



SAMOA

SURVEY ACT 2010

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SURVEY ACT 2010

2010

No. 25

AN ACT to regulate the practice of land surveys by the registration and licensing of qualified land surveyors and the prescription of requirements for land surveys and for plans of subdivision, and for related purposes.

[Assent date: 19 October 2010]

[Commencement date: 1 December 2010]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement – (1) This Act may be cited as the Survey Act 2010.

(2) This Act commences, in whole or in part, on a date or dates nominated by the Minister.

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

- “aerial photography” means photographic or remote sensing imagery exposed from above the earth’s surface;
- “Agency” means the Spatial Information Agency established under the Spatial Information Agency Act 2010;
- “approved fee” means a fee approved by the Minister by notice issued to that effect;
- “Assistant Chief Executive Officer” means the Assistant Chief Executive Officer responsible for surveys in the Ministry;
- “cadastral survey” has the same meaning as in the Spatial Information Agency Act 2010;
- “cadastre” has the same meaning as in the Spatial Information Agency Act 2010;
- “Chief Executive Officer” means the Chief Executive Officer of the Ministry responsible for lands;
- “Committee” means the Land Professionals Registration Committee (Survey) established as part of the Ministry under section 5;
- “coastal protection reserve” means the distance of 5 metres from the high water mark measured horizontally;
- “definition plan” means a survey plan that defines or redefines the boundaries and details of a parcel of land, for any purpose;
- “deposit” or “deposited” means the formal incorporation of a subdivision or definition plan or other land instrument into the Land Registry of the Ministry;
- “dominant tenement” means land which has attached to it an easement over other land;
- “employee” has the same meaning as in the Public Service Act 2004;
- “Institute” means the Samoan Institute of Land Professionals set up under section 10;
- “land” includes subsoil, airspace, and water and marine areas; and includes interests in or over land;
- “landlocked land” means a piece of land to which there is no reasonable access;
- “land professions” includes the professional practice of land surveys, land valuation and land use planning, and any other land related activity performed by persons who are entitled to be members of the Institute under its Rules or as authorised by any Act;

- “licensed surveyor” or “surveyor” means a person registered as a surveyor under this Act and who is the holder of a current practising certificate issued under this Act;
- “map” means a representation at a scale or projection of the features (whether natural or artificial or both) or other information relating to a part or the whole of the earth in a graphical, photographic, or digital form or a combination of those forms;
- “Minister” means the Minister responsible for Lands;
- “Ministry” means the Ministry responsible for Lands;
- “National Survey Control System” means a system to determine the position of points, features and boundaries in cadastral surveys and land information systems;
- “plan” has the same meaning in the Spatial Information Agency Act 2010;
- “qualification” means a certificate, diploma, degree or licence granted by overseas academic institutions or authorities and recognised either singly or in combination by the Committee as sufficient evidence of the possession by the holder of the requisite knowledge and skill for the efficient practice of land surveying in Samoa;
- “reasonable access”, in relation to land, means physical access for persons or services of a nature and quality that is reasonably necessary to enable the owner or occupier of the land to use and enjoy the land for a purpose for which it may be used in accordance with any right, permission, authority, consent or approval;
- “river protection reserve” means the distance of 5 metres from the top of the river banks;
- “river reserve” means the river bed and all areas to the top of river banks;
- “servient tenement” means land over which there is an easement;
- “survey” means the determination for boundary or other relevant purposes of the form, contour, position, area, shape, height, depth, or nature of any part of the earth or of any natural or artificial features, and the position, length, and direction of bounding lines on, below, or above a part of the earth; and includes the making of a plan or plans of any matter so determined;

“survey mark” means any survey monument or reference or boundary mark or peg fixed or placed in accordance with this Act or any regulations made under this Act, and includes any mark or beacon fixed or placed for the National Survey Control System;

“subdivision plan” means a survey plan detailing the division of land into 2 or more allotments for any purpose;

“tenure” means the kind of right or title by which land is held or owned;

“topographic”, in relation to any information or map, means information or a map relating to the horizontal and vertical positions of natural or artificial features on, below, or above the earth’s surface.

3. Act to bind the Government – This Act binds the Government.

PART 2 ADMINISTRATION

4. Role of the Ministry – (1) The Ministry shall administer and regulate matters relating to land surveys in accordance with this Act through:

- (a) the Spatial Information Agency of the Ministry; and
- (b) the Land Professionals Registration Committee (Survey).

