



SAMOA

GOVERNMENT PROCEEDINGS ACT 1974

Arrangement of Provisions

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GOVERNMENT PROCEEDINGS ACT 1974
1974 **No.13**

AN ACT to make provision for the civil liabilities and rights of the Government and officers of the Government, and for civil proceedings by and against the Government.

[Assent and commencement Date: 30 December 1974]

PART 1
PRELIMINARY

1. Short title – This Act may be cited as the Government Proceedings Act 1974.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“agent” in relation to the Government, includes an independent contractor employed by the Government;

“Attorney-General” means the Attorney-General of Samoa;

“civil proceedings” means any proceedings in a Court other than criminal proceedings, but does not include proceedings in relation to habeas corpus, mandamus, prohibition, or certiorari;

“Commonwealth” means the Commonwealth of Nations, and includes every territory for whose international relations the Government of any country of the Commonwealth is responsible;

“court” means the Supreme Court, and any other Court of competent jurisdiction established in Samoa;

“Government Department” or “Department” means the Public Trustee and every other Department or instrument of the Executive Government of Samoa;

“officer” in relation to the Government, includes a servant of the Government, and includes a Minister of the Government; but does not include the Head of State, a member of the Council of Deputies, or any Judge, District Court Judge, Faamasino Fesoasoani, or other judicial officer;

“order” includes a judgment, decree, rule, award, or declaration;

“proceedings against the Government” includes a claim by way of set-off or counterclaim raised in proceedings by the Government;

“servant” in relation to the Government, means a servant of the Government, and includes a Minister of the Government but does not include the Head of State, a member of the Council of Deputies, or any Judge, District Court Judge, Faamasino Fesoasoani, or other judicial officer.

(2) A reference in this Act to the Government, in relation to any civil proceedings, or in relation to any order or judgment debt or costs in connection with any civil proceedings, is construed as including a reference to the Attorney-General or a Government Department or officer of the Government where the Attorney-General, Department, or officer is a party or third party to the proceedings in accordance with section 14:

PROVIDED THAT the Attorney-General is not taken to be the Government in relation to any proceedings by reason only of the fact that the proceedings are brought by the Attorney-General upon the relation of some other person.

PART 1A

ACTIONS BY OR AGAINST THE GOVERNMENT

3. Claims enforceable by or against the Government under this Act – (1) Subject to this Act and any other Act, all debts, damages, duties, sums of money, land, or goods, due, payable or belonging to the Government, is to be sued for and recovered by proceedings taken for that purpose in accordance with the provisions of this Act:

PROVIDED THAT nothing in this subsection interferes with or restricts a special power or authority vested in the Government, or in a person on its behalf, with respect to all or any of the matters

mentioned in this subsection.

(2) Subject to this Act and any other Act, a person (whether a citizen of Samoa or not) may enforce as of right, by civil proceedings taken against the Government for that purpose under this Act, a claim or demand against the Government in respect of any of the following causes of action:

- (a) the breach of a contract or trust; or
- (b) a wrong or injury for which the Government is liable in tort under this Act or under any other Act which is binding on the Government; or
- (c) a cause of action, which is independent of contract, trust, or tort, or any Act, for which an action for damages or to recover property of any kind would lie against the Government if it were a private person of full age and capacity; or
- (d) any other cause of action in respect of which relief would be granted against the Government at common law or in equity.

4. Limitation of actions by or against the Government –

This Act is subject to the provisions of a limitation enactment which limits the time within which proceedings may be brought by or against the Government.

5. Liability of the Government under other Acts –

Except as expressly provided by this Act or any other Act, this Act is not construed so as to make any Act binding upon the Government which would not otherwise be so binding, or so as to impose liability on the Government by virtue of any Act which is not binding on the Government.

6. Liability of the Government in tort – (1)

Subject to this Act and any other Act, the Government is subject to all those liabilities in tort to which, if it were a private person of full age and capacity, it would be subject:

- (a) in respect of torts committed by its servants or agents; and
- (b) in respect of a breach of those duties which a person owes to his or her servants or agents at common law by reason of being their employer; and

- (c) in respect of a breach of the duties attaching at common law to the ownership, occupation, possession, or control of property:

PROVIDED THAT no proceedings lie against the Government by virtue of paragraph (a) in respect of an act or omission of a servant or agent of the Government unless the act or omission would apart from this Act have given rise to a cause of action in tort against that servant or agent or his or her estate.

