



SAMOA

DECLARATORY JUDGMENTS ACTS 1988

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DECLARATORY JUDGMENTS ACT 1988

1988 **No.22**

AN ACT to specifically authorise the Supreme Court to give declaratory judgments or orders.

[Assent and commencement date: 30 December 1988]

1. Short title – This Act may be cited as the Declaratory Judgments Act 1988.

2. Application – This Act binds the Government and a declaratory judgment or order may be made against the Government whether or not the effect of the judgment or order would be to give relief against the Government which could not otherwise have been obtained in proceedings against the Government.

3. Declaratory judgments – No action or proceeding in the Supreme Court shall be open to objection on the ground that a mere declaratory judgment or order is sought thereby, and the Court may make binding declarations of right, whether a consequential relief is or could be claimed or not.

4. Declaratory orders by motion – (1) Where a person:

(a) has done or desires to do an act the validity, legality, or effect of which depends on the construction or validity of a statute, or a regulation made by the Head of State, acting on the advice of Cabinet, under statutory authority, or a bylaw, or a deed, will, or document or instrument of title, or an agreement made or evidenced by writing, or a memorandum or articles of association of a company or body corporate, or an instrument prescribing the powers of a company or body corporate; or

(b) claims to have acquired a right under a statute, regulation, bylaw, deed, will, document or instrument of title, agreement, memorandum, articles or instrument, or to be in any other manner interested in the construction or validity thereof;

the person may apply to the Supreme Court by motion for a declaratory order determining a question as to the construction or validity of such statute, regulation, bylaw, deed, will, document or instrument of title, agreement, memorandum, articles, or instrument, or of any part thereof.

5. Effect of declaratory orders – A declaration so made on any such motion has the same effect as the like declaration in a judgment in an action, and is binding on the person making the application and on all persons on whom notice of the motion has been served, and on all other persons who would have been bound by the declaration if the proceedings wherein the declaration is made had been an action.

6. Service of notice of motion – The Supreme Court may direct that notice of the motion be served on such persons as the

Court thinks fit, and such direction may be given at the time when the motion is filled or subsequently.

7. Motion to be subject to rules of Court – Subject to this Act and to any rules of Court made under the Judicature Ordinance 1961, the motion is subject to the rules of Court which are in force with respect to motions.

8. Removal of motion into Court of Appeal – The motion may be removed into the Court of Appeal in the same manner as the matters specified in section 13 of the Judicature Act 2020 are removable, and section 13 of that Act applies to the motion so removed accordingly.

9. Appeal to Court of Appeal – An appeal shall lie to the Court of Appeal from a judgment or order given or made in pursuance of this Act, in the same manner as in the case of a final judgment of the Supreme Court.

10. Judgment or order in anticipation of an act or event – A declaratory judgment or order given or made under this Act may be given or made by way of anticipation with respect to an act not yet done or an event which has not yet happened, and in such case the judgment or order has the same binding effect with respect to that future act or event, and the rights or liabilities to arise therefrom, as if that act or event had already been done or had already happened before the said judgment or order was given or made.

11. Jurisdiction discretionary – The jurisdiction conferred under this Act upon the Supreme Court to give or make a declaratory judgment or order is discretionary, and the Court may, on any grounds which it deems sufficient, refuse to give or make any such judgment or order.

12. Declaratory judgments or orders in cases where Court cannot give relief – The jurisdiction conferred under this Act upon the Supreme Court to give or make a declaratory judgment or order is not to be excluded by the fact that the Supreme Court has no power to give relief in the matter to which the judgment or order

relates, or that such matter would, independently of this Act, be within the exclusive jurisdiction of any other Court.

13. Decision of Court of Appeal to bind all other Courts –

A decision of the Court of Appeal under this Act is binding in all other Courts in Samoa.

14. Costs –

The costs of an action, motion, or appeal under this Act is in the discretion of the Court, and the Court may in the exercise of that discretion order the whole or a part of those costs to be paid by a party, although successful in the action, motion or appeal, and may in a case direct that costs awarded to a party is taxed either as between party and party or as between solicitor and party.

REVISION NOTES 2008 – 2023

This is the official version of this Act as at 31 December 2023.

This Act has been revised by the Legislative Drafting Division from 2008 to 2023 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) Amendments have been made to up-date references to offices, officers and statutes;
- (c) Insertion of the commencement date;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General:
 - (i) “Every” and “any” changed to “a” or “each” where appropriate;
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”;
 - (iii) “shall have” changed to “has”;
 - (iv) “shall be guilty” changed to “commits”;
 - (v) “notwithstanding” changed to “despite”;
 - (vi) “pursuant to” or “in accordance with the provisions of” changed to “under”;
 - (vii) “it shall be lawful” changed to “may”;
 - (viii) “it shall be the duty” changed to “shall”;
 - (ix) Numbers in words changed to figures;
 - (x) “hereby” and “from time to time” (or “for the time being”) removed;

- (xi) “under the hand of” changed to “signed by”;
- (e) Amendment made to section 8, by substituting the cross reference to section 55 of the Judicature Ordinance 1961(repealed) and replace with section 13 of the Judicature Act 2020 which re-enacts the same provision. (*Consolidation of Laws 2023*)

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

*This Act is administered by
the Ministry of Justice and Courts Administration.*