

PUBLIC BODIES

(PERFORMANCE AND ACCOUNTABILITY) ACT 2001

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2001 No. 13

AN ACT to promote improved performance and accountability in respect of Public Bodies and, to this end, to

- (a) Specify principles governing the provision of the operation of Public Bodies; and**
- (b) Specify the principles and procedure for the appointment of Directors of Public Bodies; and**
- (c) Establish requirements concerning accountability for Public Bodies; and**
- (d) Provide support for Directors of Public Bodies.**

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

1. Short Title and Commencement - (1) This Act may be cited as the Public Bodies (Performance and Accountability) Act 2001.

(2) This Act shall come into force on the date to be determined by Cabinet and published in the Savali.

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

“Act” means the Public Bodies (Accountability and Performance) Act 2001:

“Board” means -

- (a) In relation to a Public Body that is a company, the board of directors of the Public Body;
- (b) In relation to a Public Body that is not a company, the persons occupying the positions in or in relation to the Public Body under governing legislation that are comparable with those of the board of directors of a company.

“Governing legislation” means the Act or Acts which establishes and provides for the objectives governance and purposes of a Public Beneficial Body.

“Organization” includes a company, a body corporate, a statutory corporation, a statutory body, a trust, a partnership and a joint venture.

“Public Body” means an organization included in Schedule 1 of the Act and any subsidiary of a Public Body

“Public Beneficial Body” means an organization included in Part B of Schedule 1 of the Act and any subsidiary of a Public Beneficial Body.

“Public Trading Body” means an organization included in Part A of Schedule 1 of the Act and any subsidiary of a Public Trading Body.

“Responsible Minister” in relation to a Public Body means the Minister for the time being responsible for that Public Body:

“Share” means -

- (a) In relation to a company that has issued shares, a share of any class;
- (b) In relation to an organization (other than a company) that has a capital, an interest in or right to the whole or any part of that capital, other than an interest or right as a creditor;
- (c) In relation to a company or other organization that does not have a capital,
 - (i) An interest in or right to any part of the assets of the company or organization other than an interest or right as a creditor; or
 - (ii) Where there are no assets, a direct or contingent obligation to contribute money to or bear losses of the company or organization;

and “shareholder” has a corresponding meaning.

“Shareholding Ministers” means the Minister of Finance and the Responsible Minister

“Subsidiary” has the same meaning as in Section 2 of the Companies Act 2001.

(2) Part A of Schedule 1 provides the list of Public Trading Bodies and Part B of Schedule 1 provides the list of Public Beneficial Bodies. Schedule 1 provides the list of Public Bodies.

(3) Schedule 1 may be amended from time to time by regulation made by the Head of State acting on the advice of Cabinet and such regulations may provide for amendment of the list of Public Bodies, the list of Public Trading Bodies and the list of Public Beneficial Bodies, including the transfer of an organization from Part B to Part A and vice versa.

(4) Any regulations made pursuant to this section shall be laid before Parliament within fourteen days of the making of the regulations or, where Parliament is not sitting, within seven days of the commencement of the next sitting after the promulgation of the regulations.

3. Act to bind the State – This Act shall bind the State.

4. Purpose – The purpose of this Act is to enhance the performance and accountability of Public Bodies so that they provide the best possible service for the people of Samoa and as a result contribute to Samoa's social, cultural, economic and commercial development.

PART I

FORMATION AND OWNERSHIP OF PUBLIC TRADING BODIES

5. Transfer to the Companies Act 2001 - Despite the provisions of any law each Public Trading Body shall register as a company under the Companies Act 2001 at a time and in such form of registration as determined by the Minister of Finance.

6. Ministerial Shareholding - (1) Subject to Subsection (2) the Minister of Finance and each Responsible Minister may, from time to time on behalf of the Government, subscribe for or otherwise acquire all of the shares in a Public Trading Body.

(2) Where a Public Trading Body has entered into a joint venture or other legal entity such that the shareholding of the Government is less than 100% this section shall only apply to the shares of such joint venture or other legal entity which are owned by the Government.

