

## SAMOA

### Arrangement of Provisions

#### PART 1 PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application of this Act to existing disputes
4. Objectives
5. The national interest to be paramount concern
6. This Act to prevail over other procedures and rights of action

#### PART 2 REFERRAL OF SPORTS DISPUTES AND SPORTS LITIGATION

7. Referral of sports litigation
8. Referral of sports disputes
9. The form of a referral
10. Referral of sports dispute shall bar sports litigation

#### PART 3 SAMOA SPORTS DISPUTES TRIBUNAL

11. The Samoa Sports Disputes Tribunal
12. Presiding Member

13. Other tribunal members
14. Convening Tribunal hearings
15. Authority of the presiding member
16. Tribunal proceedings
17. Other general powers of a Tribunal in any proceedings
18. Government may be represented in any proceeding
19. Tribunal decisions
20. Government ministries and agencies to assist Tribunals

#### PART 4 ORDERS TO ASSIST IN THE RESOLUTION OF DISPUTES

21. Orders for the resolution of disputes
22. Orders binding any person causing any dispute
23. Orders to be given full effect
24. Enforcement of orders

#### PART 5 MISCELLANEOUS

25. Offences against this Act
26. Rules of Procedure
27. Regulations

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**2008, No. 13**

**AN ACT to provide for the effective resolution of sports disputes to protect the integrity of sports associations in Samoa and Samoa's international sporting reputation, and for related purposes.** *[21<sup>st</sup> April 2008]*

**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 Sports Disputes Resolution Act 2008.

(2) This Act commences on the date that it is assented to by the Head of State.

**2. Interpretation** - In this Act, unless the context otherwise requires -

“Judge” means any judge of the Supreme Court or District Court of Samoa;

“Ministry” means the Ministry of Justice and Courts Administration;

“sports association” means any incorporated association (or unincorporated association with a Constitution binding its members) representing sportsmen and sportswomen and which provides facilities and events for its members to pursue their sporting endeavours;

“sports dispute” means any dispute within a sports association or between sports associations (whether or not it is the subject of court proceedings), which has been, or is eligible to be, referred to the Tribunal under this Act;

“sports litigation” means any sports dispute which is the subject of court proceedings;

“Tribunal” means the Tribunal established under section 11.

**3. Application of this Act to existing disputes-**(1) This Act shall apply to any sports dispute and any sports litigation that has existed or been instituted prior to the commencement of this Act.

(2) For the purposes of subsection (1) this Act shall have retrospective effect.

**4. Objectives-**(1) The objectives of this Act are to ensure that -

- (a) Samoa's sports associations are properly managed in the interests of their members and for the good of their sport; and
- (b) disputes involving sporting bodies are resolved in a speedy and fair manner so as to avoid disruption to the administration of sports in Samoa, and the effective participation of Samoans in sports and sporting competitions; and
- (c) Samoa's international sporting reputation is not adversely affected by sports disputes which are against the national interest; and
- (d) proceedings may be conducted by a fair and independent tribunal to effectively and finally determine the civil rights and obligations of sports associations, members of sports associations, sports governing bodies and persons aggrieved by the actions of sports associations that are not in the national interest; and
- (e) in making its determinations the Tribunal may exercise a range of powers relating to sports associations under some dispute so as to effectively and finally determine such disputes in the national interest.

**5. The national interest to be paramount concern-**(1) This Act shall be applied to protect the national interest of Samoa in -

- (a) the administration of sports associations in Samoa; and

- (b) the orderly and proper conduct of sporting events in Samoa; and
- (c) the participation of Samoan sportspersons in sporting competition at national, regional and international level; and
- (d) the international reputation of Samoa in all fields of sporting endeavour.

(2) In the application of the dispute resolution procedures under this Act and the orders that may be made by the Tribunal under this Act, the national interest of Samoa shall be the paramount consideration.

**6. This Act to prevail over other procedures and rights of action-**(1) Subject to section 10 (2), this Act shall be applied notwithstanding any other process, procedure, right or cause of action provided for in any other law or rule of procedure.

(2) No recourse may be had to any process or procedure for the enforcement of rights or the commencement and conduct of actions under any other law if a sports dispute or sports litigation is referred to the Tribunal under section 7 or section 8.

## **PART 2 REFERRAL OF SPORTS DISPUTES AND SPORTS LITIGATION**

**7. Referral of sports litigation-**(1) A sports litigation may be referred to the Tribunal on the order of the Supreme Court.

(2) An order made under subsection (1) may be made in accordance with any law dealing with procedures for the alternative resolution of disputes before the Courts.

(3) When an order is made under this section, the proceedings before the Court shall be deemed to be transferred for all purposes for determination by the Tribunal.

(4) In any case referred to the Tribunal under this section, the Chief Justice shall:

- (a) appoint the presiding member in accordance with section 12; and
- (b) appoint two (2) other members from the panel of Tribunal members.

