the Executive Council, as the case may be, has taken effect.

15 **23. Secretary to the Government**—There shall be an officer of the Western Samoan Public Service to be called the Secretary to the Government of Western Samoa, who shall have such duties and functions as may from time to time be determined by the Prime Minister or prescribed by Ordinance.

Cf. 1957, No. 22, s. 16

20 **24. 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
25 assigned to him by the Council of State, acting in accordance with the advice of the Prime Minister, or prescribed by the principal Act and its amendments (including this Act) or any regulations thereunder, or by any Ordinance or by any other enactment or law in force in Western Samoa.

30 (2) The Attorney-General shall be vested with responsibility for the initiation, conduct, and discontinuance of prosecutions for criminal offences triable in Courts constituted under the provisions of the principal Act and its amendments or any regulations thereunder or by any Ordinance or by any other
35 enactment or law in force in Western Samoa.

(3) The assignment to a Minister of responsibilities for the Department of the Attorney-General shall confer responsibility only for submitting to the Cabinet questions referring to that Department and conducting business relating to that Department in the Assembly, and shall have effect without prejudice
40 to the provisions of subsection two of this section.

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

Cf. 1957, No. 22, s. 18

25. 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 Prime Minister, or prescribed by the principal Act and its amendments (including this Act) or any regulations thereunder, or by any Ordinance or by any other enactment or law in force in Western Samoa.

(2) Except as may otherwise be provided by Ordinance, the Financial Secretary shall perform the duties of Treasurer of Western Samoa.

Cf. 1957, No. 22, s. 17

PART II

PUBLIC SERVICE COMMISSION OF WESTERN SAMOA

26. Commencement—This Part of this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Proclamation.

27. Public Service Commission—(1) There is hereby established a Commission to be known as the Public Service Commission of Western Samoa.

(2) The Commission shall consist of not more than three persons, who shall be appointed by the Council of State on the advice of the Executive Council:

Provided that the person holding office as Public Service Commissioner of Western Samoa immediately before the commencement of this Act shall become a member of the Commission at the commencement of this Act.

(3) One of the members of the Commission shall be appointed by the Council of State, on the advice of the Executive Council as the Chairman of the Commission.

(4) Every member of the Commission shall be appointed for a term of not more than three years but may from time to time be reappointed for a term of not more than three years.

(5) Nothing in this section shall be deemed to affect the rights, whether as to superannuation or the term of appointment or otherwise, of any person holding office at the commencement of this Part of this Act as the Public Service Commissioner or as Samoan Assistant Public Service Commissioner.

(6) No person shall be eligible for appointment or re-appointment as a member of the Commission if he has attained the age of sixty years.

(7) Unless he sooner vacates his office, every member of the Commission shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired or that he has attained the age of sixty years.

(8) In the event of the incapacity of any member of the Commission by reason of illness or absence or any other cause, the Council of State, on the advice of the Executive Council, may appoint a deputy to act for that member during his incapacity, and any such deputy shall, while he acts as such, be deemed for all purposes to be a member of the Commission. No appointment of a deputy as such, and no acts done by the Commission when any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

(9) The powers of the Commission shall not be affected by any vacancy in the number of its members.

28. Salaries of members of Commission—The Chairman of the Public Service Commission, and each other member of the Commission shall be paid such salaries as may from time to time be appropriated by the Legislative Assembly of Western Samoa.

29. Functions of the Commission—(1) The Public Service Commission shall be responsible for—

- (a) Recruitments, appointments, promotions, transfers, and retirements in the Western Samoan Public Service; and
- (b) The gradings and salaries to which officers and 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.

(2) Subject to the provisions of section thirty of the Samoa Amendment Act 1949, the Commission shall, in the exercise of its functions and powers, comply with the general policy of the Government of Western Samoa relating to the Western Samoan Public Service, and shall comply with such policy directions as may from time to time be given by the Executive Council to the Commission. 5

(3) Every reference in the principal Act or any other Act or Ordinance or regulation or document to the Public Service Commissioner or to the Assistant Commissioners shall, unless the context otherwise requires, be read as a reference to the Commission or the members of the Commission, as the case may be. 10

30. Meetings of Commission—(1) Meetings of the Public Service Commission shall be held at such times and places as the Commission or the Chairman from time to time appoints. 15

(2) At all meetings of the Commission two members shall form a quorum, except when there are less than two members of the Commission in office. 20

(3) At any meeting of the Commission, the Chairman shall have a deliberative vote, and in the case of an equality of votes shall have a casting vote.

