



SAMOA

PUBLIC RECORDS ACT 2011

Arrangement of Provisions

PART 1 PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Meaning of Public Entity responsible for a Record
4. Act binds Government

PART 2 ESTABLISHMENT, FUNCTIONS AND POWERS OF THE AUTHORITY

5. National Archives and Records Authority
6. Principal functions of the Authority
7. Delegation of functions
8. Powers of the Authority

PART 3 BOARD OF DIRECTORS

9. Board of Directors
10. Functions of the Board
11. Remuneration of Directors
12. Meetings of the Board

PART 4 NATIONAL ARCHIVIST AND EMPLOYEES OF THE AUTHORITY

13. National Archivist
14. Employees of the Authority
15. Existing employees of the Ministry responsible for Culture

PART 5 RECORDS MANAGEMENT OBLIGATIONS

16. Chief Executive Officers to ensure compliance with the Act
17. Obligation to protect Public Records
18. Obligation to maintain access to equipment or technology dependent Public Records
19. Authority entitled access to Records to ensure compliance

PART 6 RECORDS MANAGEMENT SERVICES

20. Codes of best practice
21. Records Management Services
22. Consent of Authority required before a Public Entity disposes of any Public Record

PART 7

**TRANSFER AND
ACQUISITION OF RECORDS
TO ARCHIVES**

23. Public Entity to deposit Records over 25 years old to the Authority
24. Court action to recover an estray
25. No limitation period on action to recover estrays
26. Authority may acquire Records

**PART 8
ACCESS TO PUBLIC
RECORDS**

27. Access may be given to Public Records
28. Access restrictions
29. Public Entity may authorise earlier public access
30. Withholding access to ensure proper care of Public Records
31. Protection from liability when access granted

**PART 9
FINANCIAL PROVISIONS**

32. Accounts and Annual Reports
33. Audit of Accounts
34. Financial Year
35. Funds of the Authority
36. Management of funds by the Authority
37. Exemption from taxation

**PART 10
OFFENCES AND PENALTIES**

38. Offences and penalties

**PART 11
MISCELLANEOUS**

39. Disputes between Authority and Public Entities
40. Records of Court
41. Injunctions to prevent contravention of the Act
42. Certificate as to loss or destruction of Public Record
43. Copying and publishing of Public Archives
44. Copyright in Public Archives
45. Special provision for secret Records
46. Regulations

PUBLIC RECORDS ACT 2011

2011

No. 2

AN ACT to provide for the custody, control, management, preservation and use of Public Records, and for establishing the National Archivi stand the National Archives and Records Authority, and for related purposes.

[Assent and commencement date:28 January 2011]

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 Public Records Act 2011.

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

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

“access restriction” means a constraint on a Public Record that restricts public access to it;

“Archival Value” means a continuing value as may be determined by the Authority after due consideration of section 23(1);

“Attorney General” means the Attorney General of Samoa;

“Authority” means the National Archives and Records Authority established under section 5;

“Board” means the Board of Directors established under section 9;

“Chief Executive Officer” means a person in charge of administering or managing the affairs of any Public Entity and includes Managing Directors, Managers and Supervisors;

“control” means to have physical possession or custody of a Record;

“Court” means the Supreme Court of Samoa;

“dispose of” means to destroy by destruction or by any other prescribed means;

“estrays” means a Public Record owned by a Public Entity but which is not under the control of the Public Entity responsible for the Record;

“Judge” means a Judge of the Supreme Court;

“Minister” means the Minister responsible for Culture;

“National Archivist” means the National Archivist of the Authority established under section 13;

“Public Archive” means a Public Record which is no longer required for frequent reference in connection with

the business of the Public Entity responsible for the Public Record, and which is considered worthy of permanent preservation due to its enduring Archival Value;

“Public Entity” means any Court, Ministry, Department, Commission, Committee, Board, Corporation, Agency, or any other organisation of the Government of Samoa, and for the avoidance of doubt, includes all “public bodies” under the Public Bodies (Performance and Accountability) Act 2001;

“Public Record” means any Record made and kept, or received and kept, by any person in the course of the exercise of any official functions of a Public Entity, or for any purpose relating to a Public Entity, or for the use of by a Public Entity, and for the avoidance of any doubt, includes any Records which were created prior to the commencement of this Act;

“Record” means any document or other source of information compiled, recorded or stored in written form or on film, or by any form of electronic process, or in any other manner or by any other means for the purpose of documenting an event or circumstance, whether or not it is to be used for future reference.

