



SAMOA

**NATIONAL KIDNEY FOUNDATION
OF SAMOA ACT 2005**

Arrangement of Provisions

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**NATIONAL KIDNEY FOUNDATION OF SAMOA ACT
2005**

2005

No. 12

AN ACT to provide for the National Kidney Foundation of Samoa

[Assent and commencement date: 27 June 2005]

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 National Kidney Foundation of Samoa Act 2005.

(2) This Act commences on the date of assent by the Head of State.

(3) Notice of commencement of this Act shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

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

- “Board” means the Board of Directors established under section 7;
- “Chief Executive Officer” means the Chief Executive Officer of the Ministry of Health;
- “Foundation” means the National Kidney Foundation of Samoa established under section 3;
- “Government” means the Government of the Independent State of Samoa;
- “Minister” means the Minister of Health;
- “Samoa” means the Independent State of Samoa.

3. Establishment of Foundation – (1) There is established the National Kidney Foundation of Samoa.

(2) The Foundation is a body corporate with perpetual succession, a common seal and is capable of:

- (a) acquiring, holding and disposing of real and personal property; and
 - (b) suing and being sued; and
 - (c) doing and suffering all the acts and things which bodies corporate may lawfully do and suffer.
- (3) The common seal may be affixed only:
- (a) with the authority of the Board; and
 - (b) with a witnessing signature of a director or other person where the director or other person is so authorised in writing by the Board.

4. Purposes of the Foundation – (1) The Foundation’s purposes are:

- (a) to minimize the incidence in Samoa of kidney related diseases and disorders and ill health caused by or associated with such diseases and disorders; and
 - (b) to assist persons in Samoa suffering from kidney diseases and disorders and their families through the provision of treatment, care, support, education and information.
- (2) With the consent of the Minister, acting on the advice of Cabinet, the Foundation may include in its purposes the provision of treatment, care, support, education and information to persons outside Samoa.

(3) In fulfilling its purposes, the Foundation shall take into account relevant Government policy as communicated to the Foundation by the Minister or the Chief Executive Officer.

(4) For the purpose of removal of doubt, the purposes of the Foundation are deemed a charitable purpose.

5. Functions – (1) The Foundation’s functions are:

- (a) to raise funds in Samoa and elsewhere for the purposes of the Foundation; and
- (b) the provision of preventive healthcare programmes by the Foundation or otherwise to minimize the incidence of kidney related diseases and disorders; and
- (c) the provision by the Foundation or otherwise of treatments, care and support for persons with kidney related diseases and disorders, including but not limited to—
 - (i) haemodialysis; and
 - (ii) peritoneal dialysis; and
 - (iii) any other treatments, care and support as the Board may determine; and
- (d) the provision by the Foundation or otherwise of healthcare education and information concerning kidney related diseases and disorders, their prevention, treatment and care; and
- (e) the conduct and publication by the Foundation or otherwise of research concerned with or related to the Foundation’s purposes; and
- (f) any other functions as the Minister, acting on the advice of Cabinet, may approve in writing.

(2) When carrying out its functions under subsection (1), the Foundation may:

- (a) impose terms and conditions; and
- (b) propose fees and charges to be prescribed by regulations. –

as the Board determines.

6. Powers – The Foundation has powers for carrying out its purposes and functions and all the acts as appear to the Foundation to be requisite, advantageous or convenient for or in connection with the carrying out of the Foundation’s purposes and functions or to be incidental to their proper discharge and

may carry on any activities in that behalf either alone or through or in association with any other person or body.

7. Board of Directors – (1) There shall be a Board of Directors for the Foundation which shall, subject to this Act, be responsible for the policy, control and management of the Foundation.

(2) The Board comprises of not less than three (3) and not more than five (5) directors who are appointed by the Head of State on the advice of Cabinet in accordance with law and approved Government policy relating to the management of public bodies.

(2A) One person appointed under subsection (2) is to be a registered medical practitioner.

(2B) The directors of the Foundation are to be appointed by the Head of State acting on the advice of Cabinet.

(2C) If the registered medical practitioner appointed as a director under subsection (2A) is a public servant, then that person is not entitled to remuneration or benefits from the Foundation for services as a director.

(2D) Cabinet shall appoint one of the directors to be Chairperson, and may appoint a Deputy Chairperson.

(2E) No person may be appointed or continue to hold office as a director while that person is a full-time member of staff of the Foundation.

(2F) Unless the Board decides otherwise, the Chief Executive Officer must attend all Board meetings but shall have no voting rights.

