

SAMOA

Arrangement of Provisions

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2006, No. 2

AN ACT to merge the National University of Samoa and the Samoa Polytechnic as one institution and to repeal the National University of Samoa Act 1997 and the Samoa Polytechnic Act 1992/1993. *[1st March 2006]*

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 National University of Samoa Act 2006.

(2) This Act shall come into force by order of the Head of State on the date specified in the Order.

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

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

“Academic Board” means the Academic Board established under section 23(2);

“Corporate Plan” means a plan as required by the Public Finance Management Act 2001 and section 32;

“Centre” means a centre established under section 3(7) and includes the Centre for Samoan Studies;

“Committee of the Council” includes the Senate, the Academic Board, the Executive Committee, the Vice Chancellor's Committee and any committee, board or other body established under section 21;

“Council” means the Council of the University constituted under section 13;

“Deputy Vice Chancellor” means one of the Deputy Vice Chancellors appointed under section 11;

“Executive Committee” means the Executive Committee of the Council established under section 22;

“Financial year” means a period of twelve (12) months commencing on 1 July in any year and ending on 30 June in the following year;

“Institute” means an institute established under section 3(3) and such other institutes as may be established pursuant to section 3(2);

“Joint Committee of Senate and Academic Board” means the committee established under section 23(3);

“Minister” means the Minister responsible for Education from time to time;

“Officers” means the officers of the University, being the Chancellor, Pro-Chancellor, Deputy Chairperson, Vice-Chancellor and Deputy Vice-Chancellors, as described in Part 3;

“President” means the President and Vice-Chancellor appointed under section 10;

“Pro-Chancellor” means the Pro-Chancellor of the University appointed under section 8;

“Senate” means the Senate established under section 23(1);

“Statute” means any statute made under section 25;

“University” means the National University of Samoa established by this Act; and

“Vice-Chancellor” means the Vice-Chancellor of the University appointed under section 10.

(2) In this Act, a reference to the holder of an office in the University shall be read as including a reference to a person for the time being performing the duties of that office.

(3) Nothing in this Act prevents any person from being re-appointed, re-elected or re-co-opted to any office under this Act if the person is eligible and otherwise qualified to hold that office.

(4) In this Act, a reference to a function includes a reference to a power, authority and duty.

PART 2 THE UNIVERSITY

3. Establishment of the University-(1) This Act establishes the National University of Samoa as an institution combining the former National University of Samoa and the former Samoa Polytechnic.

(2) The University shall comprise its students, academic and non-academic staff, Council and officers and those institutes, centres or other bodies established under this Act and such other institutes or bodies as may be established by the Council.

(3) This Act establishes the following institutes:

(a) This Institute of Higher Education; and

(b) The Institute of Technology

(4) The Institute of Higher Learning shall, at the commencement of this Act, comprise the faculties and departments of the former National University of Samoa, other than the Centre for Samoan Studies, the Centre for Professional and Continuing Education, NUS Consulting Ltd and the various offices of the former University’s Administration.

(5) The Institute of Technology shall at the commencement of this Act comprise the schools and departments of the Samoa Polytechnic, other than the various offices of the former Polytechnic's Administration.

(6) The University shall, at the commencement of this Act, also comprise the Office of the Vice-Chancellor, the Centre for Samoan Studies, the Centre for Professional and Continuing Education, NUS Consulting Ltd and the various offices of the University's Administration.

(7) Council may from time to time, establish, disestablish, modify or rename existing or new institutes, centres or other bodies within the University, as provided in section 18(1).

4. Legal Status of the University-(1) The University is a body corporate with perpetual succession and a common seal, and shall be capable of entering into contracts, of acquiring, holding and disposing of real and personal property, of suing and being sued and of doing all other things as body corporates may lawfully do.

(2) The common seal of the University is to be kept in such custody as the Council may direct and is only to be affixed to a document pursuant to a resolution of the Council or of the Executive Committee.

(3) The University is a public body under schedule 4 of the Public Finance Management Act 2001 and subject to the requirements of that Act.

(4) The University, including any fully owned subsidiary of the University, shall not be a public body under schedule 1 of the Public Bodies (Performance and Accountability) Act 2001.

5. The Functions of the University - The functions of the University, within the limits of its resources, are:

- (a) The provision of education and training, including academic, technical and vocational training and continuing education at appropriate levels responsive to the needs of the people of Samoa;
- (b) The establishment of a centre of excellence in the study of the Samoan language and culture and all matters pertaining to Samoa;

- (c) The acquisition and transmission of knowledge by teaching, consultancy, community learning and research;
- (d) The encouragement of intellectual independence;
- (e) The promotion of the economic and social development of Samoa; and
- (f) The realisation of the goals and guiding principles of the University as set out in its Corporate Plan.