(2) Where any functions are conferred or imposed upon an officer of the Government as such either by a rule of the common law or statute, and that officer commits a tort while performing or purporting to perform those functions, the liabilities of the Government in respect of the tort are such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the Government.

(3) No proceedings lie against the Government by virtue of this section in respect of anything done or omitted to be done by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in the person, or responsibilities which the person has in connection with the execution of judicial process.

7. Application of law as to indemnity, contribution, and joint and several tortfeasors – Where the Government is subject to liability by virtue of this Part, the law relating to indemnity and contribution is enforceable by or against the Government in respect of liability to which it is so subject as if the Government were a private person of full age and capacity.

PART 2

JURISDICTION, PROCEDURE AND JUDGMENTS

8. Civil proceedings by or against the Government – Subject to this Act or any other Act, all civil proceedings which must be taken by, or may be brought against, the Government under this Act may be commenced, heard, and determined in the same Court and in like manner in all respects as in suits between subjects.

9. Method of making the Government a party to proceedings – (1) Subject to this Act and any other Act, civil proceedings under this Act are instituted by and against the Attorney-General.

(2) The Government may be joined as a plaintiff to any civil proceedings to which it could be a plaintiff under this Act by joining the Attorney-General as a plaintiff.

(3) The Government may be joined as a defendant or third party to any civil proceedings to which it could be a defendant under this Act by joining the Attorney-General as a defendant or third party.

(4) No proceedings instituted under this Act to which the Attorney-General is a party or third party abates or are affected by a change in the person holding the office of Attorney-General.

(5) Where the Attorney-General is a party or third party to any proceedings under this section, an order of the Court against or in favour of the Government in those proceedings is made against or in favour of the Attorney-General.

10. Recovery on behalf of the Government of amounts not exceeding \$100 – (1) A debt or damages payable to the Government and not exceeding \$100 may be sued for and recovered in a Court on behalf of the Government by and at the suit of a person appointed in that behalf by a warrant signed by the Attorney-General, and judicial notice is to be taken of the signature of any such warrant.

(2) A person so appointed to sue on behalf of the Government sues in his or her own name with the addition of the words “suing on behalf of the Government”, or words to the like effect.

(3) Nothing in this section is to be so construed as to prevent the recovery of money payable to the Government in a manner in which that money is recoverable independently of this section.

11. Service of documents and time for filing defence by the Government – (1) In any civil proceedings instituted against the Attorney-General, or to which the Attorney-General is joined as a party or third party, as aforesaid, all documents

required to be served on him or her are to be served by delivering it to the Attorney-General at his or her office.

(2) In any civil proceedings against the Government under this Act the time to be allowed in any writ or summons for the filing of a statement of defence or notice of intention to defend is to be not less than 28 days, or such further time as the Court may allow.

12. Nature of relief – (1) In any civil proceedings under this Act by or against the Government or to which the Government is a party or third party the Court, subject to this Act and any other Act, has power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require:

PROVIDED THAT:

- (a) where in any proceedings against the Government any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the Court shall not grant an injunction or make an order for specific performance, but may instead make an order declaratory of the rights of the parties; and
- (b) in any proceedings against the Government for the recovery of land or other property, the Court shall not make an order for the recovery of the land or the delivery of the property, but may instead make an order declaring that a person is entitled as against the Government to the land or property or to the possession thereof.

(2) The Court shall not in any civil proceedings grant an injunction or make an order against an officer of the Government if the effect of granting the injunction or making the order would be to give relief against the Government which could not have been obtained in proceedings against the Government.

13. Appeals, stay of execution, and costs – Subject to this Act, all enactments and rules of Court relating to appeals and stay of execution, with any necessary modifications, apply to civil proceedings by or against the Government under this Act

as they apply to proceedings between subjects, and the costs of suit follow on either side as in ordinary cases between other suitors:

PROVIDED THAT the Government is not required under a rule of Court or order to deposit or give security for the costs of any other party.

14. Interest on debts, costs, and other things – (1) A judgment debt due from or to the Government carries interest if it would carry interest if it were due from or to a subject, and interest so payable is to be at the rate at which it would be payable if the judgment debt were due from or to a subject.

(2) Costs awarded to or against the Government carry interest if the costs would carry interest if they were awarded to or against a subject, and interest so payable is to be at the rate at which it would be payable by a subject.