(2) The functions of the Ministry in relation to land surveys are:

- (a) to formulate, maintain and apply a National Survey Control System; and
- (b) to administer, coordinate, maintain and extend geodetic control networks and traverses, precise levelling or other precision measurements forming the National Survey Control System, and to maintain permanent reference marks governing or providing subsidiary controls for any surveys of land; and
- (c) to maintain in suitable format cadastral survey documents and systems of cadastral survey documents and to produce cadastral record maps portraying surveyed boundaries, and land parcels,

- so providing a comprehensive base for integration of land information data and the establishment of geographic systems based on them; and
- (d) to set, apply standards and provide facilities for—
 - (i) the spatial extent (including boundaries) of interests under the land tenure system; and
 - (ii) new cadastral surveys into the cadastre; and
 - (iii) the structure, storage and provision of cadastral survey data; and
 - (e) to inform licensed surveyors of how to comply with standards referred to in paragraph (d); and
 - (f) to facilitate the coordination of aerial photography required for Government purposes and capable of being used in the production of maps; and
 - (g) to promote the integration of mapping, geographically based information, and land related information with land information system requirements; and
 - (h) to impose and enforce requirements for cadastral surveys; and
 - (i) to receive, hold, distribute, reproduce, and sell, topographic, cadastral, and derived maps, aerial photographs and other survey and mapping documents resulting from activities under this Act and which may be required for Government or public use; and
 - (j) to produce, maintain, publish and sell topographic maps, photogrammetric data and mapping derived from cadastral and topographic information including related thematic and special purpose mapping, aeronautical charting, and digital records; and
 - (k) to authorise, and determine charges, for the use or reproduction of survey and mapping information recorded by the Agency in written, graphic or digital form; and
 - (l) to provide survey, survey computation, mapping, cartographic, land information and related services and to determine the charges for such services; and

- (m) to liaise and coordinate with overseas agencies for the exchange of survey, mapping and land information data; and
- (n) to investigate the status of and title to any lands as required enabling reservation or allocation for Government purposes; and
- (o) to receive requests, investigate status of land, and coordinate proposals for relevant legislation; and
- (p) to conduct research into relevant professional and technical matters; and
- (q) to monitor compliance of surveyors with the standards referred to in paragraph (d); and
- (r) to convene meetings of the Committee and provide administrative support for the Committee in the discharge of its functions under this Act; and
- (s) to maintain the register of all surveyors licensed under this Act; and
- (t) to approve plans, surveys and plans of subdivision under this Act and any other relevant law; and
- (u) to report to the Minister on the performance of the Agency; and
- (v) to perform any other function conferred by Cabinet or the Minister, or as provided in any other law relating to land surveys.

5. The Land Professionals Registration Committee

(Survey) – (1) The Land Professionals Registration Committee (Survey) is established.

(2) The Committee consists of:

- (a) the Chief Executive Officer, who shall be the Chairperson; and
- (b) the Assistant Chief Executive Officer of the Spatial Information Agency; and
- (c) two registered surveyors, of whom—
 - (i) one to be nominated by the Council of the Institute; and
 - (ii) one to be appointed by the Minister,

provided that the Minister may appoint a surveyor who holds a licence in force under the Survey Ordinance 1961 upon the commencement of this Act to hold office in the Committee for

the purposes of establishing the Committee pending the formation of the Institute.

(3) The members of the Committee appointed under subsection (2)(c):

- (a) are to be appointed by the Minister by notice published to that effect; and
- (b) take office from the date of the notice under paragraph (a) or at a later date as may be specified in the notice; and
- (c) hold office for 3 years or a lesser term, as may be specified in the notice of appointment; and
- (d) are eligible for re-appointment.

(4) Despite that a Committee member's term of appointment may have expired, a member continues in office until the member's successor comes into office, unless the member sooner vacates or is removed from the office in accordance with this Act.

(5) The powers of the Committee shall not be affected by a vacancy in its membership.

(6) If a member dies, resigns or is removed from office:

- (a) the vacancy created shall be filled in the manner in which the appointment to the vacant office was originally made; and
- (b) the person appointed to fill the vacancy shall be appointed for the residue of the term for which his or her predecessor was appointed.

(7) The members of the Committee may be reimbursed travelling and other expenses as are approved by the Chief Executive Officer in accordance with applicable Ministry of Finance policies and laws.

6. Functions of the Committee – (1) The functions and powers of the Committee are:

- (a) to determine the courses of formal education (and any other or alternative experience) which are to be recognised as qualifying a person for registration as a land surveyor in Samoa; and
- (b) to receive applications for the registration of surveyors under this Act, to consider the academic and professional qualifications and practical experience in surveying of all such applicants and to conduct interviews as appropriate; and

- (c) to authorise the registration of qualified surveyors and ensure that the integrity of the register of registered surveyors is maintained; and
- (d) to promote and maintain high standards of professional education and conduct among persons engaged in the profession of surveying in Samoa, including programmes of continuing education; and
- (e) to negotiate and administer reciprocal arrangements with survey Committees or other similar authorities of other countries for the purpose of securing uniformity and reciprocity in the education, training and recognition of persons engaged in surveying; and
- (f) to consider and recommend where appropriate amendments to the law relating to surveys and surveying; and
- (g) to act as the disciplinary body for the profession of land surveyors; and
- (h) to advise the Chief Executive Officer of grounds upon which the issue of a practising certificate to a surveyor may be declined; and
- (i) to perform such functions and powers as are conferred on it by this Act, and any other law.

7. Meetings of the Committee – (1) The meetings of the Committee are to be held at the times and places as the Chairperson appoints.

(2) The quorum necessary for a meeting of the Committee is 3 members.

(3) A question before a meeting of the Committee is to be determined by a majority of the votes of the members present at the meeting.