6. Academic Freedom-(1) It shall be the responsibility of the University to ensure that the principles of academic freedom are preserved and enhanced.

(2) The principles of academic freedom include:

- (a) The freedom of academic and teaching staff and students within the law to question existing knowledge and theories, to put forward new ideas, and to state controversial or unpopular opinions;
- (b) The freedom of academic and teaching staff, and students where appropriate, to engage in research;
- (c) The freedom of the University to appoint and retain its own staff; and
- (d) Subject to this Act and to the Corporate Plan:
 - (i) The freedom of the University to regulate the courses, and the subject-matter of courses, taught at the University; and
 - (ii) The freedom of the University to teach and assess students in the manner it considers best promotes learning.

PART 3

OFFICERS OF THE UNIVERSITY

7. Chancellor-(1) The Chancellor is the titular head of the University and responsible for the conferment of degrees and the award of diplomas and certificates.

(2) In the absence of the Chancellor, the Pro-Chancellor shall confer degrees and award diplomas and certificates.

(3) Subject to the provisions of this Act, the Head of State, acting on the advice of Cabinet, shall appoint the Chancellor for a term of five (5) years, and may be re-appointed from time to time.

(4) Cabinet may remove the Chancellor from office for:

- (a) the Chancellor's failure or inability to adequately perform the Chancellor's duties;
- (b) misconduct; or
- (c) any other just cause

(5) Nothing in this section prevents the Head of State being appointed as the Chancellor on the advice of Cabinet.

8. Pro-Chancellor-(1) The Pro-Chancellor shall be the Chairperson of Council.

(2) Subject to the provisions of this Act, the Head of State, acting on the advice of Cabinet, shall appoint the Pro-Chancellor who shall hold office for a term of up to three (3) years, and may be re-appointed from time to time.

(3) The Minister, before making a recommendation to Cabinet on the appointment of a Pro-Chancellor, shall consult the Council regarding that appointment.

(4) Cabinet may remove the Pro-Chancellor from office for:

- (a) the Pro-Chancellor's failure or inability to adequately perform the Pro-Chancellor's duties;
- (b) misconduct; or
- (c) any other just cause.

9. Deputy Chairperson-(1) The Deputy Chairperson of Council shall chair the Council in the absence of the Pro-Chancellor.

(2) The Council shall elect one of its members to be the Deputy Chairperson for a term of up to three (3) years unless that member resigns as Deputy Chairperson or ceases to be a Council member.

10. Vice-Chancellor-(1) The Vice-Chancellor is the Chief Executive Officer and President of the University and is responsible to the Council for the management of the academic and administrative affairs of the University.

(2) Council shall appoint the Vice-Chancellor for a term of up to three (3) years on such conditions as Council determines, and may be re-appointed from time to time.

(3) The Council may remove the Vice-Chancellor from office for:

- (a) any breach of any of the Vice Chancellor's conditions of employment;
- (b) the Vice-Chancellor's failure or inability to adequately perform the Vice-Chancellor's duties;
- (c) misconduct; or
- (d) any other just cause.

(4) The Council shall delegate to the Vice-Chancellor the power to employ, dismiss and discipline all staff of the University, subject to any conditions Council imposes on the delegation.

11. Deputy Vice-Chancellors-(1) There shall be two Deputy Vice-Chancellors or such other number of Deputy Vice Chancellors as may be provided by Council.

(2) The Deputy Vice-Chancellors are responsible to the Vice-Chancellor for the management of the institutes and any other matters delegated to them by the Council through the Vice-Chancellor.

(3) The Deputy Vice-Chancellors are appointed for a term of up to three (3) years on such conditions as the Vice Chancellor determines, and may be re-appointed from time to time.

(4) The Deputy Vice-Chancellors may also be appointed to or continue to hold and discharge academic posts within the University alongside their role as Deputy Vice-Chancellor.

(5) The Deputy Vice-Chancellors may attend Council as observers and participate in discussion at the request of Council, but may not vote.

(6) The Council may, upon the recommendation of the Vice-Chancellor, remove any Deputy Vice-Chancellor from office for:

- (a) any breach of any of the Deputy Vice-Chancellor's conditions of employment;

- (b) the Deputy Vice-Chancellor's failure or inability to adequately perform the Deputy Vice-Chancellor's duties;
- (c) misconduct; or
- (d) any other just cause.

12. Term of Office – Where the term of any officer has expired, the appointing body may agree that the officer to hold office until such time as the officer's replacement is appointed.

PART 4 THE UNIVERSITY COUNCIL

13. Council to be the Governing Body – The Council is the governing body and Board of the University and all acts or things done in the name of, or on behalf of, the University with the authority of, or of a delegate of, the Council shall be deemed to have been done by the University.