(3) A judgment in any civil proceedings by or against the Government may award interest to a party to whom interest could be awarded if the proceedings were between subjects at the rate at which interest could be so awarded.

(4) This section applies both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

15. Recovery of debts due upon recognisance – (1) Despite the foregoing provisions of this Act, where a person has entered into a recognisance to the Government, and the recognisance is forfeited, and no other procedure is provided by an Act or rule of Court for the estreat thereof, a Judge of the Court before which the same was forfeited may cause the recognisance to be estreated as hereinafter provided.

(2) The Judge shall, by writing under his or her hand in Form 1 of the Schedule, or to the like effect, certify that the forfeiture has taken place, and deliver the recognisance and writing to the Attorney-General, who, upon receipt thereof, is to cause a final judgement to be entered in the Court for the amount of the recognisance, and a sum not exceeding \$10 for costs.

(3) Any such judgment may be in Form 2 of the Schedule, or to the like effect, and no appeal lies therefrom.

16. Judgments for recognisances may be vacated by Supreme Court – Where final judgment has been entered under section 15, the Supreme Court may order satisfaction to be entered upon the judgment, whether execution has been issued thereon or not:

PROVIDED THAT such an order is not to be made except upon notice calling upon the Attorney-General to show cause, nor unless it is proved by affidavit to the satisfaction of the Supreme Court either that the judgment has been satisfied, or that, according to equity and good conscience and the real merits and justice of the case, the defendant ought not to be required to satisfy the same.

PART 3 EXECUTION

17. Satisfaction of orders against the Government – (1)
Except as provided in this section, no execution or attachment or process in the nature thereof is to be issued out of any Court for enforcing satisfaction by the Government, or the Attorney-General, or a Government Department or officer of the Government of an order made in civil proceedings under this Act.

(2) Where in civil proceedings an order (whether for costs or otherwise) is made by the Court in favour of a person against the Government or the Attorney-General or Government Department or officer of the Government, and the person in whose favour the order is made so requests, the proper officer of the Court shall issue to that person, without payment of a fee, a certificate in Form 3 of the Schedule or to the like effect:

PROVIDED THAT, if the order provides for the payment of money, the Court by which the order is made or a Court to which an appeal against the order lies may direct that, pending an appeal or otherwise, payment of the money so payable, or part thereof, is to be suspended, and (if the certificate has not been issued) may order any such directions to be inserted therein.

(3) On receipt of any such certificate the Minister responsible for Finance, without further appropriation than this section, may cause to be paid to the person therein named the amount payable by the Government under the order, together

with costs allowed him or her by the Court and the interest, if any, lawfully due thereon, and may also perform or give effect to the terms of the order so far as it is to be satisfied by the Government.

(4) The Minister responsible for Finance shall, forthwith after the end of each financial year, cause to be prepared, in such form as the Minister approves or directs, a statement showing all amounts paid under this section without appropriation other than this section, and as soon as practicable, cause the statement (duly audited by the Controller and Auditor General) to be laid before the Legislative Assembly.

18. Execution by the Government – (1) Subject to this Act and any other Act, an order made in favour of the Government against a person in any civil proceedings may be enforced in the same manner as an order made between subjects is enforced, and not otherwise.

(2) Subsection (1) applies both in relation to proceedings pending at the commencement of this Act and in relation to proceedings instituted thereafter.

19. Attachment of money payable by the Government – A person who has obtained an order for the payment of money may take proceedings, in accordance with rules of Court, to obtain payment to him or her of the amount of any debt payable by or accruing due from the Government to the person against whom the order was made, or so much thereof as may be sufficient to satisfy the order and the costs of the attachment proceedings, and in any such case the Court may make an order in respect of the amount payable by or accruing due from the Government which it would be entitled to make if the whole proceedings were between subjects:

PROVIDED THAT, except as provided in any other Act, no such order is to be made in respect of:

- (a) wages, salary, honorarium, allowances, or expenses payable to any officer of the Government as such;
- (b) money which is subject to the provisions of any enactment prohibiting or restricting assignment or charging or taking in execution;
- (c) an interest in customary land.

PART 4
MISCELLANEOUS

20. Discovery – (1) Subject to and in accordance with rules of Court:

- (a) in civil proceedings to which the Government is a party or third party, the Government may be required by the Court to answer interrogatories if the Government could be required to do so if it were a private person of full age and capacity; and
- (b) in such proceedings as aforesaid the Government may be required by the Court to make discovery of documents and produce documents for inspection if the Government could be required to do so if it were a private person of full age and capacity:

PROVIDED THAT this section is to be without prejudice to a rule of law which authorises or requires the withholding of a document or the refusal to answer a question on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest.