(3) The number of shares in a Public Trading Body held by each shareholding Minister pursuant to subsection (1) shall be the same.

(4) Any money required to be paid by a shareholding Minister on subscribing or applying for, or being allotted, shares pursuant to subsection (1) shall be paid out of money appropriated by Parliament for the purpose and this Act shall constitute sufficient appropriation for the purposes of the Public Finance Management Act 2001.

(5) The shareholding Ministers shall be responsible to Parliament for the performance of Public Bodies under this Act.

(6) The Board of a Public Trading Body shall be accountable to the shareholding Ministers.

(7) The Board of a Public Beneficial Body shall be accountable to the Responsible Minister.

7. Disposal of Shares - (1) Subject to this section a shareholding Minister shall not;

- (a) Sell or otherwise dispose of any shares in a Public Trading Body held in the Minister's name; or
 - (b) Permit shares in the Public Trading Body to be allotted or issued to any person other than a shareholding Minister; except in accordance with this Act.
- (2) A share in a Public Trading Body held by a shareholding Minister may only be sold or otherwise disposed with the approval of the Head of State acting on the advice of Cabinet.
- (3) Cabinet may call for investments in any Public Trading Body by way of subscriptions for the purchase and acquisition of shares in the Public Trading Body or by any other scheme of investment as approved by Cabinet
- (4) Cabinet may:
- (a) Approve the sale of shares or any other scheme of investment in any Public Trading Body; and
 - (b) As part of any sale of shares or other scheme of investment, approve the sale or transfer of some or all of the shares held by a Shareholding Minister on such terms and conditions as determined by Cabinet.
- (5) Subject to subsection (6) the Minister of Finance shall lay before the Legislative Assembly a report on the sale of shares or other scheme of investment approved by Cabinet concerning any Public Trading Body within fourteen days of Cabinet approving the sale of shares or other scheme of investment or, where the Legislative Assembly is not sitting, within seven days of the commencement of the next sitting, within seven days of the commencement of the next sitting, after Cabinet's approval.
- (6) Where, in the opinion of the Minister of Finance, the tabling of a report under subsection (5) would have the effect of decreasing the value of any Public Trading Body or any shares in a Public Trading Body the Minister shall delay the tabling of such report until he or she is satisfied that the value of the Public Trading Body or shares in the Public Trading Body will not be adversely affected by the tabling of such report and, where such report is ultimately tabled, the Minister of Finance shall provide a written statement with the report explaining the delay.

PART II

OBJECTIVES OF PUBLIC TRADING BODIES

- 8. Principal objective to be a successful business** - (1) Subject to the Companies Act 2001 the principal objective of every Public Trading Body shall be to operate as a successful business and, to this end, to:
- (a) Be as profitable and efficient as comparable businesses that are not owned by the State; and
 - (b) Meet any community service obligations established under Part III of the Act; and

- (c) Be a good employer; and
 - (d) Be an organization that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.
- (2) For the purposes of the Act a "good employer" is an employer who:
- (a) Treats every employee properly, fairly and impartially; and
 - (b) Provides good and safe working conditions; and
 - (c) Selects, promotes and rewards employees on merit; and
 - (d) Provides employees with opportunities for training and development.

Part III **COMMUNITY SERVICE OBLIGATIONS**

9. Definition of Community Service Obligation - (1) For the purposes of this Act a Community Service Obligation means:

- (a) The provision of a good or service by a Public Trading Body to a consumer or user on any terms other than normal commercial terms applying from time to time; or
 - (b) The entering into an agreement by a Public Trading Body on any terms other than normal commercial terms applying from time to time; or
 - (c) The forbearance by a Public Trading Enterprise to exercise a right or entitlement other than on normal commercial terms applying from time to time; or
 - (d) The forgiveness or reduction by a Public Trading Body of a debt or an amount of money owed to the Public Trading Body other than on normal commercial terms applying from time to time.
- (2) Nothing in this part shall prevent a Public Trading Body from exercising a commercial judgment to make donations to worthy causes or to price goods and services at or below the cost of their production.