14. Composition of Council-(1) The Council shall comprise of:

- (a) the Pro-Chancellor;
- (b) the Vice-Chancellor;
- (c) a member of the Senate;
- (d) a member of the Academic Board;
- (e) a member of the academic or teaching staff nominated by the Vice-Chancellor;
- (f) a student of the University or a person who has been a student of the University within one year of becoming a member of Council and is not a member of the staff of the University;
- (g) the Chief Executive Officer of the Ministry of Education, Sports and Culture (or the person for the time being responsible for the administration of the Ministry of Education) or the Chief Executive Officer's nominee;
- (h) The Vice-Chancellor of the University of the South Pacific or the Vice Chancellor's nominee;
- (i) Up to five (5) persons, not being full-time members

of the staff or full-time students of the University, appointed by the Head of State, acting on the advice of the Minister after consultation with the Executive Committee or Council; and

- (j) Up to three (3) persons co-opted by the Council at its discretion.

(2) The provisions set out in Schedule 1 shall govern the terms of appointments to Council and vacation of office.

15. Criteria for Appointment to Council - The Minister, in advising the Head of State under section 14(1)(i), and the Council, in co-opting members of the Council under section 14(1)(j) shall have regard to representation on the Council of:

- (a) Professional, commercial, industrial and other interests in the community;
- (b) Persons with expertise in management;
- (c) Persons who provide a balance of age and gender;
- (d) Any institution or body which has affiliated or entered into association with, is co-operating with or has been incorporated in, the University;
- (e) The church education systems of Samoa;
- (f) Graduates of the University;
- (g) Residents of Samoa who are graduates of other tertiary institutions; and
- (h) Experienced academics from outside Samoa who have a contribution to make to the deliberations of the Council.

16. Functions of the Council - The functions of the Council are:

- (a) To ensure that the University performs the functions set out in section 5;
- (b) To approve drafts of the Corporate Plan and submit them for approval under the provisions of the Public Finance Management Act 2001;
- (c) To ensure that the management of the University is directed towards the implementation of its Corporate Plan.

17. Duties of the Council - The Council shall, in the performance of its functions:

- (a) Strive to ensure that the University attains the highest standards of excellence in education, training and research and, in particular that the University becomes a centre of excellence in the study of Samoan language and Samoan culture and all matters pertaining to Samoa;
- (b) Take the steps necessary to ensure that the international academic community accepts the University's standards in education, training and research;
- (c) Ensure that the principles of academic freedom are preserved and enhanced in accordance with section 6;
- (d) Seek to promote the economic and social development of Samoa;
- (e) Establish systems that ensure the responsible use of public resources;
- (f) Ensure that the University does not discriminate against any person because of the person's descent, gender, language, religion, political or other opinion, social origin, place of birth or family status; and
- (g) Maintain a concern for and protect the public interest and the well being of students of the University.

18. Powers of the Council-(1) Subject to this Act, the Council has all the powers reasonably necessary to enable it to perform its functions effectively.

(2) Unless they are exercised by delegation under this Act, the following powers shall be exercised only by the Council:

- (a) To provide programmes and courses of study or training;
- (b) To admit students and grant awards;
- (c) To grant fellowships, scholarships, bursaries, or prizes;

- (d) To consider any appeals in relation to the termination of the appointment or discipline of academic and other staff or students by the Vice-Chancellor;
- (e) To accept gifts and bequests made to the University, whether on trust or otherwise;
- (f) To raise money and procure contributions to the funds of the University;
- (g) To authorise the making of grants out of the money of the University to the Vice Chancellor, to the members of staff or students of the University; or to any association of staff or students, on such terms and conditions as the Council thinks fit;
- (h) To arrange for the provision (whether by sale or otherwise) of goods and services to staff and students of the University or other persons using facilities of the University;
- (i) To invest any funds belonging to or vested in the University;
- (j) To establish or participate in such trusts, companies or other incorporated bodies, as it considers appropriate to promote the objects and interests of the University;
- (k) To engage in the commercial development of any discovery, invention or publication or of any intellectual property in which the University has a right or interest;
- (l) To impose, fees, charges and fines;
- (m) To establish or disestablish and maintain institutes, centres, branches, colleges and other bodies of the University, within the University and elsewhere;
- (n) To determine the terms and conditions under which any institution or body may affiliate with the University, enter into association or co-operation with the University or be incorporated in the University; and
- (o) To do anything incidental to the exercise of any of the powers conferred by this section.

(3) Subject to subsection (2) and notwithstanding section 4(1), the Council shall not exercise the following powers without the written consent of the Minister:

- (a) To sell or otherwise dispose of University assets or interests in University assets;
- (b) To mortgage or otherwise charge University assets or interests in University assets; and
- (c) To grant or enter into leases of land or buildings or parts of buildings belonging to the University.

