

## SAMOA

### Arrangement of Provisions

<p style="text-align: center;"><b><u>Part I</u></b> <b>Preliminary</b></p> <p>1. Short title and commencement</p> <p>2. Interpretation</p> <p>3. Application of Act</p> <p style="text-align: center;"><b><u>Part II</u></b> <b>Establishment, Purpose, Functions and Powers of the National Health Service</b></p> <p>4. Establishment of the National Health Service</p> <p>5. Purpose</p> <p>6. Functions and Powers</p> <p style="text-align: center;"><b><u>Part III</u></b> <b>Management of the National Health Service</b></p> <p>7. Board of Management</p> <p>8. Board membership and procedures</p> <p>9. General Manager</p> <p>10. Staff and other personnel</p> <p>11. Management and arrangement of health services, institutions and bodies</p> <p>12. Delegations</p>	<p style="text-align: center;"><b><u>Part IV</u></b> <b>Ministerial and other directions</b></p> <p>13. Ministerial directions</p> <p>14. Other directions</p> <p style="text-align: center;"><b><u>Part V</u></b> <b>Performance - Reporting and Accountability</b></p> <p>15. Performance systems and reports</p> <p>16. Annual report, financial statements and audit report</p> <p style="text-align: center;"><b><u>Part VI</u></b> <b>Advisory Bodies</b></p> <p>17. Advisory bodies established by the Minister</p> <p>18. Remuneration of advisory bodies</p> <p>19. Status and authority of advisory bodies</p> <p style="text-align: center;"><b><u>Part VII</u></b> <b>Miscellaneous</b></p> <p>20. Minister to determine fees and charges</p> <p>21. Appropriation for refunds</p> <p>22. Evidence by certificate</p> <p>23. Validity of acts</p>
--	---

24	<i>National Health Service Act</i>	2006, No.20
24.	Civil protection for the Minister, Board and General Manager	29. Transfer of personnel, resources and assets
25.	Amendment of the Schedule	Schedule – List of Health Services, Institutions and Bodies for which the Service is responsible.
26.	Rules and Guidelines	
27.	Regulations	
28.	Operational arrangements with the Ministry of Health	

---

**2006, No. 20**

**AN ACT to provide for the National Health Service and related purposes.** *[07<sup>th</sup> December 2006]*

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

**Part I**  
**Preliminary**

**1. Short title and commencement-**(1 ) This Act may be cited as the National Health Service Act 2006.

(2) This Act shall commence on a date nominated by the Minister, save for section 9 which shall commence 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:

“allied health professional” does not include a medical practitioner, dental practitioner or a nurse;

“Board” means the Board of Management referred to in section 7;

- “Chairperson” means the Chairperson of the Board referred to in section 8 (1)(a);
- “Chief Executive Officer” and “Chief Executive Officer of the Ministry” mean the Chief Executive Officer of the Ministry of Health referred to in the Ministry of Health Act 2006;
- “General Manager” means the General Manager of the Service referred to in section 9;
- “Government” means the Government of Samoa;
- “Land law” means any law in force relating to the acquisition, use and disposal of land and includes the -
- (a) Land Survey and Environment Act 1989;
  - (b) Taking of Land Act 1964; and
  - (c) Land and Titles Act 1981;
- “Minister” means the Minister responsible for the Ministry;
- “Ministry” means the Ministry of Health established pursuant to the Ministry of Health Act 2006 and the Ministerial and Departmental Arrangements Act 2003, and includes the former Department of Health established under the provisions of the Health Ordinance 1959;
- “Public sector law” means any law in force relating to the public sector and includes the -
- (a) Public Service Act 2004; and
  - (b) Public Finance Management Act 2001;
- “Public Service” has the same meaning as provided by Article 83 of the Constitution;
- “Service” means the National Health Service established by section 4;
- “staff” includes officers, employees and servants.

- 3. Application of Act-**(1) This Act binds the Government.
- (2) This Act shall be read as subject to:
- (a) Public sector law; and
  - (b) Land law.