(2) An order of the Court made under subsection (1)(a) shall direct by what officer of the Government the interrogatories are to be answered.

(3) Without prejudice to the proviso to subsection (1), rules made for the purposes of this section are to be such as to secure that the existence of a document will not be disclosed if, in the opinion of a Minister of the Government, it would be injurious to the public interest to disclose the existence thereof.

21. Exclusion of proceedings *in rem* against the Government – (1) Nothing in this Act authorises proceedings *in rem* in respect of a claim against the Government, or the arrest, detention, or sale of any ships or aircraft, or cargo or other property belonging to the Government, or give to a person any lien on any such ship, aircraft, cargo, or other property.

(2) Where proceedings *in rem* have been instituted in the Supreme Court against any such ship, aircraft, cargo, or other property, the Court may, if satisfied, either on an application by the plaintiff for an order under this subsection or on application

by the Government to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the ship, aircraft, cargo, or other property did not belong to the Government, order that the proceedings shall be treated as if they were *in personam* duly instituted against the Government in accordance with this Act, or duly instituted against any other person whom the Court regards as the proper person to be sued in the circumstances, and that the proceedings continue accordingly.

(3) Any such order under subsection (2) may be made upon such terms, if any, as the Court thinks just, and, where the Court makes any such order, it may make such consequential orders as the Court thinks expedient.

22. Application to the Government of certain statutory provisions – This Act does not prejudice the right of the Government to take advantage of an Act although not named therein, and it is declared that in any civil proceedings against the Government the provisions of any Act which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to an express provision to the contrary, be so relied upon by the Government.

23. Rules of Court – (1) A power to make, alter, or revoke rules touching or regulating the practice and procedure of a Court includes power to make, alter, or revoke rules for the purpose of giving effect to this Act, and any such rules may contain provisions to have effect in relation to proceedings by or against the Government in substitution for or by way of addition to any of the rules applying to proceedings between subjects.

(2) Without prejudice to subsection (1), rules may be made with respect to the following matters:

- (a) for providing for service outside Samoa of process or notice thereof, in the case of proceedings by the Government against persons, whether citizens of Samoa or not;
- (b) for securing that where any civil proceedings are brought against the Government under this Act the plaintiff, before the Government is required

to take any steps in the proceedings, provides the Government with such information as the Government may reasonably require as to the circumstances in which it is alleged that the liability of the Government has arisen and as to the Departments and officers of the Government concerned;

- (c) for providing that in the case of proceedings against the Government the plaintiff shall not enter judgment in default of appearance or pleading without the leave of the Court to be obtained on an application of which notice has been given to the Government;
- (d) for providing that a person is not entitled to avail himself or herself of a set-off or counterclaim in any proceedings by the Government for the recovery of taxes, duties, or penalties, or to avail himself or herself in proceedings of any other nature by the Government of any set-off or counterclaim arising out of a right or claim to repayment in respect of any taxes, duties or penalties;
- (e) for providing that a person is not entitled, without the leave of the Court, to avail himself or herself of a set-off or counterclaim in proceedings by the Government if the subject matter of the set-off or counterclaim does not relate to the Government, a Government Department or an officer of the Government;
- (f) for providing that the Government, when sued, is not entitled to avail itself of a set-off or counterclaim without the leave of the Court.

24. General rules to apply in the absence of special rules – Subject to this Act and any other Act, and to any rules made under section 23, the laws, statutes, and rules in force as to pleading, joinder of parties, third party procedure, evidence, hearing and trial, amendment, arbitration, special cases, the means of procuring and taking evidence, set-off, appeal, and all other laws, statutes, and rules available as between plaintiffs and defendants in personal actions between subjects, and the

practice and course of procedure of the Court in its legal and equitable jurisdiction respectively in reference to such suits and personal actions, unless the Court otherwise orders, are applicable and apply and extend to civil proceedings by or against the Government.

