

SAMOA

Arrangements of Provisions

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2003, No. 14

AN ACT to establish the Samoa Broadcasting Corporation and for related purposes. *[26th June 2003]*

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 Samoa Broadcasting Corporation Act 2003.

(2) This Act shall come into force on the day nominated by the Prime Minister.

(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 established under section 10:

"Corporation" means the Samoa Broadcasting Corporation established under section 3:

"Department of Broadcasting" means the Department of Broadcasting established under section 3 of the Broadcasting Ordinance 1959 and includes the Ministry of Communications and Information Technology established under the Ministerial and Departmental Arrangements Act 2003:

"Director" means a Director of the Board;

"Government" means the Government of the Independent State of Samoa:

"Responsible Minister" means the Minister responsible for broadcasting from time to time:

"Samoa" means the Independent State of Samoa.

3. Samoa Broadcasting Corporation-(1) There is established the Samoa Broadcasting Corporation.

(2) The Corporation is a body corporate with perpetual succession and a common seal.

(3) The Corporation is capable of -

(a) Acquiring, holding and disposing of real and personal property;

(b) Suing and being sued; and

- (c) Doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

4. Common Seal - The Secretary of the Board shall have custody of the Corporation's Common Seal, which shall only be affixed to a document pursuant to a resolution of the Board by the Chairperson or Deputy Chairperson or one other Director of the Corporation appointed by the Board in the presence of a Director of the Corporation who shall both by their signatures attest the affixing of the seal.

5. Protection of the Corporation's name and certain other names - Despite the provisions of any other law, no person or other body shall use, incorporate or register under any law or otherwise use a name:

- (a) That is identical with the names Samoa Broadcasting Corporation, Televisé Samoa and Radio 2AP or any television or radio broadcasting station operated by the Corporation; or
- (b) That is identical with the call sign of any television or radio broadcasting station operated by the Corporation; or
- (c) That so resembles any name or call sign specified in paragraphs (a) or (b) as to be misleading or calculated to deceive.

6. Functions and Powers of the Corporation-(1) The functions of the Corporation shall be -

- (a) To take over and assume control and management of Televisé Samoa and Radio 2AP and any or all real or personal property, assets, liabilities, functions and duties of Televisé Samoa and Radio 2AP;
- (b) To carry on, manage, control, develop, extend and improve the operation of Televisé Samoa and Radio 2AP and such other television and radio broadcasting services and media services approved by Cabinet from time to time;

- (c) To undertake such other functions as may be approved by Cabinet from time to time;
 - (d) To undertake any Community Service Obligations in accordance with the provisions of the Public Bodies (Performance and Accountability) Act 2001;
 - (e) To advise the Responsible Minister in respect of matters relating to television and radio broadcasting services and media services provided by the Corporation;
 - (f) To exercise and perform such other functions, powers and duties as are conferred or imposed on the Corporation under any law.
- (2) The Corporation shall have such powers, rights and authority as may reasonably be necessary or expedient to carry out its functions and without limiting the generality of this subsection the Corporation may:
- (a) Establish, install, erect, alter, reconstruct, operate and maintain television and radio broadcasting studios, transmitters, relay stations and any other television or radio broadcasting facilities;
 - (b) Act in combination or association with any other person or body whether incorporated or not, and whether in Samoa or elsewhere, for carrying out its functions or any of the purposes of this Act;
 - (c) Provide subscription broadcasting or other specialist broadcasting or media services as may be approved by Cabinet on such terms and conditions as the Corporation determines;
 - (d) Commission, make or cause to be made programs and productions for broadcasting by the Corporation and/or other persons on such terms and conditions as the Corporation determines; and
 - (e) Set fees and charges for any services provided by the Corporation.

(3) In the exercise of its functions and powers the Corporation shall have regard to the general policy of the Government as communicated to the Board in writing by the Responsible Minister.

7. Board of Directors-(1) The Corporation shall be controlled by a Board of Directors.

(2) The Board of Directors shall consist of:

- (a) A Chairperson; and
- (b) A Deputy Chairperson; and
- (c) 7 other Directors.

(3) The Chairperson, Deputy Chairperson and other directors shall be appointed by the Head of State, acting on the advice of Cabinet, for a term of up to three years and, subject to law, are eligible for re-appointment.