**Part II****Establishment, Purpose, Functions and Powers of the National Health Service**

**4. Establishment of the National Health Service-**(1) The National Health Service is established.

(2) The Service shall act in accordance with:

- (a) The provisions of this Act;
- (b) Public sector law; and
- (c) Land law.

**5. Purpose** – The Service’s purpose is to assist the Government to meet the health care needs of Samoa through the development, provision and management of the health services, institutions and bodies listed in the Schedule.

**6. Functions and Powers-**(1) The Service’s functions are:

- (a) To provide, maintain and manage all health services, institutions and bodies listed in the Schedule;
- (b) To cooperate with, assist and support the Government, Minister, Ministry, Chief Executive Officer and staff of the Ministry, other Ministries, Statutory Bodies, Government Agencies and Persons in undertaking their constitutional and statutory functions and duties under this Act, the Ministry of Health Act 2006 and any other law;
- (c) To comply with any written directions issued by the Minister under section 13;
- (d) To comply with any written directions issued by the Chief Executive Officer of the Ministry under section 14; and
- (e) Such other functions or duties as are conferred or imposed on the Service by this or any other law.

(2) Subject to this Act, the Service, Board and General Manager shall have powers for carrying out the Service’s purpose and functions and all acts as appear to the Board to be requisite, advantageous or convenient for or in connection with

the carrying out of the Service's purpose and functions or to be incidental to their proper discharge and may carry on any activity in that behalf either alone or through or in association with any person or body.

### **Part III**

#### **Management of the National Health Service**

**7. Board of Management** - Subject to this Act, the Service shall be under the control, management and direction of the National Health Service Board of Management.

**8. Board membership and procedures**-(1) Subject to this section, the Board shall consist of:

- (a) The Chairperson, who shall not be a Member of Parliament or an employee of the Public Service;
- (b) Two health care professionals, who shall not be staff of the Service;
- (c) Two persons with experience in the management and control of public or private sector bodies or enterprises, who shall not be staff of the Service;
- (d) One community representative; and
- (e) One allied health professional.

(2) Members of the Board shall be appointed by the Head of State acting on the advice of Cabinet.

(3) Subject to subsection (1), in appointing members of the Board under subsection (1), Cabinet in advising the Head of State shall take into account:

- (a) The need of the Service and the Board to have members with qualifications, experience and expertise in the areas of health care, management, financial management and such other qualifications, experience and expertise appropriate to the Service's purpose and functions; and
- (b) The desirability of gender equality.

(4) The Chief Executive Officer of the Ministry shall be appointed to the Board.

(5) Subject to this section, members of the Board shall hold office for a term of 3 years and may be reappointed.

(6) Any member of the Board may be suspended or removed from office by the Head of State, acting on the advice of Cabinet, for:

- (a) Inability to perform their functions and duties due to a physical or mental incapacity;
- (b) Inefficiency;
- (c) Bankruptcy;
- (d) Neglect of duty;
- (e) Misconduct in office;
- (f) Misconduct elsewhere affecting or likely to affect the operations or reputation of the Service or the Board;
- (g) Failure, without reasonable excuse and within a reasonable time, to comply with the requirements of section 13 (Ministerial direction);
- (h) Failure to disclose and take all reasonable steps to avoid any real or apparent conflicts of interest in relation to their membership of the Board;
- (i) Using information belonging to or under the control of the Service or Board other than for the Service's purpose or functions;
- (j) Failure to act with integrity as a member of the Board;
- (k) Misuse of their status or authority as a member of the Board to seek or obtain a benefit for themselves or any other person or body; or
- (l) Permanent departure from Samoa.

(7) A member of the Board may resign in writing to the Head of State.

(8) The office of a member of the Board shall become vacant if the member dies or resigns or is removed from office under subsection (6), and the vacancy shall be filled in the manner in which the original appointment was made.