(3) Before advising the Head of State, Cabinet shall take into account:

- (a) the need of the Foundation to have directors with qualifications, experience and expertise in the areas of medicine, nursing, preventive healthcare, fundraising, finance, management, engineering, ethics and such other qualifications, experience and expertise appropriate to the Foundation's purposes and functions; and
- (b) the desirability of gender equality and the representation of patients and their families.

(4) When advising the Head of State, Cabinet shall designate a chairperson and a deputy chairperson from amongst the members.

7A. Terms and removal – (1) Subject to this section, a director:

- (a) holds office for a term of 3 years;
- (b) is eligible for reappointment;
- (c) may be removed from office by the Head of State, acting on the advice of Cabinet, for disability, inefficiency, bankruptcy, neglect of duty, misconduct or permanent departure from Samoa, or may resign in writing to the Head of State.

(2) If the term of 3 years expires, the director continues in office until re-appointed or a successor is appointed.

(3) A director must not be re-appointed after having served 2 consecutive terms.

7B. Vacancy of office – The office of a director becomes vacant if the director:

- (a) dies or resigns; or
- (b) is removed from office; or
- (c) completes the term of appointment under section 7A(1)(a).

7C. Meetings – (1) The following rules apply to a meeting of the Board:

- (a) a meeting is to be called -
 - (i) by the Chairperson; or
 - (ii) if the Chairperson is absent, by the Deputy Chairperson; or
 - (iii) by written request from at least 2 directors;
- (b) the Chairperson or (if the Chairperson is absent) Deputy Chairperson or (if both are absent) a director selected by the directors present, chairs the meeting;
- (c) four members constitute a quorum;
- (d) a question is to be determined by a majority of directors present at the meeting;
- (e) the chair of the meeting has a deliberative vote and a casting vote.

(2) The General Manager must attend and participate in a meeting of the Board except:

- (a) that the General Manager has no voting rights;

- (b) if the absence is approved by the Board -
 - (i) for the General Manager to perform a designated task on behalf of the Foundation; or
 - (ii) because it will consider a matter about the performance of the General Manager.

(3) Subject to this Act, the Board may regulate its own procedures.

7D. Allowances – The directors are entitled to fees and allowances as approved by Cabinet.

7E. Board secretary - The Board may appoint a staff member of the Foundation to act as secretary to the Board, but the staff member:

- (a) is taken not to be a member of the Board; or
- (b) has no right to vote; or
- (c) may, with leave of the Board, speak at or participate in a meeting of the Board.

8. Staff – (1) The staff of the Foundation consist of the following:

- (a) a General Manager of the Foundation who is appointed by Cabinet in consultation with the Board;
- (b) other officers and employees of the Foundation;
- (c) any consultant or other person engaged for the purpose of this Act.

(2) The Board may appoint suitably qualified persons on terms as it thinks appropriate under subsection (1)(b) and (c).

(3) The Board may, in writing, delegate its power under subsection (2) to the General Manager to appoint officers, employees, consultants or other persons.

(4) Staff members employed by the Foundation are not regarded as officers or employees of the Public Service under the Public Service Act 2004.

(5) With the consent of the Public Service Commission and the Chief Executive Officer of the relevant government Ministry or agency, the Foundation may arrange for the use of the services of any staff (by secondment or otherwise) or facilities of any government Ministry or agency.

(6) For the purposes of this Act, any staff member subject to subsection (5) is taken as a staff member of the Foundation.

(7) The power to appoint under this section includes the power to promote, terminate, suspend and discipline the General Manager, an officer or employee of the Foundation.

(8) The General Manager, an officer or employee suspended under this section, is entitled to receive salary for one (1) month only, effective from the date of suspension.

(9) If the General Manager, an officer or employee of the Foundation is acquitted and cleared of all allegations or any investigation relating to the subject of his or her suspension, the General Manager, an officer or employee of the Foundation must be reinstated without loss of any benefit or status and be paid the salary they lost as a result of any suspension from duty.

(10) The General Manager is not entitled to his or her salary if, as a result of the investigation relating to the subject of his or her suspension, he or she is not reinstated.

9. Accounts and annual reports – (1) The Foundation shall cause to be kept proper accounts and records of the transactions and affairs of the Foundation and shall do all things necessary to ensure that:

- (a) all funds received are brought to account; and
- (b) all payments are properly authorised and correctly made and accounted for; and
- (c) there are adequate controls over the Foundation's—
 - (i) assets; and
 - (ii) property under the Foundation's control; and
 - (iii) expenditure; and
 - (iv) liabilities.

(2) The Foundation is subject to the Public Finance Management Act 2001 and for this purpose, despite the provisions of that Act, the funds received by the Foundation are taken to be public money and the assets and property of the Foundation are taken to be public property.