(4) The University may borrow money, whether by way of overdraft or otherwise, within such limits and on such conditions as to security or otherwise as the Minister, acting on the recommendation of the Chief Executive Officer of the Ministry of Finance, may approve.

19. Powers of Delegation-(1) The Council may by resolution, from time to time, either generally or particularly, delegate to the Vice-Chancellor or to any committee of the Council any of its functions under this Act (other than the powers to appoint a Vice-Chancellor and to make statutes) or any other Act.

(2) The Vice-Chancellor or any committee of Council may delegate in writing the functions delegated to them by the Council to a member of staff of the University or to another committee.

(3) Subject to any general or special directions given or conditions imposed by the Council or the Vice-Chancellor, as the case may be, a committee of the Council or a member of the staff of the University to which or to whom any functions are delegated under this section may perform those functions in the same manner and with the same effect as if they had been conferred on the committee or member of the staff directly by this Act and not by delegation.

(4) A delegation under this section does not affect or prevent the performance of any function by the Council or the Vice-Chancellor, as the case may be, or, affect the responsibility of the Council or the Vice-Chancellor for the actions of any person acting under the delegation.

(5) A delegation under this section is revocable at will by writing and, until it is revoked continues in force according to its tenor.

20. Council procedure - The provisions set out in Schedule 2 shall govern the proceedings of the Council.

PART 5 COMMITTEES OF COUNCIL

21. Council may appoint committees-(1) The Council may from time to time establish such committees, boards or other bodies consisting of such persons, whether or not members of the Council, as the Council determines to exercise such powers as are delegated to them under section 19 or are conferred on them by statute.

(2) The Vice-Chancellor shall be a member of all committees, boards or bodies established by the Council.

22. Executive Committee and Vice Chancellor's Committee-(1) The Council shall establish an Executive Committee of the Council to exercise such powers on behalf of Council as are delegated by Council.

(2) The Executive Committee shall consist of not fewer than eight members of the Council.

(3) The Council shall establish a Vice Chancellor's Committee to advise the Vice-Chancellor.

(4) The membership and functions of the Executive Committee and the Vice Chancellor's Committee shall be prescribed by statute.

23. Establishment of the Senate, Academic Board and Joint Committee-(1) The Council shall establish a Senate consisting of the Vice-Chancellor, the Deputy Vice-Chancellor (Higher Education) a representative of the Centre for Samoan Studies and members of the staff and students of the Institute of Higher Education as provided in the relevant statute.

(2) The Council shall establish an Academic Board consisting of the Vice-Chancellor, the Deputy Vice-Chancellor (Technology) and members of the staff and students of the Institute of Technology as provided in the relevant statute.

(3) The Council shall establish a Joint Committee of Senate and the Academic Board consisting of the Vice-Chancellor, the Deputy Vice-Chancellors, a representative of the Centre for Samoan Studies and members of the Senate and Academic Board as provided in the relevant statute.

(4) The Vice-Chancellor shall be the chairperson of these committees, but may delegate the chair to the relevant Deputy Vice Chancellors on each of the Senate and Academic Board.

24. Functions of the Senate, Academic Board and Joint Committee-(1) The functions of the Senate and the Academic Board are to:

- (a) Advise the Council on matters relating to programmes and courses of study or training, awards and other academic matters within their institutes; and
- (b) Exercise powers delegated to them by the Council.

(2) The functions of the Joint Committee of Senate and Academic Board are to:

- (a) Advise Council on academic matters which affect both institutes, and in particular to facilitate and promote the ability of students from each institute to transfer courses and accreditation between institutes, to avoid duplication of courses and to facilitate the movement of staff between institutes; and
- (b) Exercise powers delegated to it by Council.

(3) The Council shall not make a decision or statute in respect of any academic matter referred to in subsection (1) unless it has requested the advice of the Senate or Academic Board and considered any advice given by the Senate or Academic Board.

(4) Without derogating from the duties of the Council under subsection (3), a decision or statute made by the Council is not invalid merely because of a failure of the Council to comply with that subsection.

PART 6
STATUTES AND REGULATIONS

25. Statutes-(1) The Council may make such statutes, not inconsistent with this Act, as may in its opinion be necessary or expedient for the administration of the affairs of the University.