(9) Meetings of the Board shall be called by the Chairperson or on a request in writing addressed to the General Manager by at least two members of the Board.

(10) Whilst there shall be a minimum of 10 meetings of the Board in each financial year the Board may conduct additional meetings as required.

(11) In the absence or unavailability of the Chairperson, the members of the Board shall appoint a member to chair a meeting of the Board.

(12) The quorum for any meeting of the Board shall be four members.

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

(14) Except as otherwise provided by the Act, the Board may regulate its procedures as the Board thinks fit.

(15) The members of the Board shall be paid such fees and allowances as approved by Cabinet.

(16) 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.

(17) The General Manager shall attend every meeting of the Board, unless the Board requires the General Manager to be absent from a meeting:

- (a) To perform a designated task on behalf of the service; or
- (b) Whilst the Board considers any matter concerning the General Manager's performance in office.

(18) The General Manager shall appoint a member of the staff of the Service to act as secretary to the Board, but such person shall not:

- (a) Be a member of the Board; or
- (b) Have a right to vote; or
- (c) Have the right to speak or otherwise participate in a Board meeting without leave of the Board.

**9. General Manager-**(1) A General Manager of the Service shall be appointed under the provisions of the Public Service Act 2004.

(2) Subject to Part IV, the General Manager shall be responsible and accountable to the Board for the day to day control, management and direction of the Service.

**10. Staff and other personnel-**(1) The Board may employ staff under the provisions of the Public Service Act 2004.

(2) The Board may engage consultants or other persons to undertake any task or work for or on behalf of the Service on such terms and conditions as the Board determines consistent with Public sector law.

(3) Subject to Public sector law, all staff of the Service and all contractors engaged by or on behalf of the Service shall be under the direction and control of the General Manager.

**11. Management and arrangement of health services, institutions and bodies** - Subject to this Act (in particular Part IV) and following consultation with the Chief Executive Officer of the Ministry and the Chief Executive Officer of the Public Service Commission, the Board, from time to time, may determine:

- (a) The structure and arrangement of the health services, institutions and bodies listed in the Schedule; and
- (b) The relationship between the health services, institutions and bodies listed in the Schedule and any other related or relevant Ministry, Statutory Body, Government Agency, Private Sector Body, Organisation or Person, Community Sector Body, Organisation or Person or other Person,

so as to fulfil the Service's purpose and functions under this Act or any other law.

**12. Delegations-**(1) The Board and the General Manager, in writing, may delegate to any person any function or power of the Board or General Manager, as the case may require, under this Act or other law, 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 Board and the General Manager, as the case may require, may exercise a function or power notwithstanding that they had delegated its exercise to some other person.

#### **Part IV**

#### **Ministerial and other directions**

**13. Ministerial directions-**(1) Subject to subsection (2), following consultation with the Chief Executive Officer of the Ministry and the Board, the Minister, acting on the advice of Cabinet, from time to time may issue written directions to the Service and the Board as to:

- (a) Government policy, objectives, priorities and requirements as to the development, provision and management of the health services, institutions and bodies listed in the Schedule; and
  - (b) Requirements as to the Service, Board, General Manager and staff and contractors of the Service co-operating with, assisting and supporting the Government, Minister, Chief Executive Officer and staff of the Ministry, Other Ministries, Statutory Bodies, Government Agencies and Persons in undertaking their constitutional and statutory functions and duties under this Act, the Ministry of Health Act 2006 and any other law.
- (2) The Minister shall not issue directions as to:
- (a) The appointment, promotion, suspension, demotion, transfer, discipline or dismissal of any staff of the Service; or
  - (b) The engagement of or dealings with any contractor engaged by or on behalf of the Service.
- (3) Where the Minister has issued a written direction under this section, the Service and Board shall comply with the direction.

(4) Where the Service and the Board, without reasonable excuse and within a reasonable time, fail to comply with a written direction under subsection (1), the Minister, after advising the Board in writing, may direct the General Manager in writing to comply with the Minister's written direction issued under subsection (1).