(2) For the purposes of this Act, an entitlement to control a Record is an entitlement to possess and take custody of that Record.

3. Meaning of Public Entity responsible for a Record –

(1) For the purposes of this Act, a Public Entity responsible for a Record is the Public Entity that is entitled to, or would otherwise be entitled to, control a Record if the Authority were not in control of, or entitled to control the Record.

(2) Despite section 39, if any dispute or uncertainty arises as to which Public Entity is entitled to the control of a Record, the Minister may, after consultation with the affected Public Entities and the Attorney General, nominate a specified Public Entity as the Public Entity entitled to control the Record.

(3) A decision made by the Minister under subsection (2) is final.

4. Act binds Government –This Act binds the Government.

PART 2
ESTABLISHMENT, FUNCTIONS AND
POWERS OF THE AUTHORITY

5. National Archives and Records Authority – (1) A body corporate called the National Archives and Records Authority of Samoa is established and shall have the functions and powers conferred to it under this Act.

(2) The Authority:

- (a) has perpetual succession and a common seal; and
- (b) is capable of suing and being sued in its corporate name; and
- (c) is capable of entering into contracts, acquire, hold and dispose of real and personal property and be capable of doing all such other acts and things as a body corporate may lawfully do; and
- (d) is capable of exercising all such powers and authority as shall be necessary or expedient for the due administration of this Act.

(3) The Authority’s common seal may be affixed only:

- (a) with the authority of the Board; and
- (b) with a witnessing signature of the Chairperson of the Board and 1 other member, or in the absence of the Chairperson, by a member nominated by the Board and 1 other member.

6. Principal functions of the Authority – (1) The functions of the Authority are:

- (a) to develop and promote efficient and effective methods, procedures and systems for the creation, management, storage, disposal, preservation and use of Public Records; and
- (b) to provide for the storage, preservation, management and conditions of access to Records of permanent value in the Authority’s possession according to the provisions of this Act; and
- (c) to conduct research and provide advice in relation to the management and preservation of Records of

Samoa that may have Archival Value, whether such Records are public or private; and

- (d) to document and describe Public Archives in both their functional and administrative context; and
- (e) to seek to obtain custody and management of resources or materials not in the custody of a Public Body and which in the opinion of the National Archivist, forms part of the archival resources and ought to be in the custody of the Authority; and
- (f) such other functions as are conferred or imposed on the Authority as may by Order be made by the Head of State.

(2) The Authority may do all such things that are necessary, supplemental, incidental, and consequential to the exercise of its functions as set out in subsection (1).

7. Delegation of functions – (1) The Authority may, under a written notice and with the Board’s approval, delegate any of its functions, other than this power of delegation, to an authorised person.

(2) A delegation of the Authority’s powers under subsection (1) may be sub-delegated to an authorised person only if such sub-delegation is permitted by a written notice issued by the Authority.

8. Powers of the Authority – (1) The Authority has such powers as are necessary for or incidental to the proper performance of its functions under section 6.

(2) Without prejudice to subsection (1), and in addition to any other powers provided for by this Act, the Authority has the following powers:

- (a) to purchase, lease, sub-lease or otherwise acquire or deal with any property, whether movable or immovable, required for the carrying out of its functions and to dispose of any such property no longer required for such purposes;
- (b) to develop land or other property and erect and maintain buildings or other structures;
- (c) to purchase, rent, or erect houses for the use of its officers and employees;

- (d) to pay any expenses properly incurred;
- (e) to produce, publish, issue, circulate and distribute, whether for payment or otherwise, in paper, electronic or magnetic form any such reports, papers, periodicals or other information which assist in the carrying out of the Authority's functions;
- (f) to provide training and other professional development requirements, with the cooperation of any other persons or bodies as the Authority deems appropriate, for its employees or other persons concerned with record keeping;
- (g) to undertake the survey, appraisal accessioning arrangement description and indexing of archival Records;
- (h) to do all things incidental to the carrying out of its powers and functions.