(2) Without limiting the generality of subsection (1), the Council may make statutes with respect to:

- (a) The management, good governance and discipline of the University;
- (b) The imposition, by or on behalf of the Council, of penalties upon staff or students of the University for the contravention of or failure to comply with a statute with respect to a matter referred to in paragraph (a);
- (c) The constitution, functions and procedures of the Executive Committee, Senate, Academic Board, Joint Committee of Senate and Academic Board and other committees established by the Council;
- (d) The creation of institutes, faculties, schools, departments, centres or other entities within the University;
- (e) The designation of members of staff of the University as academic staff, teaching, comparable, general, casual, full-time staff and part-time staff or otherwise;
- (f) The terms and conditions of employment of members of the staff of the University;
- (g) Admission to enrolment in and exclusion from programmes or courses of study;
- (h) The programmes and courses of study provided by the University and procedures for the assessment of student performance in those programmes and courses of study;
- (i) The degrees, diplomas, certificates or other awards that may be granted by the Council and the requirements for those awards;
- (j) The grant of credits, cross credits and exemptions to students of the University in respect of a course

or courses which they have followed and completed either at another institution or through extension or distance education made available for those awards;

(k) The provision of schemes of insurance, superannuation or retirement benefits for, or in respect of, the Vice-Chancellor or members of the staff of the University; and

(l) Any other matter required or permitted by this Act to be provided for by statute.

(3) If the Council makes a statute under subsection (2)(b) providing for the imposition of penalties upon staff or students of the University, the statute shall provide for the Council, if so requested by a member of the staff or a student upon whom a penalty is imposed, to review, or arrange for the review of the imposition of the penalty, the amount of the penalty, or both.

(4) Any review system or procedure established under a statute by the University in order to address a request made under subsection (3) of this section shall be made in accordance with the rules of natural justice.

26. Regulations-(1) A statute may empower the Council, any committee of the Council or any officer of the University to make regulations or rules (not inconsistent with this Act or any statute) providing for the regulation of any matter with respect to which a statute may be made, other than the imposition of penalties under section 25(2)(b).

(2) Any regulation made pursuant to subsection (1) of this section shall have the same force and effect as a statute, and may, from time to time, be amended or repealed by the Council or by the committee of the Council or the officer of the University empowered to make those regulations.

(3) Any committee or officer of the University may also promulgate rules, guidelines or policies which are not expressly empowered by statute but which are not inconsistent with the Act or any statute or regulation and which do not impose any penalty.

PART 7
ASSETS AND FUNDS

27. Public Finance Management Act 2001 - Part 13 of the Public Finance Management Act 2001 shall apply to the University

28. Funds of the University - The funds of the University shall comprise:

- (a) All money received by the University out of money appropriated by the Legislative Assembly for the purposes of the University;
- (b) All money that may be donated, given or contributed to the University or that may be otherwise lawfully payable to the University;
- (c) All money received by the University by way of fees or otherwise in respect of the performance and exercise of any of the functions of the University; and
- (d) All interest and other accumulations of money belonging to the University.

29. Money to be paid into bank-(1) All money received by the University shall, as soon as practicable after it has come into the hands of the proper officer of the University, be paid into such bank account or accounts of the University as the Council may from time to time determine.

(2) No such money shall be withdrawn from the bank except by authority of the Council and by cheques signed by an employee of the University approved by the Council, and countersigned by a member of the Council or by another officer or employee of the University approved by the Council.

(3) In this section, "proper officer" means any person nominated in writing by the Vice-Chancellor or the Vice Chancellor's delegate to handle all monies received by the University from time to time.

30. Loan money to be paid into a separate account - All money borrowed by the Council on behalf of or for the purposes

of the University, other than money borrowed by way of overdraft, shall be paid into a, separate bank account in the name of the loan, and shall not be drawn out of the bank or expended except for the specific purpose for which it was borrowed.

31. Proper accounts to be kept - The Council shall:

- (a) Cause to be kept proper accounts and records of the transactions and affairs of the University in accordance with the requirements of section 103 of the Public Finance Management Act 2001 or any successor to that provision;
- (b) Do all things necessary to ensure that the University maintains adequate control over the assets of, or in the custody of, the University; and
- (c) Ensure that the incurring of liability is under adequate control.

32. Corporate Plan and Budget - At the commencement of this Act, the Vice-Chancellor shall prepare, for approval by Council, a Corporate Plan and Budget in accordance with section 92 of the Public Finance Management Act 2001 to be submitted to the Chief Executive Officer of the Ministry of Finance within 3 months before the end of the next financial year.

33. Performance and Management Report-(1) The Vice Chancellor shall prepare, for approval by Council, a Performance and Management Report and financial statements in accordance with section 104 of the Public Finance Management Act 2001, to be submitted to the Minister and the Minister of Finance within four months of the end of the financial year.

(2) The accounts of the University shall include separate profit and loss accounts, balance sheet and supporting schedules, all of which shall be approved by the Council and signed on behalf of the Council by the Pro-Chancellor or other person designated by the Council.

(3) The accounts of the University shall be audited by the Controller and Chief Auditor of the Government of Samoa or, with the consent of the Controller and Chief Auditor, by another approved auditor.