10. Minister may direct Community Service Obligation - Subject to this Part the Responsible Minister may direct a Public Trading Body to provide a Community Service Obligation if the performance of the obligation is necessary to ensure:

- (a) That there is universal access to a necessary good or service; or
- (b) The promotion of a policy vital to the national interest as declared by the Head of State acting on the advice of Cabinet; or
- (c) That there is a proper and timely response to a local, regional, national or international emergency; or
- (d) The correction of an injustice as declared by the Ombudsman.

11. Minister to follow procedure concerning Community Service Obligation - (1) In performing any power or duty under this Part the Responsible

Minister shall follow the procedures provided in Schedule 2 concerning the issuing of a direction to a Public Trading Body to provide a Community Service Obligation;

(2) Any direction by a Responsible Minister under this Part which fails to follow the procedures provided in Schedule 2 shall be null and void.

12. Procedure for the issuing of a direction for a Community Service Obligation - (1) The procedures to be followed by a Responsible Minister concerning the issuing of a direction to a Public Trading Body to provide a Community Service Obligation are provided in Schedule 2.

(2) Schedule 2 may be amended from time to time by regulation made by the Head of State acting on the advice of Cabinet.

(3) Any regulations made pursuant to this section shall be laid before the Legislative Assembly within fourteen days of the making of the regulations or, where the Legislative Assembly is not sitting, within seven days of the commencement of the next sitting after the promulgation of the regulations.

13. Offence to unlawfully direct Director or Board of Directors - (1) Any person who knowingly directs or attempts to direct a Director or the Board of Directors of a Public Trading Body to perform a Community Service Obligation other than in accordance with the provisions of the Act is guilty of an offence and shall be liable to a fine of up to 100 penalty units [ST\$10,000].

(2) Any person who, whilst acting in the capacity of a Director of a Public Trading Body, knowingly makes or takes part, or attempts to make or take part, in the making of a decision to perform a Community Service Obligation, other than in accordance with the provisions of the Act is guilty of an offence and shall be liable to a fine of up to 100 penalty units [ST\$10,000].

PART IV

OBJECTIVES OF PUBLIC BENEFICIAL BODIES

14. Principal objective to be a successful beneficial body - (1) The principal objective of every Public Beneficial Body shall be to provide excellent service to its users and to this end:

- (a) Meet the purposes and objectives of its governing legislation; and
- (b) Operate in as efficient and effective manner as comparable organizations that are not owned by the State; and
- (c) Act as a good employer; and
- (d) Be an organization that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates.

(2) The term “good employer” shall have the same meaning as provided for in section 8(2) of the Act.

PART V
APPOINTMENT AND ROLE OF DIRECTORS

15. Selection and Appointment of Directors - (1) Every Director of a Public Body shall be selected and appointed or reappointed in accordance with the criteria for selection and procedure for appointment of directors in Schedule 3.

(2) The appointment or reappointment of a director of a Public Body which fails to follow the criteria for selection and procedure for appointment in Schedule 3 shall be null and void.

(3) The criteria for selection and procedure for appointment of directors of Public Bodies are set out in Schedule 3.

(4) Schedule 3 to the Act may be amended from time to time by regulation made by the Head of State acting on the advice of Cabinet.

(5) Any regulations made pursuant to this section shall be laid before the Legislative Assembly within fourteen days of the making of the regulations or, where the Legislative Assembly is not sitting, within seven days of the commencement of the next sitting after the regulations have been promulgated.

16. Role of Directors of Public Trading Bodies - Every director of a Public Trading Body shall ensure that the Public Trading Body complies with the provisions of the Companies Act 2001 and section 8 of the Act.

17. Decisions by Directors of Public Trading Bodies - (1) Every decision by each director of a Public Trading Body and every decision by each Board of Directors of a Public Trading Body shall be made solely in compliance with the provisions of the Companies Act 2001 and in accordance with section 8 of the Act.

(2) A person who, whilst acting in the capacity of a director of a Public Trading Body, knowingly makes any decision other than for the purpose of complying with the provisions of the Companies Act 2001 and in accordance with section 8 of the Act is guilty of an offence and shall be liable to a fine of up to 100 penalty units [ST\$10,000].