PART 3 BOARD OF DIRECTORS

9. Board of Directors – (1) The Authority is administered by a Board of Directors, consisting of a total of 8 Directors, who are collectively responsible for policy creation and the general administration of the Authority.

(2) The Board shall consist of:

- (a) the Chairperson, who is appointed by the Board of Directors; and
- (b) the Chief Executive Officer of the Public Service Commission; and
- (c) the Chief Executive Officer of the Ministry of the Prime Minister; and
- (d) the National Archivist; and
- (e) the Vice-Chancellor of the National University of Samoa; and
- (f) a representative from the Samoa Law Society; and
- (g) a member of the Library Association of Samoa; and
- (h) a person appointed by the Minister to represent the people of Samoa.

(3) Any person appointed a Director under subsection (2)(e) to (g):

- (a) shall be appointed by and may be dismissed by the Head of State acting on the advice of Cabinet; and
 - (b) may hold office for a period of 3 years and at the conclusion of this time, may be eligible for re-appointment; and
 - (c) is entitled to resign from office by delivering a written notice to that effect to the Chairperson.
- (4) From 1 July 2010:
- (a) a person employed in the public service shall not be a director or be re-appointed as a director unless Cabinet has certified that such appointment or re-appointment, as the case may be, is necessary; and—
 - (i) in the national interest; and
 - (ii) that the person has particular qualifications or experience which the Authority requires on its Board and such qualifications or experience cannot be found elsewhere; and
 - (b) where a person employed in the public service is appointed or re-appointed in accordance with this section, the person shall not receive remuneration or other benefits from the Authority for services as a director.

10. Functions of the Board – The functions of the Board are:

- (a) to determine policies and strategic plans of the Authority; and
- (b) to make any necessary decisions in relation to any matter set out in this Act.

11. Remuneration of Directors – Directors of the Board are paid such remuneration including a sitting allowance, plus travelling and other expenses, as may be fixed by Cabinet.

12. Meetings of the Board – (1) The National Archivist may call meetings of the Board as often as the National Archivist deems required, and at such times and such places as the National Archivist determines subject to the following:

- (a) the Board shall meet at least once every 2 months;
- (b) upon the written request of at least 2 Directors of the Board, the National Archivist shall call a meeting

of the Board at a date not more than 14 days after receipt of the written request.

- (2) The quorum for all meetings of the Board shall:
- (a) be more than 50% of the appointed Directors who are eligible to vote at Board meetings; and
 - (b) consist of the National Archivist and the Chairperson, or their representatives.

(3) A matter arising at a meeting of the Board will be decided by a simple majority of the members present and voting, and in the case of an equality of votes, the Chairperson will have a casting vote.

(4) All orders and directions of the Board will be signed by the National Archivist or, in the National Archivist's absence, to an employee of the Authority appointed and authorised by the Board.

(5) The Board shall keep true and accurate records of its proceedings, including reports, agendas and minutes.

(6) The Chairperson shall preside over every meeting of the Board, or if the Chairperson is absent, the Board may elect a Director to chair the meeting.

PART 4 NATIONAL ARCHIVIST AND EMPLOYEES OF THE AUTHORITY

13. National Archivist – (1) A National Archivist of the Authority is appointed by the Head of State acting on the advice of Cabinet and the appointment will be on such terms and conditions as Cabinet deems fit.

(2) The National Archivist is responsible for the administration of the Authority and such administration must be in accordance with this Act and policies developed by the Board.

(3) The National Archivist will perform such other functions and exercise such other powers as are conferred by this or any other Act.

(4) The National Archivist may, with the approval of the Board, delegate by written notice the performance of any of his or her functions, or the exercise of any of his or her powers to an employee or officer of the Authority.