(4) As soon as the accounts of the University have been audited, the Council shall send a copy of the statement of accounts, together with a copy of any report made by the auditor, to Cabinet.

(5) The Minister shall cause copies of the audited statement of accounts and any report made by the auditor to be laid before the Legislative Assembly within twenty eight (28) days after the receipt of a copy by the Minister if the Assembly is then in session or, if not, within twenty eight (28) days of the next ensuing session.

34. Annual Report-(1) In addition to the Performance and Management Report, the Council shall, as soon as possible after the end of each financial year, make a report to the Minister on the operations of the University during that financial year, including a statement of the extent to which the objectives set out in the Corporate Plan have been achieved.

(2) The Minister shall cause copies of every such report to be laid before the Legislative Assembly within twenty eight (28) days after the receipt of the copy by the Minister if the Assembly is then in session or, if not, within twenty eight (28) days after the commencement of the next ensuing session.

35. Acquisition of land, etc-(1) Notwithstanding any provision in any other enactment, the Land Board is hereby authorised:

- (a) To convey or transfer to the University, for the purposes of this Act, a freehold estate in such Government land as may be agreed upon between the Government and the University, together with any improvements thereon, upon such terms as may be agreed upon between the Government and the University; and

- (b) To grant to the University, for the purposes of this Act, a lease over such Government land as may be agreed upon between the Government and the University, together with any improvements thereon, upon such terms as may be agreed between the Government and the University.
- (2) Notwithstanding the provisions of any other Act, the term of any lease granted under subsection (1)(b) shall expire no later than eighty (80) years after the date on which the lease commences.

36. No liability for income tax - The University's income howsoever acquired shall not be liable to income tax for the purposes of the Income Tax Act 1974.

PART 8 TRANSITIONAL

37. Repeal of the National University of Samoa Act 1997 and Samoa Polytechnic Act 1992/1993-(1) The National University of Samoa Act 1997 and Samoa Polytechnic Act 1992/1993 are repealed.

(2) The Council of the National University of Samoa and Council of the Samoa Polytechnic, as constituted immediately before the repeal of the above Acts, are dissolved.

(3) Subject to the provisions of this Act, the persons holding office as members of the two Councils immediately before the repeal of the Acts cease to hold office as members.

(4) In all other respects, the University is a continuation of the National University of Samoa and the Samoa Polytechnic.

(5) All assets and liabilities of the National University held pursuant to the National University of Samoa Act 1997 and Samoa Polytechnic under the Samoa Polytechnic Act 1992/1993 are transferred to the National University of Samoa.

(6) Any appropriations or other income payable to the National University of Samoa as constituted under the National University of Samoa Act 1997 or the Samoa Polytechnic as constituted under the Samoa Polytechnic Act shall be payable to the University.

38. Chancellor - Notwithstanding anything in this Act, the present Head of State, being the person who immediately before the coming into force of this Act held office as Chancellor ex officio of the National University of Samoa:

- (a) Remains Chancellor of the University; and
- (b) Continues to hold office for a term of five (5) years from the date of coming into force of this Act (unless the current Head of State sooner resigns or ceases to be Head of State).

39. Pro-Chancellor-(1) Notwithstanding anything in this Act, the Minister, being the person who, immediately before the coming into force of this Act, held office as Pro-Chancellor of the National University of Samoa:

- (a) Remains Pro-Chancellor of the University; and
- (b) Continues to hold office for a term of three (3) years from the date of coming into force of this Act (unless the Pro-Chancellor sooner resigns as Pro-Chancellor or ceases to be a Minister).

40. Council Members-(1) Those persons who, immediately before the coming into force of this Act, were members of the Council of the National University of Samoa under the National University of Samoa Act 1997 or of the Samoa Polytechnic Council under the Samoa Polytechnic Act 1992/1993 shall cease to be members of the Council of the University and the Samoa Polytechnic on the coming into force of this Act.

(2) Subsection (1) does not prevent any person who was a member of either Council before the commencement of this Act being reappointed, whether in the person's existing capacity or in another capacity, to the Council of the University under this Act.

41. Interim Council-(1) For the purpose of enabling a Vice-Chancellor to be appointed, an interim Council shall be formed upon the passing of this Act but prior to its commencement by Order of the Head of State.