(4) All questions before the Commission shall be determined by a majority of the valid votes recorded thereon. 25

31. Procedure—Subject to the provisions of this Act, the Public Service Commission may regulate its procedure in such manner as it thinks fit.

32. Delegation of powers—(1) The Public Service Commission may from time to time, either generally or particularly, delegate any of its powers to any of its members or to any other person or persons; and may delegate to the Board of Directors of the Western Samoa Trust Estates Corporation such of its powers in relation to the appointment and control of employees of the Corporation or any particular class of those employees as the Commission thinks fit. 30 35

(2) Subject to any general or special directions given by the Commission, the person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation. 40

(3) Every person purporting to act pursuant to any delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

5 (4) Any delegation under this section may be made to a specified person or to persons of a specified class or to a Board of Directors or to the holder for the time being of a specified office.

10 (5) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Commission.

(6) Unless and until any such delegation is revoked, it shall continue in force according to its tenor. In the event of any member of the Commission ceasing to hold office, the delegation shall continue to have effect as if made by the Commission as it is for the time being constituted; and, in the event of any member of any such Board of Directors ceasing to hold office, the delegation shall continue to have effect as if made to that Board of Directors as it is for the time being constituted.

33. Protection of status—Where any person who is appointed to be a member of the Public Service Commission was employed in the Western Samoan Public Service or the New Zealand Government service immediately before he was appointed to be a member of the Commission, that person shall, unless he was removed from office under section thirty-four of this Act, be eligible for any position in the service in which he was employed as if he retained the status in that service which he had immediately before he was so appointed:

30 Provided that, where any higher status in the New Zealand Government service is conferred on any such person after he became a member of the Commission, he shall, unless he is so removed from office, be eligible for any position in that service as if he had that higher status.

35 **34. Removal from office**—(1) On the advice of the Executive Council, any member of the Commission may be removed or suspended from office by the Council of State for misbehaviour or incompetence, or for engaging without the approval of the Council of State during his term of office in any paid employment or any business or profession outside
40 the duties of his said office or of any other office in the Western Samoan Public Service or the New Zealand Government service held by him concurrently during his said term of office.

(2) On the advice of the Executive Council, the Council of State may restore as a member of the Commission any person who is suspended from his office as aforesaid.

(3) No person who is suspended from his office as aforesaid shall be entitled to recover any salary, allowance, or payment in respect of the period while he is suspended, unless the Council of State otherwise directs. 5

35. Duties of the Public Service Commission—(1) The Public Service Commission shall furnish to the Council of State at least once in every year a report on the efficiency and condition of the Western Samoan Public Service; and a copy thereof shall be laid before the Legislative Assembly within twenty-eight days after the date of the receipt of the same by the Council of State if the Assembly is then meeting, and, if it is not then meeting, shall be laid before it during its next meeting. 10 15

(2) The Commission shall cause to be kept a record of all persons in the Western Samoan Public Service, and shall in each financial year publish a list of persons permanently employed in that service on the first day of that financial year together with particulars of the salaries and allowances payable to those persons in that financial year; and a copy thereof shall be laid before the Legislative Assembly of Western Samoa within twenty-eight days after the date of 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, but in any case not later than three months after the beginning of that financial year. 20 25

(3) In order to ensure the maintenance of a proper standard of efficiency in the Western Samoan Public Service, the Commission may from time to time make such recommendations to the Government as it thinks fit. 30

(4) In the exercise of its functions the Commission shall, consonant with the efficient conduct of the Government service of Western Samoa, take such action as it thinks necessary to ensure that the citizens of Western Samoa are afforded a progressively increasing share in the administrative and other services of Western Samoa; and a full statement of action taken in this regard shall be included in each annual report by the Commission to the Council of State. 35 40

36. **General power to appoint deputies**—(1) Where in or by any Act, Ordinance, Order in Council, rule, regulation, bylaw, contract, or agreement any duty, obligation, right, or power is imposed or conferred upon the holder of any position under
 5 the control of the Commission, and where that position is for the time being vacant (whether by reason of death or resignation or otherwise), or the holder of the position is for the time being absent from duty, the duty, obligation, right, or power may be performed or exercised by any employee whom
 10 the Commission may have directed to perform or exercise the same while the position is vacant or the holder of the position is absent, in the same manner and to the same extent in all respects as the same might have been performed or exercised by the holder of the position; and everything so done under the
 15 provisions of this section shall be as good and effectual for all purposes and against all persons as if it had been done by the holder of the position.