18. Role of Directors of Public Beneficial Bodies - Every Director of a Public Beneficial Body shall ensure that the Public Beneficial Body provides excellent service to its users in accordance with section 14 of the Act.

19. Decisions by Directors of Public Beneficial Body - (1) Every decision by each Director of a Public Beneficial Body and each Board of Directors of a Public Beneficial Body shall be made solely for the purpose of ensuring that the Public Beneficial Body provides excellent service to its users in accordance with section 14 of the Act.

(2) Any person who whilst acting in the capacity of a Director of a Public Beneficial Body, knowingly makes any decision other than for the purpose of ensuring that the Public Beneficial Body provides excellent service to its users in accordance with

section 14 of the Act shall be guilty of an offence and shall be liable to a fine of up to 100 penalty units [ST10,000].

20. Declaration of Pecuniary Interests and Convictions - (1) Every director of a Public Body within 2 months of the commencement of the Act and annually thereafter by the 30th day of June shall provide the shareholding Ministers and the Controller and Chief Auditor, the Financial Secretary and the Secretary for Justice with a Declaration of Pecuniary Interests and Convictions in the form provided in Schedule 4 of the Act.

(2) A director of a Public Body who fails to perform his or her duty under subsection (1) shall forfeit his or her position as a director forthwith.

(3) Each Declaration of Pecuniary Interests and Convictions shall be available for public inspection at the Office of the Secretary for Justice during normal business hours upon payment of a fee set by regulation.

(4) The Secretary for Justice shall keep a register of Declarations of Pecuniary Interests and Convictions to enable the public to exercise their rights under subsection (3).

(5) The form and content of the Declaration of Pecuniary Interests and Convictions are set out in Schedule 4.

(6) Schedule 4 to the Act may be amended from time to time by regulation made by the Head of State acting on the advice of Cabinet.

(7) Any regulations made pursuant to this section shall be laid before the Legislative Assembly within fourteen days of the making of the regulations or, where the Legislative Assembly is not sitting, within seven days of the commencement of the next sitting after the regulations have been promulgated.

21. Decisions by Directors involving a conflict of interest - (1) A person who whilst acting in the capacity of a director of a Public Body, knowingly makes or takes part in the making, or attempts to take part in the making of a decision where the person has a pecuniary or other interest which conflicts with the interests of the Public Body is guilty of an offence and shall be liable to a fine of up to 100 penalty units [ST\$10,000].

(2) A person convicted under this section shall immediately forfeit his or her directorship of the particular Public Body and any other Public Body of which the person is a director.

PART V **ACCOUNTABILITY**

22. Corporate Plan - (1) The Board of Directors of each Public Body shall prepare a Corporate Plan in accordance with Schedule 5 to the Act and shall forward a copy of the Corporate Plan to each shareholding Minister, the Controller and Chief Auditor and the Financial Secretary prior to the commencement of each financial year.

(2) The Corporate Plan shall include a Statement of Corporate Objectives.

(3) The form and content of the Corporate Plan are set out in Schedule 5.

(4) Schedule 5 to the Act may be amended from time to time by regulation made by the Head of State acting on the advice of Cabinet.

(5) Any regulations made pursuant to this section shall be laid before the Legislative Assembly within fourteen days of the making of the regulations or, where the Legislative Assembly is not sitting, within seven days of the commencement of the next sitting after the regulations have been promulgated.

(6) The Statement of Corporate Objectives referred to in subsection (2) shall be laid before the Legislative Assembly within fourteen days of the Responsible Minister receiving the Statement of Corporate Objectives from the Public Body or where the Legislative Assembly is not sitting, within seven days of the commencement of the next sitting after the Statement of Corporate Objectives has been received by the Responsible Minister.

23. Financial Reports, Accounts and Information - (1) In addition to the financial reports, accounts and information required by the Companies Act 2001 or governing legislation, as the case may be, each Public Body shall prepare financial reports, accounts and information in accordance with the requirements of Schedule 6 and shall forward a copy of such financial reports, accounts and information to each shareholding Minister and to the Controller and Chief Auditor and the Financial Secretary in accordance with the requirements of Schedule 6.