(3) The Foundation shall cause to be prepared and submitted to the Minister for Public Enterprises, within 6 months of the end of the financial year, an annual report containing:

- (a) financial statements for the financial year; and

- (b) performance indicators and such information as may be directed by the Minister for Public Enterprises ; and
 - (c) a report on the operations of the Foundation during the preceding financial year; and
 - (d) such other information as Cabinet may require.
- (4) The financial statements referred to in subsection (3) shall be prepared on an accrual accounting basis and shall consist of:
- (a) a statement of financial transactions of the Foundation for the financial year; and
 - (b) a statement of the financial position of the Foundation at the end of the financial year; and
 - (c) proper and adequate notes to the financial statements.
- (5) The financial statements referred to in subsection (3) shall:
- (a) present fairly the financial transactions of the Foundation during the financial year to which they relate; and
 - (b) present fairly the financial position of the Foundation at the end of the financial year.
- (6) The Foundation shall, within 4 months after the end of each financial year, cause to be submitted to the Controller and Auditor General for audit the financial statements and other information referred to in subsection (3).
- (7) The financial year of the Foundation shall be from 1 July to 30 June.
- (8) The Minister for Public Enterprises shall table the annual report of the Foundation together with the Controller and Auditor General's report on the Foundation's financial statements before Parliament within 14 sitting days of receiving the Controller and Auditor General's audit report.

10. Income exempt from taxation – For the purposes of the Income Tax Act 2012, the Foundation is deemed an institution established exclusively for charitable purposes and, as such, the income of the Foundation is exempt from taxation.

11. Protection from liability – (1) Despite any other law, the Foundation, the Board, the directors and servants of the

Foundation shall not be civilly liable for any act or omission made or done in good faith.

(2) Where, but for the provisions of the subsection (1), the Foundation, the Board, the directors or the servants of the Foundation would be civilly liable for any act or omission, Samoa shall be civilly liable for any such act or omission as if the Foundation was the Government, and all of the provisions of the Government Proceedings Act 1974 shall apply with such modifications, adaptations and alterations to that Act as necessary to enable that Act to apply.

(3) Save for subsection (2), for all purposes the Foundation, the Board and the directors and the servants of the Foundation shall not be regarded as the servants or agents of Samoa, the Government, the Minister, the Ministry of Health or the Chief Executive Officer.

12. Delegation – (1) The Foundation and the Board may, in writing, delegate to any person any function or power of the Foundation or Board, as the case may require, other than this power of delegation.

(2) A delegation under subsection (1) may be:

- (a) made subject to conditions, qualifications and exceptions; and
- (b) revoked or varied at will.

(3) The Foundation and the Board, as the case may require, may exercise a function or power notwithstanding that they had delegated its exercise to some other person.

13. Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration including prescribing fees and charges for the purposes of this Act.

(2) The amount of a fee or charge prescribed under subsection (1):

- (a) shall be proposed by the Foundation with the concurrence of the Board; and
 - (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.
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REVISION NOTES 2008 – 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 2008 to 2020/3 March 2020 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
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an”
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are”
 - “shall have” changed to “has”
 - “from time to time” removed
 - (iii) Numbers in words changed to figures
 - (iv) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate
 - (v) Section 7(5) paragraphed
 - (vi) “Income Tax Act 1974” changed to “Income Tax Act 2012”.

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

By the Composition of Boards of Public Bodies Act 2012 (commenced on 1 April 2012):

Section 7 - by replacing subsection (2) with subsections (2) to (2F).

By the Audit Act 2013:

Section 9 amended.

By the Public Bodies (Performance and Accountability) Amendment Act 2015, (commenced on 25 April 2014, and as such has retrospective effect):

Section 9(3) and (8) after “Minister” insert “for Public Enterprises”.

Section 9(3)(b) delete “of Finance” and substitute with “for Public Enterprises”.

By the National Kidney Foundation of Samoa Amendment Act 2015, No. 3, commenced on 2 February 2015:

Section 7 subsections (2) to (4) substituted and subsections (5) to (15) deleted

Sections 7A – 7E new sections 7A to 7E inserted

Section 8 substituted

By the *Fees and Charges (Miscellaneous Amendments) Act 2017 No. 13*:

Amendments made to this Act reflect that fees charged under the Act are to be prescribed by Regulations. Amendments were made to sections 5 and 13.

By the *Miscellaneous (Boards of Public Bodies) Amendment Act 2020, No 6*, (commenced on 28 January 2020):

Section 7(2) substituted

By the *Miscellaneous (Salary Conditions Upon Suspension) Amendment Act 2021, No 6*, (commenced on 3 March 2021):

Section 8 insertion of new subsections (7) – (10).

*This Act is administered by
the Ministry of Health.*