(4) A member of the Committee is not entitled to be present or vote or otherwise participate at any part of the meeting where a matter relating to that member's registration, suspension or discipline is being considered.

(5) The Chairperson shall have a deliberative vote, and in the case of an equality of votes, shall also have an additional casting vote.

(6) The Committee may regulate its procedure in a manner as it thinks fit in accordance with this Act.

(7) An officer of the Ministry shall perform the duties of Secretary of the Committee, which shall include:

- (a) the giving of notices of meetings of the Committee;
and
- (b) keeping minutes of all meetings of the Committee;
and
- (c) recording all resolutions made by the Committee;
and
- (d) receiving and processing applications to the Committee; and
- (e) attending to the correspondences of the Committee.

8. Delegation of the Minister's powers and functions –

(1) The Minister may, by writing under the Minister's hand, delegate to the Chief Executive Officer any of the powers conferred on the Minister under this Act other than this power to delegate.

(2) A delegation under subsection (1) is revocable at will, and no such delegation shall prevent the exercise of a power by the Minister.

(3) A delegation under this section may be made subject to restrictions and conditions as the Minister thinks fit, and may be either general or apply only to a particular case or matter.

(4) The fact that the Chief Executive Officer exercises a power conferred on the Minister under this Act shall, in the absence of proof to the contrary, be sufficient evidence of the Chief Executive Officer's authority to exercise that power.

9. Delegation of the Chief Executive Officer's powers and functions – (1) The Chief Executive Officer may delegate any power to the Assistant Chief Executive Officer other than this power to delegate.

(2) A delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the person delegating the power.

(3) A delegation under this section may be made subject to such restrictions and conditions as the Chief Executive Officer thinks fit, and may be either general or apply only to a particular case or matter.

(4) The fact that a power is purported to be exercised by an Assistant Chief Executive Officer in accordance with a delegation under this section shall, in the absence of proof to the contrary, be sufficient evidence of that officer's authority to exercise that power.

PART 3
SAMOAN INSTITUTE OF LAND PROFESSIONALS

10. The Samoan Institute of Land Professionals – (1) The Samoan Institute of Land Professionals is established.

(2) The Institute is a body corporate and may either be:

(a) registered by that name under the Incorporated Societies Ordinance 1952; or

(b) constituted and administered in accordance with Regulations made under this Act.

(3) Despite the requirements of sections 3 and 6 of the Incorporated Societies Ordinance 1952 and any other provision of that law to the contrary, the Institute may be incorporated under that Act with a membership of less than 15 persons.

(4) A surveyor registered under this Act may apply to the Institute to become a member of the Institute and subject to the Rules of the Institute shall have right of membership by virtue of being a registered surveyor under this Act.

(5) A qualified surveyor may apply to the Institute to become a member.

(6) The membership of the Institute may include persons (other than registered cadastral surveyors) who are suitably qualified in such survey related disciplines as may be specified in the Rules of the Institute.

(7) Nothing in this Part restricts the right of other land professionals (including land valuers and land use planners) to be members of the Institute in accordance with the Rules of the Institute, or as provided by any other law relating to land planning, valuation or other matters.

(8) A member of the Institute shall have his or her category of membership determined in accordance with the Rules of the Institute.

11. Functions of the Institute – The functions of the Institute include:

- (a) the protection and promotion of the interests of the land professions in Samoa, and the interests of the public in relation to the activities of land professionals; and
- (b) the promotion and encouraging proper surveying conduct, and to suppress any illegal, dishonourable, or improper practices by members of the Institute; and
- (c) the preservation and maintenance of the integrity and status of the land professions in Samoa, and to promote the highest ethical standards; and
- (d) the provision of opportunities for the acquisition and communication of knowledge in surveying, valuing, planning and related matters; and
- (e) the consideration and recommendation to the Minister of amendments to the law on land and any particular aspect of the land professions; and
- (f) the provision of means for the amicable settlement of professional differences.

12. The Council of the Institute – (1) The Council of the Institute shall be constituted and empowered in accordance with the Rules or regulations constituting the Institute in accordance with section 10.

(2) The Council shall transact the ordinary business of the Institute, and shall cause proper minutes of its proceedings to be kept.

(3) The Council may appoint advisory committees, with specific terms of reference.

(4) A member of the Institute may be appointed to an advisory committee, irrespective of whether or not he or she is a member of the Council or a registered land professional.

(5) The Council may regulate its own procedure in accordance with this Act.

13. Disciplinary offences and procedures for land professionals – The powers and proceedings for the discipline and de-registration of land professionals by the Institute shall be as prescribed in:

- (a) the Rules of the Institute; or
- (b) regulations made under this Act.

PART 4
REGISTRATION AND LICENSING OF SURVEYORS

14. Register of surveyors – (1) The Chief Executive Officer shall ensure that a register of surveyors registered under this Act is maintained and made accessible to the public.

(2) The Secretary of the Committee shall enter in the register the name, qualifications and current address of a person that is registered, and make such other entries as may be required by the Chief Executive Officer or the Committee, or that are required to keep the register current.

(3) The Chief Executive Officer may fix a reasonable fee to be paid by a person who wishes to obtain a copy of the register or part of the register.