- (2) The Interim Council shall comprise:

- (a) The Pro-Chancellor;
 - (b) A nominee of the Senate under the National University of Samoa Act 1997 to be nominated by the Senate;
 - (c) A nominee of the Academic Board under the Samoa Polytechnic Act 1992/1993 to be nominated by the Academic Board;
 - (d) The Chief Executive Officer of the Ministry of Education, Sports and Culture;
 - (e) The Vice Chancellor of the University of the South Pacific; and
 - (f) Up to 5 persons appointed by the Head of State acting on the advice of the Minister, having regard to the criteria set out in section 15.
- (3) The interim Council shall meet at such times and at such places as may be determined by the Minister in writing from time to time, provided that the first meeting of the interim Council shall not be held later than one (1) month of this Act being passed by Parliament.
- (4) The procedure of any meeting of the Interim Council shall be governed by such rules as may be determined by the Interim Council from time to time.
- (5) The interim Council shall be responsible for the appointment of a Vice-Chancellor and matters incidental to the bringing into force of this Act, but in all other respects the Councils established under the National University of Samoa Act 1997 and the Samoa Polytechnic Act 1992/1993 shall continue to operate until this Act comes into full force and effect.

42. Membership of the Council-(1) For the purpose only of enabling the Council to be duly constituted on the coming into force of this Act, the Minister may, by written notice, direct that specified persons are to be members of the Council, each such person to represent one of the following interests on the Council until a corresponding member of Council is elected under the provisions of a statute as provided in clause 1(c) of the first schedule:

- (a) The Senate, to be represented by a member of the academic staff who was a member of the Senate immediately before the coming into force of this Act;
 - (b) The Academic Board, to be represented by a member of the academic staff of the Samoa Polytechnic immediately before the coming into force of this Act;
 - (c) The students of the University, to be represented by a person who had been a student of the National University of Samoa or the Samoa Polytechnic within the preceding twelve (12) months and is not a member of the staff of the University; and
 - (d) Those members of the interim council appointed by the Head of State pursuant to section 41(2)(f).
- (2) Any person appointed as a member of the Council under subsection (1) shall not remain a member of the Council under that subsection for a period longer than one (1) year unless that person subsequently has been elected or appointed under the relevant statute.

43. Employment of staff - A person who, immediately before the commencement of this Act, was a member of the staff of the National University of Samoa or the Samoa Polytechnic shall, after that commencement, continue in the employment of the University on the same terms and conditions as those on which the person was employed immediately before that commencement, until the person's employment is terminated or renewed in accordance with those terms and conditions.

44. Vice-Chancellor-(1) Upon the passing of this Act, but prior to its commencement by Order of the Head of State, the interim Council of the University shall appoint a Vice-Chancellor, as provided by section 10 of this Act.

(2) Until this Act comes into force and subject to any decisions of the Interim Council, the Vice Chancellor appointed under the National University of Samoa Act 1997 shall continue to act as the Chief Executive Officer of the University.

45. Corporate Plans-(1) The Council, within one year of its first meeting, shall prepare and submit to the Minister for approval a proposed Corporate Plan for the University which shall relate to the activities of the Institutes, Centre for Samoan Studies and other bodies of the University.

(2) Prior to the approval of a single new corporate plan, the corporate plans and charters of both the former National University of Samoa and the Samoa Polytechnic shall continue in force, subject to such amendments as may be necessary for the purpose of establishing the University and subject to any amendments as may be proposed by Council and approved by the Minister from time to time.

46. Savings of delegations - Any delegation made or taken to have been made by the Council of the National University of Samoa under the National University of Samoa Act 1997 or the Samoa Polytechnic Act 1992/1993 is to be taken as a delegation under this Act by the Council.

47. Statutes and regulations-(1) Any statutes or regulations made or authorised by the Council of the National University of Samoa under the provisions of the National University of Samoa Act 1997 and the Council of the Samoa Polytechnic under the Samoa Polytechnic Act 1992/1993:

- (a) Continue in force as if they had been made by the Council; and
- (b) May be amended and revoked in accordance with the provisions of this Act.

(2) Every action and decision of the Council or the Senate of the National University of Samoa or the Council of the Samoa Polytechnic which was made while the National University of Samoa Act 1997 and Samoa Polytechnic Act 1992/1993 were in force shall be deemed to have been lawfully and properly taken.

SCHEDULE 1
(section 14(2))

COUNCIL
(APPOINTMENTS AND VACATION OF OFFICE)

1. Term of Appointment

- (a) A member of the Council under section 14(1)(f) shall hold office for a term not exceeding one (1) year; and
- (b) A member of the Council under section 14(1)(c), (d), (e), (i) or (j) shall hold office for a term between one (1) and three (3) years, as provided in the appropriate statute or by the person or body appointing that member.
- (c) The appointment or election of members of the Council under section 14(1) (c), (d), (e) and (f) shall be in such manner as may be prescribed by statute.
- (d) A member of the Council appointed or elected under section 14(1)(c), (d), (e) or (f) shall continue to be a member until the successor of that member is appointed, unless the member sooner vacates office under clause 2 of this Schedule.
- (e) A member of Council who holds office under section 14(c), (d), (e), (f), (i) and (j) may be reappointed for a maximum of three terms.