(4) In selecting and appointing Directors the Head of State and Cabinet shall comply with the requirements of the Public Bodies (Performance and Accountability) Act 2001 and have regard to the need:

- (a) For the Board to have Directors with expertise and experience in:
 - (i) business;
 - (ii) management;
 - (iii) broadcast media;
 - (iv) Faa-Samoa; and

(b) To include both women and men and persons from the islands of Samoa.

(5) All Directors shall comply with the provisions of the Public Bodies (Performance and Accountability) Act 2001.

8. Meetings of the Board-(1) Subject to subsection (4), meetings of the Board shall be held at such times and at such places as the Chairperson or, in the absence of the Chairperson, the Deputy Chairperson shall determine from time to time.

(2) Every meeting of the Board shall be presided over by the Chairperson or the Deputy Chairperson if the Chairperson is absent.

(3) In the absence of both the Chairperson and the Deputy Chairperson the Directors shall elect one Director to act as Chairperson.

(4) Notwithstanding subsection (1), the Deputy Chairperson or two Directors may, at any time, convene a special meeting of the Board by giving three days notice in writing to each Director stating the business to be transacted at the meeting.

(5) At every meeting five Directors present in person shall constitute a quorum.

(6) A question before the Board shall be resolved by a simple majority of Directors present and voting.

(7) A resolution signed or assented to by letter, facsimile or email, by each Director shall have the same effect as a resolution passed at a Board meeting.

(8) The person chairing a Board meeting shall have a casting as well as a deliberative vote.

(9) Subject to this Act the Board may regulate its proceedings in such manner as it thinks fit.

(10) The Board shall appoint a suitable person employed by the Corporation to act as secretary to the Board.

(11) The Board shall cause proper minutes of its meetings to be kept, including the recording of the names of all directors present and voting and all resolutions put to the Board.

(12) Board meeting minutes, if signed as confirmed by the Director chairing the meeting, shall be received in evidence in any Court without further proof and shall be accepted as evidence of the truth of the matters contained in those minutes unless the contrary is proved.

9. Delegation of Board Powers-(1) The Board may, either generally or as otherwise provided by the instrument of delegation under the Corporation's common seal, delegate to any person any of its powers and the powers of the Corporation under this Act.

(2) A power delegated under subsection (1) when exercised by the delegate shall for all purposes be deemed to have been exercised by the Corporation.

(3) A delegation under this section does not prevent the exercise of any power by the Board.

(4) A delegation under this section shall be revocable at the will of the Board.

10. Chief Executive Officer-(1) The Head of State acting on the advice of Cabinet shall from time to time appoint a Chief Executive Officer.

(2) The Chief Executive Officer shall be appointed for a period not exceeding 3 years on such terms parity with other Chief Executive Officers as the Board determines.

(3) The Chief Executive Officer may from time to time be reappointed.

(4) The Chief Executive Officer shall not engage in any business or occupation.

(5) The Chief Executive Officer may delegate to any person any of the Chief Executive Officer's powers with the Board's approval.

11. Relationship of Chief Executive Officer to the Board

- The Chief Executive Officer shall be responsible to the Board for the efficient and effective control and management of the Corporation.

12. Acting Chief Executive Officer-(1) Where there is no Chief Executive Officer or the Chief Executive Officer is absent or is unable to perform the functions and duties of Chief Executive Officer for any reason the Board may appoint an Acting Chief Executive Officer on terms and conditions as the Board determines.

(2) A person appointed as Acting Chief Executive Officer shall have the same powers as the Chief Executive Officer.

13. Staff-(1) The Corporation may employ such staff as it thinks necessary for the efficient and effective performance of the functions of the Corporation.

(2) Staff shall be responsible to and under the control of the Chief Executive Officer.

14. Transfer of Assets and Liabilities to the Corporation-

(1) All assets, liabilities, rights, entitlements and legal obligations of Televisé Samoa Corporation, established under section 3 of the Televisé Samoa Corporation Act 1994, are transferred to the Corporation.

(2) Such assets, liabilities, rights, entitlements and legal obligations of the Department of Broadcasting as are concerned with Radio 2AP as the Chief Executive Officer of the Ministry of Finance may determine are transferred to the Corporation.

15. Transfer of Staff to the Corporation-(1) All staff employed by Televisé Samoa Corporation are transferred to the Corporation.

(2) Such staff employed by the Department of Broadcasting concerned with Radio 2AP as the Responsible Minister, after consulting with the Public Service Commission, may determine are transferred to the Corporation.

