

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;
 - (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 authorized 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;
 - (b) The provision of preventive healthcare programs by the Foundation or otherwise to minimize the incidence of kidney related diseases and disorders;
 - (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;
 - (ii) Peritoneal dialysis; and
 - (iii) Such other treatments, care and support as the Board may determine from time to time;
 - (d) The provision by the Foundation or otherwise of healthcare education and information concerning kidney related diseases and disorders, their prevention, treatment and care;
 - (e) The conduct and publication by the Foundation or otherwise of research concerned with or related to the Foundation's purposes; and
 - (f) Such other functions as the Minister, acting on the advice of Cabinet, may approve in writing.
- (2) In undertaking the functions under subsection (1) the Foundation may:
- (a) do so on such terms and conditions; and
 - (b) impose such fees and charges,
- as the Board determines from time to time.

6. Powers – The Foundation shall have 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) Subject to subsection (13), the Board shall consist of:

- (a) The Chairperson, who shall be the Minister;
- (b) The Deputy Chairperson, who shall be the Chief Executive Officer, who shall chair a meeting of the Board in the absence or unavailability of the Chairperson; and
- (c) Nine other directors who shall be appointed by the Head of State, acting on the advice of Cabinet.

(3) In appointing directors under subsection (2)(c) the Head of State and 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 consumers and their families.

(4) Subject to this section, directors appointed under subsection (2)(c) shall hold office for a term of 3 years and may be reappointed.

(5) Any director appointed under subsection (2)(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.

(6) The Office of a director shall become vacant if the director dies or resigns or is removed from office or completes their term of appointment under subsection (4), and the vacancy shall be filled in the manner in which the original appointment was made.

(7) Meetings of the Board shall be called by the Chairperson or, in the absence or unavailability of the Chairperson, by the Deputy Chairperson or on a request in writing from at least three directors.

(8) In the absence or unavailability of the Chairperson and Deputy Chairperson, the directors shall appoint a director to chair a meeting of the Board.

(9) The quorum for any meeting of the Board shall be six directors.

(10) Every question before any meeting of the Board shall be determined by a majority of directors present at the meeting but the chairperson of that meeting shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(11) Except as otherwise provided by this Act, the Board may regulate its procedure as the Board thinks fit.

(12) The directors shall be paid such fees and allowances as approved by Cabinet.

(13) Where a director is incapacitated by a temporary illness or due to unforeseen circumstances cannot attend a meeting of the Board, the director may nominate in writing, addressed to the chairperson of such meeting, a suitable alternate to attend on behalf of the director, and such alternate shall be deemed to be a director for such meeting.

(14) The Board may co-opt other persons from time to time to attend and participate in the Board's deliberations, but such persons shall not have the power to vote on any matter.

(15) The Board may appoint a member of its staff to act as secretary to the Board but such staff member shall not:

- (a) be a member of the Board; or
- (b) have a right to vote; or

- (c) have the right to speak at or otherwise participate in a Board meeting without leave of the Board.

8. Staff and other personnel-(1) Following consultation with the Chief Executive Officer of the Public Service Commission, the Foundation may employ staff on terms and conditions as the Board determines.

(2) Staff employed by the Foundation shall not be regarded as officers or employees of the Public Service.

(3) 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.

(4) For the purposes of this Act, any staff subject to subsection (3) shall be regarded as a member of the staff of the Foundation.

(5) The Foundation may engage consultants or other persons to undertake any task or work for or on behalf of the Foundation on such terms and conditions as the Board determines.

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;
- (b) All payments are properly authorized and correctly made and accounted for; and
- (c) There are adequate controls over the Foundation's:
 - (i) assets;
 - (ii) property under the Foundation's control;
 - (iii) expenditure; and
 - (iv) liabilities.

(2) The Foundation shall be subject to the provisions of the Public Finance Management Act 2001 and for this purpose, despite the provisions of such Act, the funds received by the

Foundation shall be deemed public money and the assets and property of the Foundation shall be deemed public property.

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

- (a) Financial statements for the financial year;
- (b) Performance indicators and such information as may be directed by the Minister of Finance;
- (c) A report on the operations of the Foundation during the preceeding 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;
- (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 four (4) months after the end of each financial year, cause to be submitted to the Controller and Chief Auditor for audit the financial statements and other information referred to in subsection (3).

(7) The financial year of the Foundation shall be from 1st July to 30th June.

(8) The Minister shall table the annual report of the Foundation together with the Controller and Chief Auditor's report on the Foundation's financial statements before Parliament within 14 sitting days of receiving the Controller and Chief Auditor's audit report.

10. Income exempt from taxation- For the purposes of the Income Tax Act 1974, the Foundation is deemed an institution established exclusively for charitable purposes and, as such, the income of the Foundation shall be 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-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.

**The National Kidney Foundation of Samoa Act 2005 is
administered in the Ministry of Health**