15. Qualifications of applicants for registration – (1) Subject to this Act and to any matters of disciplinary procedure applying to the Institute, a person who applies to the Chief Executive Officer to be registered as a surveyor is entitled to be registered if the Committee is satisfied that the applicant:

- (a) has the educational qualifications determined by the Committee as necessary for registration as a surveyor; and
- (b) has the practical experience determined to be necessary for any category of registration approved by the Committee; and
- (c) is of good character and is in all respects professionally competent to act as a surveyor in Samoa; and
- (d) has paid the application and registration fees.

(2) No person is to be registered under this Act unless the Committee is satisfied that the person is of good character and reputation and is a fit and proper person to be so registered.

16. Applications for registration – (1) An application for registration shall be made to the Chief Executive Officer and shall:

- (a) specify the full name, postal address, qualifications, and relevant experience of the applicant; and
- (b) specify the category of registration which is sought by the applicant; and

- (c) be accompanied by an approved fee.
- (2) The Chief Executive Officer shall:
 - (a) approve the form of application for the purpose of this section; and
 - (b) set the approved fee for the application, with the approval of the Minister.
- (3) The Chief Executive Officer shall, as soon as practicable after receiving an application for registration, notify the Institute of the application and refer the application to Secretary of the Committee.
- (4) The Institute may make written comments to the Committee on the application upon notification.
- (5) As soon as practicable after the receipt of an application for registration and any comments on or objections to the application, the Committee shall consider the application, and shall give such directions to the Secretary of the Committee in respect of the application.
- (6) Before giving any directions, the Committee may interview:
 - (a) the applicant; and
 - (b) a person who has made comments on or objections to the application; and
 - (c) any other appropriate person.
- (7) The Committee shall not decline an application for registration without first giving the applicant:
 - (a) a copy of information on which the Committee relies in proposing to decline the application; and
 - (b) a reasonable opportunity to comment on that information and to be heard either personally or by the applicant's representative, in support of the application.

17. Registration of surveyors – (1) If the Committee, after considering an application, considers that the applicant is entitled to be registered, it shall direct the Secretary to register that person, and notify the applicant accordingly.

(2) If the Committee considers that the applicant is not entitled to be registered, it shall direct the Secretary to notify the applicant in writing of the reasons that the application has been declined.

(3) A registered surveyor shall, on payment of the registration fee determined by the Chief Executive Officer with the approval of the Minister, receive a certificate of registration issued by or under the authority of the Committee.

(4) A person who, when making an application for registration:

- (a) makes a declaration or representation, either orally or in writing, that to his or her knowledge is false or misleading; or
- (b) produces or makes use of a document knowing it to contain a false or misleading declaration or representation; or
- (c) produces or makes use of a document knowing that it is not genuine,—

commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months, or to both.

(5) The registration of a person who commits an offence under subsection (4) is deemed to be void upon that person's conviction.

18. Annual practising certificates for registered surveyors

– (1) In this section the term “year” means the period of 12 months beginning on 1 July and ending on 30 June in the following year.

(2) A registered surveyor shall not practise as a surveyor in a year unless he or she holds an annual practising certificate issued in respect of that year.

(3) The Chief Executive Officer, upon receipt of an application for an annual practising certificate and upon payment of the approved fee, shall issue to the surveyor an annual practising certificate which shall, subject to subsection (5), be in force during the year in respect of which it is issued.

(4) The Chief Executive Officer may refuse to grant or renew a practicing certificate if:

- (a) the Committee or the Council of the Institute has determined that the surveyor is no longer competent to practise surveying, or has committed any disciplinary breach which warrants the surveyor being prevented from practicing surveying; or

- (b) the applicant earlier obtained registration as a surveyor licence by fraud or misrepresentation or by virtue of dishonesty of any nature; or
- (c) the surveyor fails to comply with the conditions of his or her registration; or
- (d) the surveyor has allowed a person who is not a licensed surveyor to practise in that surveyor's name.

(5) If at any time during the currency of any such certificate, the certificate holder ceases to be registered under this Act, that certificate holder's annual practising certificate is deemed to be cancelled.

(6) The Secretary of the Committee shall keep a register of the names and addresses of all persons to whom annual practising certificates have been issued.

(7) A registered surveyor who practises as a cadastral surveyor in Government service or private practice without an annual practising certificate commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units.

PART 5 SURVEY PLANS

19. Subdivision plans – (1) Where a land is subdivided into allotments for any purpose, a subdivision plan of that land shall be prepared by a licensed surveyor and submitted to the Chief Executive Officer for approval.

(2) A subdivision plan submitted for approval under subsection (1) is to be accompanied by an offer by the registered proprietor to transfer to the Government all areas designated as roads, road reserves and public reserves depicted on the plan.

(3) A subdivision plan that is submitted to the Chief Executive Officer for approval shall be signed by the registered proprietor of the land being subdivided or his or her authorised representative.