(3) All staff transferred to the Corporation shall be subject to the same terms and conditions of employment as they were entitled to as at the commencement of this Act until the Board determines otherwise.

(4) Despite any other law, where staff of the Corporation were employees of the Public Service as at the commencement of this Act, the Corporation and the Public Service Commission are authorized to enter into such arrangements as they consider necessary to resolve any matters concerning:

- (a) The rights and entitlements of such staff; and
- (b) The liability and responsibility of the Corporation, the Public Service Commission and the Government to meet any rights and entitlements which such staff may have.

16. Expenditure not to exceed income – Subject to the requirements of the Public Bodies (Performance and Accountability) Act 2001 and the Public Finance Management Act 2001, the Corporation shall ensure that in each financial year expenditure does not exceed income and that the Corporation's profit and loss account does not have a deficit.

17. Accounts, Audit and Annual Report-(1) The Corporation shall keep full and current records and accounts in accordance with the provisions of the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act 2001.

(2) The Corporation shall prepare annual financial statements which shall be prepared and audited in accordance with the provisions of the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act 2001.

(3) The Corporation shall prepare and provide to the Minister the annual financial statements, the audit report on such statements and an annual report in accordance with the provisions of the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act 2001.

(4) The Minister shall present to Parliament the annual financial statements, the audit report on such statements and the annual report in accordance with the provisions of the Public Finance Management Act 2001 and the Public Bodies (Performance and Accountability) Act 2001.

18. Secrecy - The Directors, the Chief Executive Officer and all Corporation employees shall not communicate or reveal to any person any matter which becomes known to them as a Director or Chief Executive Officer or employee, except when required to do so by this Act or by any other Act or except with the approval of the Board or as required for the discharge of their duties as a Director or Chief Executive Officer or employee of the Corporation, as the case may be.

19. Regulations - The Head of State, acting on the advice of Cabinet, may from time to time make such regulations as shall be necessary for giving full effect to the provisions of this Act and for its administration.

- 20. Transitional-**(1) Upon the commencement of this Act -
- (a) All rights and liabilities accruing or accrued to the Televisé Samoa Corporation are vested in the Corporation and may be enforced by or against the Corporation accordingly;
 - (b) All rights and liabilities accruing or accrued to the Department of Broadcasting and the Government as are concerned with Radio 2AP and which are transferred to the Corporation may be enforced by or against the Corporation accordingly;
 - (c) All contracts, agreements, undertaking and securities made by or given to or by the Televisé Samoa Corporation have effect as contracts, agreements and undertaking by and with the Corporation and may be enforced by or against the Corporation accordingly;
 - (d) All contracts, agreements, undertaking and securities made by or given to or by the Department of Broadcasting and the Government as are concerned with Radio 2AP and which are transferred to the Corporation may be enforced by or against the Corporation accordingly;
 - (e) All debts due and money payable by the Televisé Samoa Corporation and all claims, liquidated and unliquidated, recoverable against the Televisé Samoa Corporation shall be debts due and money payable by and claims recoverable against the Corporation;
 - (f) All debts due and money payable by the Department of Broadcasting and the Government as are concerned with Radio 2AP and which are transferred to the Corporation under this Act shall be debts due and money payable by and claims recoverable against the Corporation;
 - (g) All legal or other proceedings that might, but for this section, have been commenced or continued by or against the Televisé Samoa Corporation may be commenced or continued by or against the Corporation;

- (h) All legal or other proceedings that might, but for this section, have been commenced or continued by or against the Department of Broadcasting and the Government as are concerned with Radio 2AP and which are transferred to the Corporation may be commenced or continued by or against the Corporation;
- (i) Any reference to the Televisé Samoa Corporation in any law, act of authority, instrument or document shall be taken for all purposes as a reference to the Corporation, unless the context otherwise requires;
- (j) Any reference to the Department of Broadcasting and the Government in any law, act of authority, instrument or document as concerns Radio 2AP shall be taken for all purposes as a reference to the Corporation, unless the context otherwise requires.

(2) Despite the provisions of this Act and any law, where this Act makes insufficient or no provision to ensure an effective and complete transition from the Televisé Samoa Corporation and the Department of Broadcasting to the Corporation, the Government, the Responsible Minister, the Public Service Commission and the Corporation shall have the power to take all measures and to do all things which they determine necessary to ensure such transition and to give full force and effect to this Act.

21. Repeal - The Televisé Samoa Corporation Act 1994 is repealed.