25. Saving of certain rights, etc. – (1) Except as therein otherwise expressly provided, nothing in this Act:

- (a) applies to criminal proceedings; or
- (b) subjects the Government to greater liabilities in respect of the acts or omissions of any independent contractor employed by the Government than those to which the Government would be subject in respect of the acts or omissions if the Government were a private person; or
- (c) subjects the Government to liability in respect of the acts or omissions of a medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dental practitioner or any other person while any such person is rendering any professional or other service or supplying any medicine, drug, appliance, or material, unless the medical practitioner, pharmaceutical chemist, midwife, maternity nurse, dentist, or other person is acting as a servant of the Government at the time of the act or omission; or
- (d) interferes with or affects an Act that now is or hereafter may be in force whereby the Government, or its officers or servants, is exempt from liability for anything done under the Act or affects a power, authority, or liability vested in or imposed upon the Government or its officers or servants under any such Act; or
- (e) affects a right of the Government to control or otherwise intervene in proceedings affecting the Government's rights, property, or profits.

(2) Where property vests in the Government by virtue of a rule of law which operates independently of the acts or the intentions of the Government, the Government is not by virtue of this Act subject to liabilities in tort by reason only of the

property being so vested, but the provisions of this subsection is to be without prejudice to the liabilities of the Government under this Act in respect of a period after the Government or a person acting for the Government has in fact taken possession or control of any such property, or entered into occupation thereof.

(3) This Act does not limit the discretion of the Court to grant relief by way of mandamus in cases in which such relief might have been granted before the commencement of this Act, even if by reason of this Act some other and further remedy is available.

26. Repeal – Section 264 of the Samoa Act 1921 (NZ) is repealed, and on the coming into force of this Act, the Crown Proceedings Act 1950 (NZ) ceases to be part of the law of Samoa.

SCHEDULE

FORM 1
(Section 15(2))

**CERTIFICATE OF FORFEITURE
OF RECOGNISANCE**

This is to certify to the Attorney-General that, at thethis day held at the recognisances hereunto annexed were forfeited, and were there and then caused to be estreated.

Given under my hand this day of 20

.....
Judge

FORM 2
(Section 15(3))

JUDGMENT IN RESPECT OF RECOGNISANCE

In the Supreme Court of Samoa
Be it remembered that the Attorney-General has informed the Court that at the held at on the day of 20 beforethe recognisance of one by which he acknowledged

to owe to the Government the sum of was forfeited and estreated as by the said recognisance and the certificate of the said now filed of record appears. Therefore, on the day of 20, it is adjudged by the Court here that the Government do recover against the said the said sum of and also the sum offor costs, making together the sum of

Dated at this day of 20

.....
Registrar.

FORM 3
(Section 17 (2))

CERTIFICATE OF JUDGMENT

In the Supreme (or District) Court of Samoa

Between, Plaintiff
And, Defendant.

I certify thatof, did on the day of 20in the Supreme Court (or the District Court) at, obtain a judgment (order, decree, or declaration); and that by the judgment (order, decree, or declaration) the Government was ordered to pay to him the sum of (or as the case may be).

Dated at this day of 20

.....
Registrar.

REVISION NOTES 2008 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

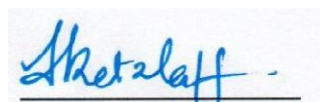
- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;

- (b) Insertion of the commencement date and Part numbering before the Part title;
- (c) References to the male gender have been made gender neutral;
- (d) Parts are inserted into the Act and numbered (as roman numerals) and titled accordingly;
- (e) Present tense drafting style applied;
- (f) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
 - (i) “shall” or “shall be” with “is” or “are” and deleting “from time to time”;
 - (ii) “any” or “every” is substituted with “a” or “an”, and reference to “every person” or “any person” is substituted with “a person” where appropriate;
 - (iii) “the provision of” and “this section” is deleted where appropriate;
 - (iv) “and” or “or” at the end of paragraphs where appropriate
 - (v) “notwithstanding” substituted with “despite”;
 - (vi) “for the time being” is deleted;
 - (vii) “in accordance with” changed to “under”;
 - (viii) Reference to the Forms in the Schedule are made clear;
 - (ix) Altering the form of subsections by sub-dividing (e.g. section 18 and section 21(2) and (3));
 - (x) Authorising sections for different Forms in the Schedule are inserted into the Schedule under the heading of each Form.
 - (xi) Part numbering changed to decimal

The following amendment was made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*:

By the *Audit Act 2013, No.22*, commenced on 27 January 2014:

Section 17(4) substituted “(duly audited by the Audit Office)” with “(duly audited by the Controller and Auditor General)”.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Office of the Attorney General*