**8. Referral of sports disputes** - A sports dispute may be referred to the Tribunal by the Head of State, acting on the advice of Cabinet, if Cabinet is of the opinion that the national interest is adversely affected by the sports dispute.

- 9. The form of a referral** - A referral under section 8 shall -
- (a) identify the nature of the dispute being referred to a Tribunal; and
  - (b) appoint two (2) members of the Tribunal from the panel of Tribunal members; and
  - (c) identify the parties to the dispute insofar as they are known at the date of the referral.

**10. Referral of sports dispute shall bar sports litigation**-(1) No proceedings relating to any sports dispute may be commenced in any Court after a referral of the sports dispute has been made under this Part.

(2) This section does not prevent any action taken by way of judicial review in relation to a proceeding of the Tribunal.

### **PART 3 SAMOA SPORTS DISPUTES TRIBUNAL**

**11. The Samoa Sports Disputes Tribunal**-(1) The Samoa Sports Disputes Tribunal is hereby established.

(2) When conducting a proceeding in accordance with this Act, the Tribunal shall be comprised of a presiding member and two (2) other members appointed in accordance with this Act.

(3) The Ministry shall provide all necessary administrative support to the Tribunal whenever it is convened under this Act.

**12. Presiding Member**-(1) The Tribunal shall be presided over by a Judge appointed by the Chief Justice.

(2) In the event that the Chief Justice does not have a Judge available to preside at a proceeding, the Chief Justice may appoint a lawyer who is qualified to be a Judge, to be the presiding officer for a proceeding of the Tribunal.

**13. Other tribunal members-**(1) Two (2) members shall be appointed from the panel of Tribunal members for each Tribunal proceeding convened under this Act, by -

- (a) the Head of State, acting on the advice of Cabinet, in the case of any sports dispute referred under section 8; or
- (b) the Chief Justice, in the case of any sports litigation referred by a Court under section 7.

(2) A person may be appointed to the panel of Tribunal members by the Head of State, acting on the advice of Cabinet, if that person is -

- (a) a person of high standing in sports in Samoa and is of good character; or
- (b) a Minister of religion.

(3) Prior to the commencement of a Tribunal proceeding, each member shall be required to state that he or she has -

- (a) no personal interest or involvement in the matter under dispute; and
- (b) no close association with any of the disputing parties.

(4) A Tribunal member shall be entitled to receive a sitting fee and allowance approved by Cabinet.

**14. Convening Tribunal hearings-**(1) The Tribunal shall be convened by the Presiding Member as soon as is necessary for the Tribunal to hear and determine any dispute referred in accordance with this Act.

(2) The Tribunal shall convene at such time and place, and shall conduct its proceedings at such further times, as are determined by the Presiding Member.

**15. Authority of the presiding member-**(1) The presiding member of each Tribunal convened under this Act shall have the final decision in relation to -

- (a) a matter of law that arises during a Tribunal proceeding, or which affects any such proceeding; and
- (b) any matter of procedure arising during or applying to a Tribunal proceeding; and

- (c) the extent of the Tribunal's powers to make orders for the resolution of disputes in accordance with this Act; and
- (d) the application of a principle of natural justice to a Tribunal proceeding; and
- (e) an action taken against any person for contempt, perjury or failure to give evidence or otherwise cooperate with a Tribunal.

**16. Tribunal proceedings-**(1) Subject to this Act, a Tribunal shall have the powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry Act 1964, including -

- (a) protections in accordance with sections 5 and 9 of that Act; and
- (b) powers as provided by section 6 of that Act; and
- (c) a power to hear persons having an interest in a matter which is the subject of a Tribunal proceeding as provided by section 7 of that Act.

(2) A person who, after being summoned or ordered to attend before a Tribunal or to produce any books, papers, writings, or documents to a Tribunal, -

- (a) fails to appear according to the requirements of such a summons; or
- (b) refuses to be sworn or to give evidence or to make answer to such questions as may be put to the person by any member of a Tribunal relating to the subject of the inquiry; or
- (c) fails to produce any such books, papers, writings, or documents -

commits an offence and shall be liable to a fine not exceeding 50 penalty units, or to imprisonment for a term not exceeding six (6) months, or both.

(3) Each Tribunal proceeding shall be conducted so as to accord the principles of natural justice to any party as far as is practicable having regard to the need in any given case to proceed expeditiously to determine any sports dispute in the national interest.

(4) Nothing in subsection (3) shall affect the right of a Tribunal to direct that -

- (a) sworn statements be submitted by persons intending to provide evidence or make submissions to a Tribunal; and
- (b) the right to cross examine any witness shall be restricted only to matters which the Tribunal considers to be of such a highly probative nature that they need to be tested under cross examination; and
- (c) each party, and any interested person permitted to participate in a Tribunal proceeding, prepare and submit written submissions, and that these be provided to other parties and their representatives on terms determined by the Tribunal; and
- (d) any other things be done or orders be complied with to permit the timely determination of a dispute.