(5) The General Manager shall comply forthwith with a Ministerial written direction under subsection (4).

(6) Any failure, without reasonable excuse and within a reasonable time, by the General Manager to comply with the provisions of subsection (5) shall be taken as serious misconduct by the General Manager under the Public Service Act 2004 and any contract of employment between the General Manager and the Public Service Commission.

**14. Other directions-**(1) The Chief Executive Officer of the Ministry, with the written consent of the Minister and after the Chief Executive Officer has consulted with the Board and the General Manager, from time to time may issue written directions to the Board and/or the General Manager as to the provision by the Service, Board and/or General Manager, as the case may require, of specified reports and/or specified information in specified formats and at specified times required to enable the Ministry to undertake its functions and duties under the Ministry of Health Act 2006 and any other law.

(2) Where the Chief Executive Officer of the Ministry has issued a written direction under this section, the Board and the General Manager, as the case may require, shall comply with the direction.

(3) Any failure, without reasonable excuse and within a reasonable time, by the Board and the General Manager, as the case may require, to comply with the provisions of subsection (2), shall be taken as:

- (a) Misconduct in office under section 8 (6) (e), in the case of any member of the Board failing to do everything within the member's power to comply with the direction; and

- (b) Misconduct under the Public Service Act 2004 and any contract of employment between the General Manager and the Public Service Commission, in the case of the General Manager failing to do everything within the General Manager's power to comply with the direction.

### **Part V**

#### **Performance - Reporting and Accountability**

**15. Performance systems and reports-**(1) Subject to subsections (2) and (3), the Board shall develop, maintain and produce, as the case may require:

- (a) Performance control and monitoring systems;
- (b) Financial control and monitoring systems;
- (c) Accounts;
- (d) Records; and
- (e) Reports,

as directed by the Minister in writing from time to time.

(2) Prior to issuing a direction under subsection (1), the Minister shall consult with:

- (a) The Board;
- (b) The Chief Executive Officer of the Ministry;
- (c) The Chief Executive Officer of the Ministry of Finance; and
- (d) The Controller and Chief Auditor.

(3) Any direction under subsection (1) shall conform to the requirements of Public sector law.

**16. Annual report, financial statements and audit report-**(1) The Board shall produce and submit to the Minister an annual report and financial statements for the Service in accordance with the requirements of Public sector law.

(2) The financial statements shall be audited by or on behalf of the Controller and Chief Auditor.

(3) The Minister shall table the Service's annual report, financial statements and the Controller and Chief Auditor's audit report before Parliament within 14 sitting days of receiving the audit report.

**Part VI**  
**Advisory Bodies**

**17. Advisory bodies established by the Minister-**(1) The Minister, following consultation with the Board and the Chief Executive Officer of the Ministry, may:

- (a) By Notice establish any advisory body that the Minister considers appropriate to assist the Minister, the Board and the Ministry in carrying out the Service's purpose, functions and duties under this Act or any other law;
- (b) Authorise any advisory body established under this Part to make enquiries, conduct research or make reports which the Minister considers will assist the Minister, the Board or the Ministry to efficiently and effectively fulfil the Service's purpose and functions under this Act and any other law;
- (c) Regulate the procedures in relation to any matter concerning any advisory body established under this Part;
- (d) Appoint any person to an advisory body or dismiss any advisory body member appointed under this Part; and
- (e) By Notice dissolve any advisory body established under this Part.

(2) The Minister shall consider the nature of the community interest and the matters to be addressed by an advisory body when determining its membership.

(3) Any Notice establishing an advisory body under this Part shall:

- (a) Specify the name of the advisory body;
- (b) Specify the purpose for establishing or dissolving the advisory body, as the case may require;
- (c) In the case of a Notice establishing an advisory body, specify the advisory body membership; and
- (d) Be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

(4) The establishment of an advisory body under this Part shall not in any way reduce or otherwise affect the accountability of the Service, the Board and the General Manager to fulfil their functions and duties under this Act or any other law.