(2) The form of financial reports, accounts and information and the requirements concerning the provision of copies of such financial reports, accounts and information are set out in Schedule 6.

(3) Schedule 6 to the Act may be amended from time to time by regulation made by the Head of State acting on the advice of Cabinet.

(4) Any regulations made pursuant to this Section shall be laid before the Legislative Assembly within fourteen days of the making of the regulations or, where the Legislative Assembly is not sitting, within seven days of the commencement of the next sitting after the regulations have been promulgated.

24. Performance Audit - (1) A shareholding Minister or the Financial Secretary may require the Controller and Chief Auditor to conduct a performance audit of a Public Body.

(2) Upon being requested in writing by a shareholding Minister or the Financial Secretary the Controller and Chief Auditor shall conduct a performance audit forthwith.

(3) Of his or her own motion the Controller and Chief Auditor may conduct a performance audit.

(4) For the purposes of the Act a performance audit shall take the form of an enquiry by the Controller and Chief Auditor as to the circumstances and performance of a Public Body and shall include an enquiry as to the performance of any duty or responsibility under the Act, the Companies Act 2001 or any governing legislation by any person, director, board of directors or Public Body.

(5) Upon completion of a performance audit the Controller and Chief Auditor shall forward a report to each shareholding Minister, the Financial Secretary and the Speaker of the Legislative Assembly.

(6) Upon receipt of any report provided under subsection (5) the Speaker shall lay the report before the Legislative Assembly forthwith

(7) In conducting a performance audit the Controller and Chief Auditor shall have all such powers as are necessary or expedient to enable the Controller and Chief Auditor to carry out his or her functions under this section.

(8) Without limiting the generality of subsection (7) the Controller and Chief Auditor shall have the power:

- (a) to inspect and take copies of any document, file, bank statement or record (whether paper, electronic or in any other form);
- (b) to seize any document, file, record (whether paper, electronic or in any other form), bank statement, or any computer or other electronic device, recording system or database;
- (c) to enter any premises, if necessary by force, to search for and seize any item the Controller and Chief Auditor believes on reasonable grounds is needed to assist with the conduct of a performance audit; and

the Commissioner for Police Service and the Financial Secretary shall render any assistance the Controller and Chief Auditor may request to enable a performance audit to be completed.

(9) (i) Notwithstanding any law now existing or in the future the Controller and Chief Auditor shall have the power to require any bank, financial institution, trust, trustee, accountant, lawyer, any other legal entity, Minister, member of Parliament, Government Department, Government organization, departmental head, public servant or any other person to answer any question which the Controller and Chief Auditor may require the entity or person to answer.

(ii) The powers of the Controller and Chief Auditor under subsection 9(i) are subject only to the right of any person to refuse to answer a question if the person believes that the answer would incriminate the person.

(iii) Where a person refuses to answer a question on the grounds of self-incrimination the Controller and Chief Auditor shall include details of the refusal in the report of the performance audit.

25. Director liable to be dismissed - If, following a performance audit it is found that a director of a Public Enterprise has failed to perform any duty or function required of the director under the Act, the Companies Act 2001 or any governing legislation the Responsible Minister may dismiss the director from the Public Enterprise.

26. Financial Secretary to undertake assessment of performance - (1)
At any time the Financial Secretary may undertake an assessment as to the performance of a Public Enterprise and its capacity to meet its obligations under the Act, the Companies Act 2001 or any governing legislation.

(2) The assessment under subsection (1) may take the form of an inquiry in such manner as the Financial Secretary thinks fit.

(3) In conducting an assessment under (1) the Financial Secretary shall have all such powers as are necessary or expedient to enable the Financial Secretary to carry out his or her functions under this section.

(4) Without limiting the generality of subsection (3) the provisions of subsections (8) and (9) of section 24 of the Act shall apply to any assessment conducted by the Financial Secretary under this section and where the Controller and Chief Auditor is referred to in subsections (8) and (9) of section 24 of the Act the references shall be read as referring to the Financial Secretary and the powers of the Financial Secretary.