(5) The National Archivist:

- (a) is eligible for re-appointment upon the expiry of his or her term of appointment; and
- (b) may be removed or suspended from office by Cabinet for reason of 1 or more of the following—
 - (i) disability;
 - (ii) inefficiency;
 - (iii) neglect of duty;
 - (iv) misconduct;
 - (v) permanent departure from Samoa;
 - (vi) any such other cause which Cabinet approves to be sufficient.

(6) If the National Archivist is removed or suspended from office, the Board having obtained approval of Cabinet, may appoint another person to act as a temporary National Archivist until such time that the National Archivist resumes office or a replacement National Archivist is appointed.

(7) An act, matter or thing done in the name of, or on behalf of, the Authority, by the National Archivist, is taken to have been done by the Authority.

14. Employees of the Authority – (1) The Board may appoint and employ such officers and employees as the Board considers necessary for the due performance of the functions of the Authority.

(2) The officers and employees of the Authority are employed at such remuneration and on such terms and conditions as the Board may determine, and such terms and conditions shall:

- (a) not be less than the entitlements applying to public servants; and
- (b) take account of the need for the Authority to attract and retain appropriately qualified and experienced staff.

15. Existing employees of the Ministry responsible for Culture – (1) Upon the commencement of this Act, an employee of the Ministry responsible for Culture may be offered employment with the Authority on new terms and conditions as may be mutually agreed upon by such employee and the Authority.

(2) All the rights, powers, duties and liabilities are enforceable by or against the Authority as if it were made between that employee and the Authority.

PART 5
RECORDS MANAGEMENT OBLIGATIONS

16. Chief Executive Officers to ensure compliance with the Act – Each Chief Executive Officer shall take all reasonable measures to:

- (a) ensure that the Public Entity for which the Chief Executive Officer is responsible for complies with the requirements of this Act; and
- (b) create and keep full and accurate records of the activities of the Public Entity which it is responsible for in accordance with the codes of best practice established under section 20.

17. Obligation to protect Public Records – (1) A person and a Public Entity responsible for the control of Public Records shall take all reasonable measures to ensure the safe custody and proper preservation of the Public Records in accordance with the codes of best practice established under section 20.

(2) Subject to subsection (3), a Public Entity shall take all reasonable measures to recover Public Records that the Public Entity is responsible for but which are not in the control of the Public Entity.

(3) Despite subsection (2), a Public Entity is not required to recover Public Records which are under the control of the Authority or any other person or body who has lawful authority.

18. Obligation to maintain access to equipment or technology dependent Public Records – (1) Subject to subsection (2), if any Public Record is in such a form that information can only be produced or made available from it by usage of particular equipment or information technology, the Public Entity responsible for the Record shall take such necessary action or actions to ensure that the information remains able to be produced or made available for its prescribed Retention Period.

(2) Despite subsection (1), if a Public Entity responsible for a Record has determined that it will be unable to retain the information required under subsection (1), the Public Entity shall as soon as practicable, issue a written notice to the Authority detailing the circumstances that are causing, or will cause, its inability to retain such information.

(3) If the Authority receives a notice issued by a Public Entity under subsection (2), the Authority shall:

- (a) consider all relevant circumstances and any other matter which is taken by the Authority to be relevant to the notice issued; and
- (b) make a decision in relation to the Record as appropriate; and
- (c) consider the provisions of this Act and any other laws.

19. Authority entitled access to Records to ensure compliance – (1) Subject to subsection (2), a Public Entity shall provide the Authority with access to Records under its control as may be reasonably necessary for the purpose of enabling the Authority to monitor the Public Entity's compliance with the requirements of this Act.

(2) If the Attorney General certifies that any specified Public Record in the control of a Public Entity contains information which may, if made accessible under this section, adversely affect the national interest or security of Samoa or relations between the Government of Samoa and the government of any other country, access to that Public Record will be deferred for such period, or be made subject to such conditions as the Attorney General may direct.