**18. Remuneration of advisory bodies** - Subject to monies being appropriated by Parliament for the purpose and any directions issued by Cabinet, the General Manager may:

- (a) Pay such fees and allowances to members of advisory bodies established under this Part at such rates as may be approved by Cabinet; and
- (b) Reimburse members of advisory bodies for authorised expenses reasonably incurred in performing any service required to be performed on behalf of such advisory bodies.

**19. Status and authority of members of advisory bodies**-(1) No person shall be deemed to be employed in the Public Service by reason of appointment to an advisory body under this Part.

(2) Except where the Minister authorises otherwise in writing, no member of an advisory body appointed under this Part shall have authority to bind or speak on behalf of the Government, the Minister, the Service, the Board or any advisory body.

## **Part VII** **Miscellaneous**

**20. Minister to determine fees and charges**-(1) Subject to this section and Public sector law (in particular Part 6 of the Public Finance Management Act 2001), the Minister by Notice may:

- (a) Determine fees and charges concerning any matter under or concerning this Act and for any goods or services provided by the Service or for any goods or services funded by or through the

Service and provided by another person or body;  
and

(b) Provide for the time and manner of payment of any fee or charge determined under this section.

(2) Prior to the Minister acting under subsection (1) the Minister shall consult with:

(a) The Chief Executive Officer of the Ministry;

(b) The Board; and

(c) The Chief Executive Officer of the Ministry of Women, Community and Social Development;  
and

(d) The Chief Executive Officer of the Ministry of Finance,

concerning any proposed fees and charges and their anticipated effects and consequences.

(3) Subject to section 21, any fee or charge determined under this section shall be non-refundable unless the Minister determines otherwise.

(4) Any Notice under this section shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa

**21. Appropriation for refunds-**(1) Any refund of fees or charges under this Part may be made without further appropriation than this section and shall be statutory expenditure payable out of the Treasury Fund.

(2) In exercising any discretion concerning refunds the Minister shall be subject to any Cabinet directions issued from time to time.

**22. Evidence by certificate-**(1) The General Manager, and any staff of the Service authorised in writing by the General Manager, may provide a certificate stating any fact known to the Service, or indicating the content of any record or register maintained by the Service.

(2) Despite any other law, a certificate complying with the requirements of subsection (1) shall be admissible in Samoa or elsewhere as sufficient evidence of the fact so stated or the content so stated in such certificate before:

- (a) Any court or tribunal; or
- (b) Any statutory or administrative body or agency; or
- (c) Any person exercising judicial, quasi – judicial, statutory or administrative authority.

(3) A certificate purporting to comply with the requirements of subsection (1) shall be presumed to comply with subsection (1) unless the contrary is proved.

(4) Despite any other law, the issuance of a certificate under this section and filing of such certificate with a court, tribunal or other body, authority or person shall be sufficient discharge of the Minister's or the Service's or the Board's or the General Manager's or any obligation to answer a summons issued by such court, tribunal or other body, authority or person to give evidence or produce documents, provided that such court, tribunal or other body, authority or person may require the person signing such certificate to appear in person for the purpose of examination.

**23. Validity of acts** – All actions and decisions of the Minister, Board, General Manager or any personnel acting under the authority of the Minister or the Board or the General Manager under the provisions of this Act or any other law shall be deemed to have been validly done or made notwithstanding any defect, expiration, error or lapse in the appointment of the person taking such action or making such decision.

**24. Protection from liability**-(1) Claims made by or against the Service shall be made pursuant to the Government Proceedings Act 1974.

(2) A person exercising a function under this Act does not incur civil liabilities for anything done or omitted to be done in good faith:

- (a) In the exercise of a power or the discharge of a duty under this Act; or
- (b) In the reasonable belief that the act or omission was in the discharge of a duty under this Act.