(2) No such direction and no act done by any employee acting pursuant to any such direction shall in any proceedings
 20 be questioned on the ground that the occasion for the direction had not arisen or had ceased, or on the ground that the employee had not been appointed to any position to which the direction relates.

Miscellaneous

25 **37. Position of Public Service Commissioner abolished**—Section two of the Samoa Amendment Act 1949 is hereby amended—

- (a) By repealing the definition of each of the following terms:
 - 30 (i) “Assistant Public Service Commissioner”;
 - (ii) “Public Service Commissioner”;
 - (iii) “Samoan Assistant Public Service Commissioner”;
- (b) By inserting, after the definition of the term “probationer”, the following definition:
 - 35 “‘Public Service Commission’ or ‘Commission’ means the Public Service Commission constituted under this Act:”;
- (c) By omitting from the definition of the term “Western Samoan Public Service”, the words “as Public Service Commissioner or as Samoan Assistant Public Service Commissioner; but does not include the service of the Secretary of Island Territories in his capacity as an Assistant Public Service Commissioner or”, and substituting the words “as a member of the Public Service Commission; but does not include”.
 - 40
 - 45

38. Contract Officers—(1) The Samoa Amendment Act 1949 is hereby further amended—

- (a) By inserting in section two, before the definition of the term “employee”, the following definition:
 “‘Contract Officer’ means an officer engaged by the Public Service Commission for a specified time”:
- (b) By omitting, from the definition of the term “officer” in section two, the words “a person”, and substituting the words “any contract officer or person”:
- (c) By inserting in subsection one of section fourteen, after the word “officer”, the words “other than a contract officer”.

(2) Section eighteen of the Samoa Amendment Act 1949 is hereby amended by adding to subsection one the following additional proviso:

“Provided also that the rate of remuneration of contract officers shall not be reduced except pursuant to an Ordinance of the Legislative Assembly of Western Samoa.”

(3) Subsection two of section thirty-three of the Samoa Amendment Act 1949 is hereby amended by inserting, after paragraph (a), the following paragraph:

“(aa) Fixing the maximum period for which the Commission may contract to employ contract officers:”.

PART III

25

MISCELLANEOUS AMENDMENTS

39. Currency—(1) The principal Act is hereby amended by repealing section three hundred and sixty-four, and substituting the following section:

“364. (1) Save as is otherwise expressly provided in this section or by Ordinance, the currency, coinage, and legal tender in Western Samoa shall be the same as that of New Zealand.

“(2) The Council of State of Western Samoa may make and issue Samoan Treasury notes in such denominations, form, and design as the Council thinks fit.

“(3) Such notes shall be legal currency and tender in Western Samoa, and shall be negotiable and transferable by delivery.

“(4) The Samoan Treasury shall invest in New Zealand Government stock an amount equal in the aggregate to the face value of Samoan Treasury notes on issue at any time, at the rate of exchange prevailing at that time.

5 “(5) On and after a date to be fixed by the Council of State by Proclamation, the Bank of Western Samoa may make and issue bank notes in Western Samoa in such denominations, form, and design as the Government of Western Samoa approves.

10 “(6) On and after the date so proclaimed, such bank notes shall be legal currency and tender in Western Samoa, and shall be negotiable and transferable by delivery.

“ (7) On and after the date so proclaimed, the Bank of Western Samoa shall assume full liability for all Samoan Treasury notes remaining outstanding on that date, and on 15 that date the Samoan Treasury shall transfer to the Bank of Western Samoa New Zealand Government stock of an amount equal in the aggregate, at the rates of exchange between Western Samoa and New Zealand prevailing on that date, to 20 the face value of those notes.

“ (8) Samoan Treasury notes, whether issued before or after the commencement of this section, shall continue to be legal currency and tender in Western Samoa until the expiration of twelve months after the date appointed for the issue 25 of notes by the Bank of Western Samoa, and after that date Samoan Treasury notes shall be redeemed only in notes of the Bank of Western Samoa or in coin legally current in Western Samoa at the date of redemption.