(3) If the Attorney General or the Minister in charge of any Public Entity certifies that any specified Public Record in control of that Public Entity contains confidential and privileged information, the deposit of that Public Record to the Authority will be deferred for such period, or be made subject to such conditions as the Attorney General or Minister may direct.

(4) The Authority may report to the Minister responsible for any Public Entity, any failure by the Public Entity to comply with the requirements of this Act.

PART 6

RECORDS MANAGEMENT SERVICES

20. Codes of best practice – (1) The Board may establish a code or codes of best practice for records management which must be used by Public Entities for the proper management of the making, keeping, transferring and disposing of Public Records.

(2) Any code of best practice established by the Board under this section may be amended by the Board upon consultation with all Public Entities.

(3) Where an amendment is made to any code of best practice established under this section, notice of such amendment must be served on each Public Entity by the Authority.

(4) A Public Entity shall not dispose of, or cause to be disposed of, any Public Record unless such disposal is made in accordance with the relevant code of best practice or prescribed Retention Period.

21. Records Management Services – (1) The Authority shall provide services in relation to records management activities of Public Entities including all aspects of the making, keeping, transferring and disposal of Public Records.

(2) The Head of State, acting on the advice of Cabinet, may, by regulations, establish specific requirements relating to the services referred to in subsection (1) which the Authority shall comply with.

22. Consent of Authority required before a Public Entity disposes of any Public Record – A Public Entity shall not dispose of, or permit the disposal of, a Public Record in its custody unless the Authority has consented to the disposal in accordance with the prescribed retention period of the Public Entity.

PART 7 TRANSFER AND ACQUISITION OF RECORDS TO ARCHIVES

23. Public Entity to deposit Records over 25 years old to the Authority – (1) A Public Entity shall deposit with the Authority, Public Records which are 25 years old or more from

the date of its creation or publication, whichever is the earlier, and which are determined by the Authority:

- (a) to be evidence of the existence or operations of the Public Entity; or
- (b) to contain historical or general information which has Archival Value to Samoa.

(2) Despite any other provision in this Act, a Public Entity may deliver to the Authority any Public Record that is less than 25 years old which has permanent Archival Value if such Public Entity determines that the Public Record is no longer required for official purposes.

(3) Where any Public Record is delivered to the Authority under subsection (2), the Authority is deemed to have control of the Public Record.

(4) Delivery of any Public Record must be made in such manner as is determined by the Authority in accordance with the code of best practice issued under section 20.

(5) If the Attorney General or the Minister in charge of any Public Entity certifies that any specified Public Record in control of that Public Entity contains information which may, if released, adversely affect the national interest or security of Samoa or relations between the Government of Samoa and the government of any other country, the deposit of that Public Record to the Authority will be deferred for such period, or be made subject to such conditions as the Attorney General or Minister may direct.

(6) If the Attorney General or the Minister in charge of any Public Entity certifies that any specified Public Record in control of that Public Entity contains confidential and privileged information, the deposit of that Public Record to the Authority will be deferred for such period, or be made subject to such conditions as the Attorney General or Minister may direct.

24. Court action to recover an estray – (1) In accordance with the Government Proceedings Act 1974, the Authority may take action in a Court on behalf of the Government or any Public Entity to recover possession of an estray.

(2) Where the Authority has commenced proceedings to recover possession of an estray, the Authority may seek a Court order to direct a person who has possession of the estray to give possession of the Record to the Authority pending the determination of the proceedings.

(3) A person subject to a direction made by the Court in favour of the Authority under subsection (2) shall comply with such direction unless the Court before which the proceedings are pending otherwise directs.

25. No limitation period on action to recover estrays – Despite any other law, no limitation period shall operate to bar the rights of the Authority to commence proceedings in a Court on behalf of any Public Entity for the recovery of any Public Record that is an estray.

26. Authority may acquire Records – Subject to the provisions of this Act, the Authority may acquire:

- (a) by purchase or exchange, any Record that the Authority considers to be of continuing value to Samoa; and
- (b) by receipt of a gift, any Record upon such reasonable conditions as may be required for receipt of such gift.