**25. Amendment of the Schedule**-(1) Following consultation with the Chief Executive Officer of the Ministry

and the Board, the Minister, acting on the advice of Cabinet, from time to time may amend the Schedule by Notice.

(2) Any Notice under subsection (1) shall be published in Samoan and English in the *Savali* and one other newspaper circulating in Samoa.

**26. Rules and Guidelines-**(1) Subject to this Act, the Board, with the written consent of the Minister, from time to time, may make rules and guidelines for such matters as the Board believes necessary to achieve the Service's purpose, functions and duties under this Act and any other law.

(2) Without limiting the power of the Board under subsection (1), the power to make rules and guidelines shall include:

- (a) Defining who shall be deemed an eligible person for the purpose of access to the health services, institutions and bodies listed in the Schedule, including but not limited to medical procedures, medicines and other health services, and defining classes of persons who are residents of Samoa or non residents and who is liable for or exempt from the cost of any health services provided by the Service; and
- (b) Providing for the arrangement and management of health services and patients, including the admission, discharge and treatment arrangements for patients, the admission of visitors and the powers and duties of staff and contractors of the Service and the provision of quality control and consumer complaint systems; and
- (c) Providing for the creation of offences and to prescribe fines of up to 5 penalty units for such offences.

**27. 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.

**28. Operational arrangements with the Ministry of Health-**(1) Despite any other law, where under any law (save this Act and the Ministry of Health Act 2006) reference is made to the Director General of Health, the Director of Health or the Chief Executive Officer of the Ministry, the Minister, after consulting with the Chief Executive Officer of the Ministry and the Board, by Notice from time to time, may designate either the Chief Executive Officer of the Ministry or the General Manager, or both, to exercise or not exercise any function, duty or power under any such law.

(2) Despite any other law, where under any law (save this Act and the Ministry of Health Act 2006) reference is made to the former Department of Health or Ministry or the Service or any health service, institution or body listed in the Schedule, the Minister, after consulting with the Chief Executive Officer of the Ministry and the Board, by Notice from time to time, may designate either the Ministry or the Service, or both, to exercise or not exercise any function, duty or power under any such law or to provide or not provide any service referred to in such law.

**29. Transfer of personnel, resources and assets-**(1) Where this Act and the Ministry of Health Act 2006 provide for the Service or the Ministry to be responsible for any function, duty, health service, institution or body or where responsibility for such function, duty, health service, institution or body is transferred to or from the Service or the Ministry, the Minister, after consulting with the Board, the Chief Executive Officer of the Ministry and, in the case of staff and contractors, the Chief Executive Officer of the Public Service Commission and, in the case of resources and assets, the Chief Executive Officer of the Ministry of Finance, by Notice from time to time may determine:

- (a) Which staff and contractors will be transferred to or from the control, management and direction of the Service or the Ministry, as the case may require; and
- (b) Which resources and assets will be transferred to or from the control and management of the Service or the Ministry, as the case may require; and

- (c) The terms, conditions and other arrangements required for any transfer referred to in subsection (1)(a) and (b), including but not limited to any payments and entitlements.

**SCHEDULE**  
**(sections 5 and 25)**

**LIST OF HEALTH SERVICES, INSTITUTIONS AND BODIES FOR WHICH THE SERVICE IS RESPONSIBLE**

- T.T.M Hospital, Motootua
  - Malietoa Tanumafili II Hospital, Tuasivi
  - Laboratory Services
  - Dental Services
  - Mental Health Services
  - Pharmacy Services
  - Drugs and Therapeutic Goods and Devices Procurement Program
  - Radiology Services
  - Community Health Services
  - Overseas Treatment Program
  - Safotu Health District
  - Foailalo Health District
  - Sataua Health District
  - Urban Upolu Health District
  - Leulumoega Health District
  - Aleipata Health District
  - Fusi Health District
  - Poutasi Health District
-

**The National Health Service Act 2006 is administered in the  
Ministry of Health.**