- (4) A subdivision plan shall clearly depict:
- (a) the boundaries of the land being subdivided; and
 - (b) the allotments and their areas and dimensions; and
 - (c) any existing roads and road reserves; and
 - (d) any existing and proposed public reserves; and
 - (e) any existing easements; and

- (f) any proposed roads and proposed road splays or proposed road widening; and
- (g) adequate access to all parcels of land depicted in a plan; and
- (h) any other particulars as may be determined from time to time by the Chief Executive Officer, or required by the Chief Executive Officer in relation to a particular subdivision plan.

20. Definition plans – (1) Where the details of a land are to be defined or redefined for any purpose, a definition plan of that land shall be prepared by a licensed surveyor and submitted to the Chief Executive Officer for approval.

(2) A definition plan submitted for approval under subsection (1) shall be accompanied by an offer by the registered proprietor to transfer to the Government all areas designated as roads, road reserves and public reserves depicted on the plan.

(3) A definition plan submitted for approval:

- (a) for freehold land, must be signed by the registered proprietor of the land or his or her authorised representative; and
- (b) for customary land, must be shown as “customary land” and signed by a person who has the authority to sign the plan for and on behalf of the customary landowners.

(4) A definition plan must show:

- (a) the whole of the land being defined or redefined; and
- (b) the areas and dimensions; and
- (c) any existing roads; and
- (d) any existing public reserves; and
- (e) any existing easements; and
- (f) any proposed public reserves; and
- (g) any other particulars as may be determined from time to time by the Chief Executive Officer, or required by the Chief Executive Officer in relation to a particular plan.

21. Standard measurement of length – (1) All measurements of length in land surveys and on all plans of land affecting registered titles shall be made and expressed in terms of the international metre.

(2) All measurements of area in land surveys and on all survey plans shall be expressed in acres, roods, perches, decimal of perches and metric areas.

22. Roads – (1) The proposed roads shown on a subdivision plan is to be constructed to the best advantage having regard to the position of the existing roads in the locality, and the possible future requirements in the district.

(2) Roads designated on a subdivision plan shall be a minimum of:

- (a) twenty-five metres for a primary road, being a through route linking different regions; and
- (b) fifteen metres for a secondary road, being an access linking different local areas; and
- (c) ten metres for an access road, being a direct access to individual allotments of land; and
- (d) six metres for an access way, being a direct access to an allotment or allotments of land with a total maximum area of 4000 square metres; and
- (e) four metres for access lane, being a direct access to an allotment or allotments of land with a total maximum area of 1000 square metres.

23. Reserves – (1) For a subdivision plan or definition plan, a strip of land of 5 metres minimum in width shall be set aside as a public reserve along the coastal protection reserve, the river reserve and river protection, streams, lakes and water ways, even if dry.

(2) A person who is directly affected by this provision may apply to the Chief Executive Officer to review the reserves under this provision and must provide grounds of how he or she is directly affected.

(3) Regulations may be made in accordance with this Act to restrict or limit the use of and access to a public reserve created under subsection (1).

(4) A person who breaches any regulation made under subsection (3) commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months, or to both.

24. Creation of access and drainage easements – Where it is intended to create rights of ways or drainage easements in a plan of subdivision, the registered surveyor shall endorse on the plan a memorandum showing:

- (a) for each right of way or drainage easements, the dominant tenement and the servient tenement; or
- (b) for a drainage easement in gross, the name of a proposed grantee and the servient tenement.

25. Consideration of subdivision plan – (1) The Chief Executive Officer may:

- (a) refuse to approve a subdivision plan; or
- (b) approve a subdivision plan unconditionally; or
- (c) approve a subdivision plan subject to such conditions as the Chief Executive Officer sees fit.

(2) For subsection (1)(a), the Chief Executive Officer may refuse to approve a subdivision plan if:

- (a) closer subdivision or settlement of the land shown on the plan is not in the public interest or the land for any other reason is not suitable for subdivision; or
- (b) adequate provision has not been made for access to an allotment or the drainage of an allotment; or
- (c) insufficient areas for public reserves have not been set aside; or
- (d) the proposed subdivision does not conform to recognised principles of the close settlement of land; or
- (e) the subdivision does not satisfy the provisions of this Act or other existing law relating to subdivision of land; or
- (f) the plan is not accompanied by an offer by the registered proprietor to transfer to the Government all areas designated as roads, road reserves and public reserves depicted on the plan as required by section 19(2); or
- (g) the plan depicts a parcel of land without any adequate access.

(3) For subsection (1)(b), the Chief Executive Officer may approve a subdivision plan subject to all or any of the following conditions:

- (a) a condition restricting the use of all or any of the allotments shown on the plan;
 - (b) a condition restricting in the interest of public safety the use of land at intersections to provide road splays;
 - (c) a condition restricting in the public safety the use of land on road frontage, to provide road widening.
- (4) The Chief Executive Officer shall not accept for deposit a plan for subdivision which includes land to be set aside:
- (a) as a public reserve or for road splays or road widening; or
 - (b) as a road that is already constructed, paved or otherwise in accordance with the Land Transport Authority Act 2007,–
- unless the written consent of a person having a registered interest in the land, which may be prejudicially affected by the vesting of land in the Government for any such purpose, is obtained.