PART 8 ACCESS TO PUBLIC RECORDS

27. Access may be given to Public Records – (1) Subject to subsection (2) and section 28, a Public Record may be made accessible to every person once 25 years have elapsed since the Public Record came into existence or, since the original Record of which it is a copy came into existence.

(2) If the Attorney General certifies that any specified Public Record in the control of a Public Entity contains information which may, if made accessible under this section, adversely affect the national interest or security of Samoa or relations between the Government of Samoa and the government of any other country, access to that Public Record will be deferred for such period, or be made subject to such conditions as the Attorney General may direct.

(3) If the Attorney General or the Minister in charge of a Public Entity certifies that a specified Public Record in control of the Public Entity contains confidential and privileged information, access to that Public Record will be deferred for

such period, or be made subject to such conditions as the Attorney General or Minister may direct.

28. Access restrictions – (1) Each Public Entity shall determine whether Public Records for which it is responsible are subject to any access restrictions.

(2) The Authority shall establish and issue guidelines setting out the criteria to be used by Public Entities for determining whether Public Records are to be subject to an access restriction.

(3) A Public Entity shall have regard to the guidelines established by the Authority under subsection (2) in determining whether or not Public Records within their custody are to be made subject to any access restrictions.

(4) When an access restriction is imposed upon a Public Record, notice of the access restriction must be submitted to the Authority in writing.

(5) An access restriction:

- (a) shall remain in force for a period of 5 years unless it is sooner revoked prior to that time or is further renewed by the relevant Public Entity; and
- (b) may be revoked or renewed with respect to either the whole or certain selected parts of a Public Record; and
- (c) may be made with respect to a select class or classes of persons and upon such terms and conditions as may be determined necessary by the relevant Public Entity, with the written endorsement of the Authority.

(6) Despite anything in this section, the giving of access or the doing of anything in breach of any confidentiality obligation or any other duty owed by the relevant Public Entity with respect to any Public Record is not deemed to be authorised under these provisions.

(7) In this section, the relevant Public Entity documenting an event or circumstance, whether or not it is to be used for future reference, means the Public Entity in which a Public Record is kept or retained.

(8) The Authority may place an access restriction at any time on a Public Record which has 1 or both of the following:

- (a) belonged to a Public Entity that no longer functions or exists;

- (b) has been provided unrestricted access by a Public Entity but which the Authority determines, having given due consideration to the guidelines and after consultation with the affected Public Entity, to be a Public Record which should be made subject to an access restriction under this section.

29. Public Entity may authorise earlier public access– (1)

Despite any other provision in this Act, a Public Entity:

- (a) may authorise public access to any Public Record within its control prior to the expiry of the 25 year Retention Period; and
- (b) shall provide notice of the authorisation in writing to the Authority at the earliest available opportunity.

(2) An authorisation granted under subsection (1) by a Public Entity may be revoked at any time only if a notice of the revocation is made in writing to the Authority at the earliest available opportunity.

(3) This section indemnifies a Public Entity which acts in contravention of any duty or obligation it owes to a person for any Public Record in its control.

(4) This section does not limit the power of any Public Entity to permit access to a Public Record independently of this Act.

30. Withholding access to ensure proper care of Public Records – (1) Despite any other provision of this Act, the Authority may direct that a Public Record be withheld from public access if the Authority is of the opinion that it is necessary to do so for the purpose of ensuring the safe custody and proper preservation of the Public Record.

(2) The Authority may provide a copy of a Public Record which in original form is not open to the public under this section, if the Authority thinks it is practicable to do so for the proper preservation and safe custody of the Public Record.

31. Protection from liability when access granted – (1) Subject to the provisions of this Act, where access to a Public Record is given to a person under this Act:

- (a) no action for defamation or breach of trust shall lie against the access provider, by reason only of

giving such access, or for having supplied the Record to the Authority; and

- (b) for the avoidance of doubt, the giving of access does not constitute a breach of the laws relating to defamation or breach of trust.