2. Vacation of office-(1) A member of the Council (other than the Vice-Chancellor) may resign as a member by written notice signed by the member and given to the Vice-Chancellor.

(2) A member of the Council who is representing the Senate, Academic Board or academic and teaching staff of the University under section 14(1)(c), (d), or (e) ceases to be a member of the Council if that member ceases to be a member of the staff of the University.

(3) The Council may, by resolution, dismiss a member of the Council (other than the Vice-Chancellor) as a member if the member:

- (a) Is declared bankrupt;
- (b) Is sentenced to a term of imprisonment;
- (c) Is absent without leave from three (3) consecutive meetings of the Council; or
- (d) Without reasonable excuse, fails to comply with clause 2 of schedule 2 (disclosure of interest).

(4) The Vice-Chancellor shall send to a member of the Council dismissed under subclause (3) a letter setting out the terms of the resolution dismissing that member.

3. Casual Vacancies-(1) Subject to subclause (2), if a member of the Council ceases to be a member before the end of the member's term of office, the vacancy shall be filled as soon as practicable by the appointing body, and the new member shall hold office for only the residue of the term for which the vacating member was elected, appointed or co-opted as the case may be, unless that person is subsequently reappointed or elected as provided in clause 1(b) of this schedule.

(2) If a vacancy occurs within six (6) months before the end of the member's term of office, the Council may decide that the vacancy need not be filled under this clause.

4. Proceedings of the Council not affected by vacancies, etc - No act or proceeding of the Council, any committee of the Council or any person acting as a member of the Council shall be invalidated in consequence of there being a vacancy or vacancies in the membership of the Council at the time of that act or proceeding, or if there was some defect in the appointment or qualification of any member of the Council, or a defect in the convening of any meeting of the Council.

SCHEDULE 2**(section 20)****COUNCIL****(MEETING PROCEDURE)**

1. Meetings of Council-(1) The Council shall meet at least twice in each calendar year.

(2) The Pro-Chancellor may call a special meeting of the Council at any time and the Pro-Chancellor shall call a special meeting on the requisition in writing of at least one-third of the members of the Council.

(3) If there is no Pro-Chancellor or if for any reason the Pro-Chancellor is not available, the Deputy Chairperson of the Council has the powers and duties of the Pro-Chancellor under this clause.

(4) At any meeting of the Council, a majority of the members then holding office shall form a quorum.

(5) If neither the Pro-Chancellor nor the Deputy Chairperson of the Council is present at a meeting, the members present shall appoint one of their members to preside.

(6) Every question before a meeting of the Council shall be decided by a majority of the votes of the members present at the meeting and entitled to vote on that question.

(7) At any meeting of the Council the member presiding has a deliberative vote, and, in the case of an equality of votes, has a casting vote.

(8) Except as provided in this section, the Council shall determine its own procedures.

2. Disclosure of interest-(1) A member of the Council or of a committee of the Council who has an interest in a matter being considered or about to be considered by the Council or the committee, as the case may be, shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Council or of the committee.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Council or the committee of the Council and the member shall not, unless the Council decides otherwise:

- (a) Be present at any deliberation of the Council or the committee with respect to that matter; or
- (b) Take part in any decision of the Council or the committee with respect to that matter.

(3) For the purposes of this section, a person has an interest in a matter, if the matter relates to the conditions of service of that person, or of a close relative of that person, or if that person, or a close relative of that person has any other or indirect pecuniary interest in the matter.

3. Circulation of Council Resolutions-(1) At the discretion of the Pro-Chancellor or of the Executive Committee, the Council may do anything that may be done by a resolution passed at a meeting of the Council without a meeting by means of a resolution signed by the number of members of the Council specified in subsection (2).

(2) For the purposes of this section, a resolution must:

- (a) Have been sent or delivered to all current members at their last known address; and
- (b) Not be addressed unless the Council has notified the Vice-Chancellor in writing within two (2) weeks of the resolution being sent or delivered that a member opposes the resolution and that the member wishes it to be discussed at a Council meeting; and
- (c) Be signed by a majority of the current members.

(3) For the purposes of this section, both notice of the resolution and approval or disapproval of it may be transmitted electronically provided adequate steps are taken to acknowledge receipt and authenticity of the documents.

4. Fees and Allowances-(1) Members of the Council shall be paid fees at such rates as the Council determines, subject to any guidelines established by Government for public bodies.

(2) Members of the Council may be reimbursed for any expenses reasonably incurred by them in respect of their attendance as members of the Council.

5. Personal liability – No member of the Council is personally liable for any act done or omitted by the member of the Council in good faith and in pursuance of the functions of the University or of the Council.

**The National University of Samoa Act 2006 is administered in the
Ministry of Education, Sports and Culture**