“ (9) On and after the date so proclaimed for the issue 30 of notes, the Bank of Western Samoa shall maintain reserves as defined by Ordinance equal to not less than thirty per cent in the aggregate of the amount of its notes for the time being in circulation and the deposit liabilities of its commercial and savings bank departments.

35 “ (10) Until the date appointed for the issue of notes by the Bank of Western Samoa, the Minister of Finance of New Zealand may, by notice in the *Gazette*, fix a rate of exchange between Western Samoa and New Zealand.

40 “ (11) On and after the date appointed for the issue of notes by the Bank of Western Samoa, the Council of State of Western Samoa, upon the advice of the Executive Council, may from time to time, by notice in the *Western Samoa Gazette*, fix a rate of exchange between Western Samoa and New Zealand.”

(2) The following enactments are hereby consequentially repealed:

- (a) Section four of the Samoa Amendment Act 1953:
- (b) Section seventeen of the Samoa Amendment Act 1956.

40. Statutory declarations—(1) Subsection one of section three hundred and sixty-five of the principal Act is hereby amended by inserting, after the word “Any”, the words “person who is for the time being authorised by the Council of State by notice in the *Western Samoa Gazette* to take and receive declarations under this section, and any”.

(2) Section three hundred and sixty-five of the principal Act is hereby further amended by adding the following subsection:

“(4) Any officer in the service of the Government of Western Samoa who is authorised by the Council of State, by notice in the *Western Samoa Gazette*, to take declarations may be designated by name or as the holder for the time being of any specified office in the service of the Government of Western Samoa.”

41. Reserved enactments—(1) The Second Schedule to the Samoa Amendment Act 1957 is hereby amended—

- (a) By omitting, from the portion of the Schedule relating to the Samoa Act 1921, all the words in the second column, and substituting the words “Sections 33, 36, 44, and 45, Parts III, IV, VI, VII, and VIII, and section 210”:
- (b) By repealing so much of the Schedule as relates to the British Nationality and New Zealand Citizenship Act 1948.

(2) Section thirty-two of the Samoa Amendment Act 1957 is hereby amended by adding the following subsection:

“(4) Any enactment specified in the Second Schedule to this Act or any other enactment deemed to be a reserved enactment for the purposes of this section may be declared by the Governor-General by Order in Council not to be a reserved enactment for the purposes of this section or not to be a reserved enactment to the extent specified in the Order in Council.”

42. Validation of certain Ordinances—(1) The Citizenship of Western Samoa Ordinance 1959 is hereby validated as from the commencement thereof.

(2) Every Ordinance of the Legislative Assembly that comes into force on or after the first day of October, nineteen hundred and fifty-nine but was passed before that date shall be valid if it would have been valid if it had been passed on or
5 after that date.

43. Repeals and savings—(1) The enactments specified in the Third Schedule to this Act are hereby repealed.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of
10 any provision by this Act shall not affect any document made or any thing whatsoever done under the provision so repealed or under any corresponding former provision, and every such document or thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done
15 under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document was made or the thing was done.

SCHEDULES

Section 8 (6)

FIRST SCHEDULE

OATH OF MEMBER OF COUNCIL OF STATE

I, solemnly swear that I will duly execute the office of member of the Council of State and will justly and faithfully perform my duties in the administration of Western Samoa in accordance with its constitution and laws. So help me God.

Section 15

SECOND SCHEDULE

MINISTER'S OATH

I, being chosen and accepted as a Minister and member of the Cabinet of Western Samoa, swear that I will to the best of my judgment, at all times when thereto required, freely give my counsel and advice to the Council of State for the time being, for the good management of the affairs of Western Samoa; and that I will not directly nor indirectly reveal such matters as shall be debated in Cabinet and Committees and in Council and committed to my secrecy, but that I will in all things be a true and faithful Minister. So help me God.

Section 43 (1)

THIRD SCHEDULE

ENACTMENTS REPEALED

1921, No. 16—The Samoa Act 1921: Sections 33, 34, 37 to 43, and 363.
 1949, No. 47—The Samoa Amendment Act 1949: Sections 3 to 12.
 1954, No. 28—The Samoa Amendment Act 1954.
 1956, No. 11—The Samoa Amendment Act 1956: Sections 11 and 12.
 1957, No. 22—The Samoa Amendment Act 1957: Sections 4 to 20,
 21 (2) (c), (6), 27, 36 (2), and 46.