26. Consideration of definition plan – (1) The Chief Executive Officer may:

- (a) refuse to approve a definition plan; or
 - (b) approve a definition plan unconditionally; or
 - (c) approve a definition plan subject to such conditions as the Chief Executive Officer sees fit.
- (2) For subsection (1)(a), the Chief Executive Officer may refuse to approve a definition plan if:
- (a) closer subdivisions or settlement of the land shown on the plan is not in the public interest or the land for any other reason is not suitable for definition; or
 - (b) adequate provision has not been made for access to the land; or
 - (c) insufficient areas for public reserves have not been set aside; or
 - (d) the definition plan does not satisfy this Act or other existing law relating to the subdivision of land; or
 - (e) the plan is not accompanied by an offer by the registered proprietor to transfer to the Government all areas designated as roads, road reserves and public reserves depicted on the plan as required by section 20(2).

(3) For subsection (1)(c), the Chief Executive Officer may approve a definition plan subject to all or any of the following conditions:

- (a) a condition restricting the use of all or any of the land shown on the plan;
- (b) a condition restricting in the interest of the public safety, the use of the land at intersections to provide road splays;
- (c) a condition restricting in the public safety the use of land on road frontage to provide road widening.

(4) The Chief Executive Officer shall not accept for deposit any plan for definition which includes land to be set aside as a road, a public reserve or for road splays or road widening unless the written consent of a person having a registered interest in the land, which may be prejudicially affected by the vesting of land in the Government for any such purpose, is obtained.

27. Reconsideration of Chief Executive Officer's decision

– (1) In a case where the Chief Executive Officer has refused to approve a subdivision plan or definition plan or has approved a subdivision plan or definition plan subject to conditions, a person aggrieved by a decision of the Chief Executive Officer may, within 1 month after being notified of that decision, apply to the Chief Executive Officer to reconsider the decision, and the Chief Executive Officer may, at a time within 1 month after receiving the application, approve a reconsideration of the case if he or she thinks that justice requires it, and on reconsidering the case, may reverse, alter, modify, or confirm the previous decision in the same case.

(2) An application for a reconsideration of a decision under this section must be lodged with the Chief Executive Officer at the Ministry.

28. Appeals to Supreme Court – (1) If a person considers himself or herself aggrieved by a decision of the Chief Executive Officer, he or she may appeal to the Supreme Court if within 1 month after being notified of that decision, he or she gives notice of appeal to the Chief Executive Officer and the Attorney General in accordance with the Government Proceedings Act 1974 and the Limitation Act 1975, and also to such persons (if any) as have appeared before the Chief Executive Officer as opponents of the case or claim or application to which the decision relates, and also

gives security to be approved of by the Registrar of the Supreme Court for the costs of the appeal.

(2) A notice to the Chief Executive Officer under the last preceding subsection shall be lodged with the Chief Executive Officer at the Ministry.

(3) The appeal shall be in the form of a case agreed on by the Chief Executive Officer and the appellant, or, if they cannot agree, the Court shall hear the appeal without a case stated, and in any case may receive evidence either orally or by affidavit or by both of such means.

(4) The Court, if it thinks fit, instead of deciding a question of fact in dispute upon affidavit or personal examination by it of witnesses, may order that question to be found and determined by assessors, and may settle an issue or issues for that purpose.

(5) After hearing the parties the Court shall give its decision and the Chief Executive Officer shall be bound to follow that decision and shall reverse, alter, modify, or confirm his or her decision in accordance with the Court's decision.

(6) The Court may make such order as to payment of costs to either party as it thinks fit.

(7) Following such decision, no action or other proceeding by any process of any Court shall lie against the Government of Samoa or the Chief Executive Officer.

29. Correction of errors – If an error is found in a survey affecting a title or tenure to land under any Act, the Chief Executive Officer may in writing, require the surveyor responsible for the error to undertake the work necessary to correct the error at the surveyor's own costs.

30. Subdivision and definition plans to be deposited – Subject to sections 25(4) and 26(4), the registered owner shall deposit at the office of the Chief Executive Officer an approved subdivision and a definition plan together with a notice of conditions restricting the use of any such land.

31. Vesting of roads, road reserves and public reserves in the Government – When a subdivision plan or definition plan is submitted for approval under this Act, all those areas of land designated as roads, road reserves and public reserves on the

subdivision or definition plan shall vest in the Government pursuant to the offers made under sections 19(2) and 20(2).

32. Power of Registrar to create an easement for the benefit of landlocked land – (1) The Registrar may, on an application from the owner or occupier of a landlocked freehold land or as he or she sees fit, create an easement over a parcel of freehold land, whether or not adjoining the landlocked land, for the benefit of the landlocked land in order to provide reasonable access to the landlocked land in accordance with:

- (a) an agreement between an owner or occupier of landlocked land and the owner of the land or lands adjoining the landlocked land and any other person who has an estate or interest in the landlocked land or in any other piece of land, whether or not adjoining the landlocked land, that may be affected by the creation of the easement; or
 - (b) a determination by the Registrar to create such easement over freehold land.
- (2) In making a determination under subsection (1)(b), the Registrar shall have regard to:
- (a) the nature and quality of the access, if any, to the landlocked land at the time when the owner of the land purchased or otherwise acquired the land; and
 - (b) the circumstances under which the land became landlocked; and
 - (c) the hardship that would be caused to the owner or occupier of the landlocked land if an easement is not created, in comparison with the hardship that would be caused to any other person by the creation of an easement; and
 - (d) any other relevant matters.
- (3) In creating an easement under subsection (1), the Registrar may impose any conditions that the Registrar thinks fit, including conditions relating to the following:
- (a) the carrying out of a survey of any land;
 - (b) the time within which any work necessary to give effect to the creation of the easement is to be carried out;

- (c) the execution of any instrument or the doing of any other thing necessary to create the easement;
- (d) any other matters that the Registrar considers relevant, including a question arising under subsection (4).