27. Controller and Chief Auditor to be Auditor of Public Bodies and Subsidiaries – (1) Notwithstanding the provisions of the Companies Act 1955, the Companies Act 2001 and any governing legislation the Controller and Chief Auditor shall be the auditor of every Public Body and of every subsidiary of every Public Body, and, for the purposes of the Companies Act 1955 and the Companies Act 2001 shall have and may exercise the functions, duties, and powers of an auditor appointed under the Acts and all such powers as the Controller and Chief Auditor has under the Public Finance Management Act 2001 in respect of public moneys trust money and public property.

(2) Every Public Body shall pay to the Controller and Chief Auditor for carrying out his or her duties and functions under this section fees at such rates no greater than those prescribed by the Minister of Finance.

(3) Without limiting the foregoing provisions of this section, the Board of a Public Body may after consultation with the Controller and Chief Auditor and if its Responsible Minister so approves, appoint a person or firm that is qualified for appointment as an auditor of a company as an additional auditor of the Public Body or any subsidiary thereof.

PART VI

SUPPORT FOR PUBLIC BODIES AND DIRECTORS

28. Support by the Financial Secretary – (1) The Financial Secretary shall provide any shareholding Minister, director and board of directors of a Public Body with:

- (a) advice and assistance concerning Corporate Plans, Statements of Corporate Objectives and financial reports;
- (b) analysis, advice and information concerning the performance of any Public Body and compliance with the Act by any Public Body or person;
- (c) advice to shareholding Ministers on expenditure, advances, credit support, and guarantees to be made, sought or provided in relation to a Public Body;
- (d) financial, commercial and public policy analysis and advice in relation to Public Bodies and in relation to corporatization and/or privatization of Public Bodies;

- (e) advice on the appointment of directors and boards of Public Bodies and the performance of such directors and boards;
- (f) information and advice relating to best practice by Public Bodies so as to encourage and enhance efficiencies and service delivery; and
- (g) information and advice to shareholding Ministers when requested to do so.

(2) The Financial Secretary shall be responsible for monitoring the performance of Public Bodies on behalf of the Shareholding Ministers and advising the Shareholding Ministers in respect of the Government's investment in Public Bodies

PART VII **OTHER MATTERS**

29. Transfer of employment from the Public Service - (1) Except as otherwise provided in the Act every Public Body shall consult with the Public Service Commission over the conditions of employment to be included in any agreement to be entered into with any employee transferring from employment in the Public Service, for the purpose of ensuring that such agreement contains terms that are no less favourable than those upon which the employee is employed immediately prior to transfer.

(2) For the avoidance of doubt, on the establishment of a Public Enterprise all employees transferring employment from the Public Service to the Public Body shall transfer on terms no less favourable than those applicable immediately prior to transfer.

(3) Every employee transferring employment from the Public Service to a Public Body shall be entitled, in accordance with any regulations made under the Act, to the payment of such entitlements as they have accumulated during their employment in the Public Service.

30. Powers - The Head of State, Cabinet, Ministers, Controller and Chief Auditor, Financial Secretary, Secretary for Justice, Ombudsman, Commissioner of Police Service, each Public Body and each Director of a Public Body shall have the power to do all things necessary or convenient to be done for or in connection with the performance of their respective powers, functions and duties under the Act.

31. Delegation by Shareholding Ministers, Controller and Chief Auditor and Financial Secretary - (1) The Shareholding Ministers, the Controller and Chief Auditor and the Financial Secretary may delegate any of their respective powers, functions and duties under this Act in writing, save for this power of delegation.

(2) Where a delegation has occurred in accordance with this section any decision or action taken by the person to whom the power, function or duty is delegated shall be regarded for all purposes as if it were a decision or action of the Shareholding Minister, the Controller and Chief Auditor or the Financial Secretary, as the case may be.

32. Regulations - The Head of State acting on the advice of Cabinet may from time to time make regulations prescribing matters:

- (a) required or permitted by the Act to be prescribed including amendment of the Schedules; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to the Act; or
- (c) to impose penalties for any matter under the Act.

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