(2) In this section, access provider means a person, not being a Public Entity, who deposits a Public Record to the control of the Authority.

PART 9 FINANCIAL PROVISIONS

32. Accounts and Annual Reports – (1) The Authority shall:

- (a) keep full and proper accounts of its financial affairs and other records of its operations; and
- (b) prepare financial statements and other statements of accounts in accordance with international best accounting practice, and which are necessary to show the financial position of the Authority and the financial results of its operations during that year fully and accurately.

(2) The accounts of the Authority must be audited each year by the Auditor in accordance with section 33, and the requirements of other applicable laws.

(3) As soon as reasonably practicable after the end of each financial year, the Board shall send to the Minister:

- (a) a report of its proceedings and the operations of the Authority for that year, together with a copy of its audited accounts for that year; and
- (b) the report of the Auditor in relation to its accounts.

(4) A copy of the report and the audited accounts of the Authority, together with a copy of the Auditor's report on the accounts, must be laid before the Legislative Assembly by the Minister as soon as practicable after the Minister has received them.

(5) The National Archivist and chief financial officer shall sign off on all accounts and reports kept or prepared in accordance with this section, and shall certify that:

- (a) proper books of account have been maintained by the Authority; and

- (b) the accounts and reports accurately reflect the financial affairs of the Authority, and the accounts maintained by the Authority; and
- (c) adequate procedures of internal control have been applied by the management of the Authority.

33. Audit of Accounts– (1) Within 3 months after the end of each approved financial year, the Authority shall cause to be prepared full and true statements and accounts of all its income and expenditure in that year and of its assets and liabilities at the end of that year.

(2) The accounts of the Authority must be audited by the Controller and Auditor General of the Government, or by any other auditor authorised by him or her for the purpose.

34. Financial Year –The financial year of the Authority shall begin on 1 July of each year and shall end on 30 June of that year, except that the first financial year of the Authority shall begin on the date of the commencement of this Act and shall end on 30 June of that year.

35. Funds of the Authority – The funds of the Authority include all monies:

- (a) appropriated by Parliament for the purposes of the Authority; and
- (b) donated or given to the Authority or that may be otherwise lawfully payable to the Authority; and
- (c) received by the Authority by way of fees for certification, accreditation, the provision of services or otherwise arising from the performance of any of the functions and powers of the Authority; and
- (d) raised by any means in accordance with regulations made under this Act.

36. Management of funds by the Authority – (1) The monies of the Authority are held in such accounts or funds the Board may determine.

(2) The Board may approve that monies be held in special funds dedicated for purposes associated with:

- (a) the marketing or promotional activities undertaken by or on behalf of the Authority; and
- (b) any aspect of the administration or operation of the Authority; and
- (c) any joint venture, agency or other relationship between the Authority and a partner of the Authority.

37. Exemption from taxation –The Authority shall not be liable to taxation except for customs, excise duties and value added goods and services tax.

PART 10 OFFENCES AND PENALTIES

38. Offences and penalties – (1) A person commits an offence under this Act if that person does any or all of the following:

- (a) without lawful authorisation, abandons or disposes of a Public Record;
 - (b) without lawful authorisation, transfers or offers to transfer or be a party to, arrangements for the transfer of, the possession or ownership of a Public Record;
 - (c) without lawful authorisation takes or sends a Public Record out of Samoa;
 - (d) without lawful authorisation damages or alters a Public Record;
 - (e) knowingly neglects a Public Record in a way that causes or is likely to cause, damage to the Public Record;
 - (f) contravenes any conditions of an access restriction or special access arrangements to Public Records under this Act.
- (2) None of the following is a contravention of this section:
- (a) anything that is authorised or required to be done by, or under this Act;
 - (b) anything done by or with the permission of the Authority or in accordance with any code of practice approved by the Authority;

(c) anything done under an order or determination of the Court.

(3) A person who is convicted of an offence under this Act is liable to a fine not exceeding 50 penalty units or 7 years imprisonment, or both.