(4) The reasonable cost of any work necessary to give effect to the creation of an easement under subsection (1) is to be met by the owner or occupier of the landlocked land, unless the Registrar is satisfied, having regard to the matters specified in subsection (3), that it is just and equitable to require any other person to pay the whole or any specified share of the cost.

(5) Where the Registrar is of the view that the creation of an easement would be unjust and inequitable, he or she may recommend that land be taken and compensated under the Taking of Land Act 1964 to enable access to the landlocked land.

(6) If a person is aggrieved by a determination of the Registrar to create or not to create an easement, the person may appeal to the Supreme Court within 3 months from the date of being notified of such determination in accordance with the Government Proceedings Act 1974.

PART 6

CONDUCT OF SURVEYS

33. General – (1) A cadastral survey must be conducted by a licensed surveyor or a person acting under the immediate personal supervision of a licensed surveyor.

(2) A licensed surveyor is responsible for the survey conducted by a person acting under his or her personal supervision.

(3) In conducting a cadastral survey, a licensed surveyor or a person acting under that surveyor's supervision, must comply with this Part and any regulation, standards and rules made under the Act.

(4) If the Chief Executive Officer considers that compliance with the requirements of any rules in subsection (3) in a particular

case is impractical or unreasonable, the Chief Executive Officer may:

- (a) grant an exemption from the requirements of the rules; or
- (b) specify alternate requirements.

34. Powers of entry for cadastral survey purposes – (1)

For the purpose of conducting a cadastral survey, or the installation of a survey mark, a licensed surveyor, or person acting under the direction of a licensed surveyor, may, subject to subsection (2),:

- (a) enter any land at reasonable times with or without assistants, vehicles and equipment which are reasonably necessary for the conduct of a cadastral survey or to install a survey mark; and
- (b) do all things necessary on any land for the proper conduct of a cadastral survey or the installation of a survey mark.

(2) The licensed surveyor shall as far as practicable before exercising the power under subsection (1) in respect of any land, give reasonable notice to the occupier of the land of the intention to enter that land.

35. Entry on land for purposes of survey – (1)

The Chief Executive Officer or a person authorised either specifically or generally by the Chief Executive Officer, may, subject to subsection (2):

- (a) enter during the day time at reasonable times, any Government land, customary land, or freehold land, with such assistance as he or she thinks fit, for the purpose of making a survey which he or she is authorised to make, and may affix or set up trigonometrical stations, survey pegs, marks, or poles, or for the purpose of inspecting any such survey or station, or for the purpose of altering, repairing, moving, or removing any trigonometrical station, survey peg, mark, or pole; and
- (b) may do all things necessary for such survey or for any inspection or alteration.

(2) The Chief Executive Officer, or person authorised shall as far as practicable before exercising the power under subsection (1), give reasonable notice to the proprietor or occupier of the land of the intention to enter, and shall, if required by the proprietor or occupier, produce and show the authority under which he or she claims to enter, or has entered the land.

36. Rules for cadastral surveys – (1) In order to maintain the integrity of, and public confidence in the cadastre, the Chief Executive Officer may specify rules:

- (a) for the conduct of cadastral surveys; and
- (b) for the use of cadastral survey marks; and
- (c) for cadastral survey datasets.

(2) The rules may require surveyors to provide to the Chief Executive Officer in digital form such information as the Chief Executive Officer determines.

PART 7 OFFENCES AND PENALTIES

37. Carrying on survey without a licence – A person who carries out a survey without a current practising certificate issued under this Act commits an offence and is liable upon conviction to imprisonment for a term not exceeding 1 year, or a fine not exceeding 50 penalty units, or both.

38. Professional misconduct by surveyors – (1) The Rules of the Institute and regulations made under this Act may prescribe disciplinary offences by surveyors.

(2) Without limiting subsection (1), a registered surveyor is guilty of professional misconduct if he or she is found in a legal or disciplinary proceeding:

- (a) to have failed to conduct a survey or to have been negligent in the conduct of a survey; or
- (b) to have certified to the accuracy of a survey or a plan in relation to a survey without having personally carried out or supervised that survey, and the related field operations; or
- (c) to have certified to the accuracy of a survey or of a plan in relation to a survey without having carried out sufficient checks to ensure the accuracy of the

- entries in a field book and the accuracy of all calculations, working plans and other survey records that may have been made by a person employed by him or her in relation to the survey; or
- (d) to have certified to the accuracy of any survey carried out by him or her or under his or her personal supervision if the operations of pegging and ground marking, and all other requirements of the survey, have not been carried out in accordance with any regulations for the conduct of surveys and related operations; or
 - (e) to have certified to the accuracy for a survey or plan knowing it to be defective; or
 - (f) to have made an entry in a field book or other record that purports to have been derived from actual observation or measurement in the field, if in fact it has not been so derived; or
 - (g) to have supplied to the Chief Executive Officer or an authorised officer of the Division, any erroneous information in relation to a survey, survey mark or boundary, knowing that information to be erroneous in a material particular; or
 - (h) to have breached any Rules of the Institute relating to unprofessional conduct.

39. Assault of a licensed surveyor – A person who knowingly obstructs a licensed surveyor, or a person assisting the licensed surveyor or acting under the direction of a licensed surveyor in:

- (a) performing the licensed surveyor's duties in relation to a survey; or
- (b) ascertaining or marking out a boundary or cadastral survey line; or
- (c) fixing, placing, restoring, replacing or setting up a survey mark,–

commits an offence and is liable upon conviction to imprisonment for a term not exceeding 1 year, or a fine not exceeding 100 penalty units, or both.

40. Interference with survey marks – (1) A person who knowingly takes, destroys or alters the position of, or markings

on, a survey mark which has been placed under the authority of this Act or any other Act commits an offence and is liable upon conviction to imprisonment for a term not exceeding 1 year, or a fine not exceeding 100 penalty units, or both.

(2) Where a person is convicted of an offence under subsection (1), the Court may order that the person convicted be liable to pay the costs including survey costs of repairing, replacing or restoring the survey mark to its original position.

PART 8 MISCELLANEOUS

41. Protection from liability – The Minister, the Chief Executive Officer, a member of the Committee or the Council of the Institute and a delegate, officer or employee of the Ministry exercising a function under this Act shall not incur civil liability for any action or omission in good faith:

- (a) in the exercise of a power or the discharge of a duty;
or
- (b) in the reasonable belief that the act or omission was in the discharge of duty under this Act.

42. Regulations – (1) The Head of State acting on the advice of Cabinet may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made for any of the following purposes:

- (a) prescribing qualifications for the licensing of surveyors under this Act;
- (b) regulating the conduct of surveys including provisions for ensuring accuracy of plan and surveys, and providing for amendments and additions to plans in accordance with requisitions in that behalf made by the Chief Executive Officer;
- (c) prescribing methods of making applications under this Act and forms;
- (d) prescribing any other documents required under this Act;

- (e) prescribing the use of and access to a public reserve;
- (f) prescribing fees required to be prescribed under this Act;
- (g) prescribing penalties for breach of regulations made under this Act, being fines not exceeding 50 penalty units.

43. Repeal and amendment – (1) The Survey Ordinance 1961 is repealed.

(2) Sections 16 to 21 of the Lands, Surveys and Environment Act 1989 are repealed.

(3) Section 146(2) (a) of the Lands, Surveys and Environment Act 1989 is amended by omitting the words “surveys or other”.

44. Savings and transitional provisions – (1) A licence in force under the Survey Ordinance 1961 at the commencement of this Act shall, to the extent that it is capable of doing so, continue and have effect under the corresponding provisions of this Act until such time as the licence expires, or is cancelled under this Act.

(2) A plan of subdivision or definition approved or deposited under the Survey Ordinance 1961 or Part 3 of the Lands, Surveys and Environment Act 1989 is taken to have been approved or deposited under the relevant provisions of this Act.

(3) All applications, investigations and legal proceedings commenced under the Survey Ordinance 1961 which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall continue and may be deemed by a court to have been taken under the equivalent provisions of this Act.

(4) Insofar as they are not inconsistent with this Act, every regulation, order, document and act of authority made under the Survey Ordinance 1961, so far as they are subsisting or in force at the time of the repeal of such legislation, shall continue and have effect under the corresponding provisions of this Act until such time as they are altered, amended, cancelled or repealed, as the case may require, under the provisions of this Act and, where there is a question or concern as to what is a corresponding provision of the Act, the Minister by notice in writing may for all purposes declare a provision of this Act to be a corresponding provision for such purposes.

(5) Despite this Act, where the Act does not provide or provides insufficient or inadequate provision for the transition from the Survey Ordinance 1961 to this Act, the Minister may by notice issued to that effect make such provisions as the Minister deems necessary in order for all matters under or concerning such Acts and the Act to be properly and effectively determined or otherwise dealt with under this Act.

(6) The Committee can discharge its functions pending nomination by the Council of the Institute of a surveyor under section 5(2)(c)(i).

REVISION NOTES 2010 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division in 2010 to 2020/3 March 2021 respectively authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement date
- (b) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “any” changed to “a/an”
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”
 - “from time to time” removed
 - (iii) Removal/replacement of obsolete and archaic terms with plain language: “notwithstanding” changed to “despite”
 - (iv) Numbers in words changed to figures
 - (v) Removal of superfluous terms: “the provisions of”
 - (vi) Parts renumbered in decimal numbers

There were no amendments made to this Act since its enactment.

*This Act is administered by
the Ministry of Natural Resources and Environment.*