**PART 11
MISCELLANEOUS**

39. Disputes between Authority and Public Entities – (1)

When a dispute arises between the Authority and a Public Entity concerning the operation or interpretation of this Act, such dispute must be arbitrated before the Ombudsman who shall make a ruling on the matter.

(2) If a dispute under subsection (1) affects the national interest or security of Samoa, the Attorney General may make a ruling on the matter and the ruling is final.

40. Records of Court –Despite any other provision of this Act, no Public Archive of any Court may be deposited with the Authority or destroyed or otherwise disposed of under this Act, except with the prior written approval of a Judge and subject to any conditions imposed by the Judge in granting that approval.

41. Injunctions to prevent contravention of the Act – (1)

If a person contravenes, and continues to contravene, or is proposing to contravene any provision of this Act, the Court may, on the application of the Authority, grant an injunction:

- (a) restraining the person from contravening the provisions of this Act; or
- (b) requiring the person to carry out any act or thing necessary to avoid or remedy the contravention.

(2) Any order made by the Court under this section may be varied or revoked as the Court deems necessary or just.

42. Certificate as to loss or destruction of Public Record –

A certificate given by the Authority to the effect that a specified Public Record has been lost or destroyed is conclusive evidence of the matter so certified.

43. Copying and publishing of Public Archives – (1)

Subject to subsection (2), the Authority may issue copies of any Public Archive and publish any Public Archive which is not subject to an access restriction.

(2) Despite subsection (1), the Authority's power to issue copies of Public Archives does not enable the Authority to do anything that may be an infringement of copyright which lawfully belongs to another person who is not a Public Entity.

(3) The Authority may issue and certify copies of a Public Archive and for all purposes, a copy so made and certified is admissible as evidence in any legal proceeding as if such copy were the original.

44. Copyright in Public Archives – (1)

Subject to subsection (2), the Authority may exercise, on behalf of the Government, any right the Government has as the owner of copyright subsisting in a Public Record that has been duly transferred to the Authority.

(2) Despite subsection (1), the Authority may not exercise the Government's copyright rights until receipt of written approval from the Attorney General.

45. Special provision for secret Records– (1)

Despite any other provisions of this Act, it shall not be an offence for any person having the authority to act on behalf of any of the following to refuse to submit any Record to the Authority or to dispose of any Record where it is reasonable to do so for Samoa's national interest or security:

- (a) the Financial Intelligence Unit of the Central Bank;
- (b) the Transnational Crimes Unit;
- (c) the Attorney General's Office;
- (d) the Money Laundering Prevention Task Force;
- (e) any other Public Entity, which has under its authority, Records that are required to be kept secret under the provisions of any Act.

(2) Nothing in subsection (1) restricts the voluntary submission of Records to the Authority by the entities in subsection (1).

46. Regulations – (1)

The Head of State, acting on the advice of Cabinet, may make regulations as are necessary or convenient

for the purpose of carrying out, or giving effect to the provisions of this Act.

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

- (a) prescribing the form of certificates, licences, notices, approvals or any other matter required under this Act; and
- (b) prescribing the fees payable, including rate at which such fees are to be calculated, and providing for the recovery and application of such fees, in respect of any matter under this Act; and
- (c) creating offences and penalties for breaches of those offences up to a maximum of 50 penalty units.

(3) If forms are prescribed under subsection (2)(a), the Authority shall use the prescribed forms, but nothing in this section prevents the Authority from using or requiring the use of forms approved by the Authority where no applicable form has been prescribed.

REVISION NOTES 2011 – 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 2011 – 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) 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) “Every” changed to “a/an”;
 - (ii) Offence provisions: “found guilty” changed to “convicted”
 - (iii) Use of plain language: “where” changed to “if”;
 - (iv) Numbers in words changed to figures;
 - (v) Removal of superfluous terms: “the generality of”;
 - (vi) Reference to “Chief Auditor” changed to “Auditor General”
 - (vii) “pursuant to” changed to “under”;
 - (viii) “under the hand of” changed to “signed by”;
 - (ix) Part numbering changed to decimal.

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

*This Act is administered by
the Ministry of Education, Sports and Culture.*