(5) The Presiding Member may make final and binding determinations in relation to any matter of procedure, and make orders to that effect.

**17. Other general powers of a Tribunal in any proceedings-**(1) In any Tribunal proceedings, a Tribunal may -

- (a) subject to section 18 (2), make any order as to costs against a party which may be made by the Supreme Court; and
- (b) permit any person with a direct interest in a matter under dispute to become a party in the proceedings; and
- (c) require the strict application of the rules of evidence applying in the Supreme Court, or dispense with any such requirement in the interests of justice.

**18. Government may be represented in any proceeding-**(1) In all Tribunal proceedings, the Attorney General may elect to represent the Government, and in any such case, the Government shall be regarded as a party to the dispute.

(2) No order for the payment of any costs associated with any Tribunal proceedings may be made against the Government.

**19. Tribunal decisions-**(1) Subject to section 15, all decisions of a Tribunal shall be validly made if a majority of members resolve to make the decision.

(2) A decision of a Tribunal shall be final and binding on all parties, and all persons named in any order made by a Tribunal.

**20. Government ministries and agencies to assist Tribunals-**(1) All government ministries and agencies shall cooperate with the Tribunal and shall make available, at no cost, any document or record in its custody which the Tribunal requires, or which may assist in the consideration and determination of a dispute.

(2) This section applies notwithstanding any provision of any law to the contrary.

#### **PART 4 ORDERS TO ASSIST IN THE RESOLUTION OF DISPUTES**

**21. Orders for the resolution of disputes-**(1) For the purposes of resolving any dispute a Tribunal, during the course of any proceeding under this Act, may make the following orders -

- (a) that the name of a sports association be changed;
- (b) that a meeting of members of the sports association be held and that a vote be taken to finally determine any matter under dispute;
- (c) that the Rules of Association or the Constitution of a sports association be amended so as to resolve any matter under dispute in the interests of the majority of its members;
- (d) that certain persons be admitted to membership or removed from membership of a sports association on grounds that are legal and

consistent with the constitutional right of freedom of association;

- (e) that the register of members of a sports association be amended to reflect the true membership of that association, or to give effect to any order made by the Tribunal;
  - (f) that a sports association cease to carry on any operation which is -
    - (i) beyond the scope of its objects; or
    - (ii) against the interests of the majority of its members; or
    - (iii) against the national interest;
  - (g) certain property is property belonging to a sports association and is to be returned to a nominated officer of the association;
  - (h) any contract made by a sports association is validly or invalidly made;
  - (i) that the Registrar of Incorporated Societies take action in accordance with the procedures provided for in section 27 of the Incorporated Societies Ordinance 1952 to wind up a sports association, if the Tribunal is satisfied that -
    - (i) the Association is not being administered in the interests of the majority of its members or the majority of participants in the sport which the association represents; or
    - (ii) it is in the national interest that the association be wound up.
  - (j) any ancillary order to give better effect to the orders which may be made under this section.
- (2) An order made under subsection (1) shall be given full effect notwithstanding that it may be inconsistent with any provision of the Incorporated Societies Ordinance 1952, or any other law applying to or affecting a sporting body.

**22. Orders binding any person causing any dispute** - If a Tribunal finds that any person has unreasonably caused any

sports dispute, or unreasonably delayed the resolution of any dispute, the Tribunal may order that -

- (a) the person be ineligible to hold any office, or any specific office, in any sports association or any specific sports association, for a period determined by the Tribunal; or
- (b) the person pay any costs incurred as a result of or arising from a dispute referred to the Tribunal; or
- (c) the person pay any compensation to recompense any person who has suffered loss or damage, or the loss of any opportunity, as a result of the person's conduct; or
- (d) any other order that the Tribunal considers may resolve the dispute, and prevent that dispute or any similar dispute arising in the future.

**23. Orders to be given full effect-**(1) All government ministries and agencies shall exercise any power vested in them so as to give effect to any order made by the Tribunal.

(2) All persons obliged to implement any order made by a Tribunal shall be deemed to have the lawful authority to do any act necessary to give effect to the order notwithstanding that the power may not exist under any law, or may be contrary to the provision of any other law.

**24. Enforcement of orders** - Any person who is directed by a Tribunal or under a legal obligation to implement an order made by a Tribunal under this Act, and who refuses or fails to implement the order, commits an offence and shall be liable upon conviction to a fine not exceeding 50 penalty units or to a term of imprisonment not exceeding six (6) months, or both.

## **PART 5 MISCELLANEOUS**

**25. Offences against this Act-**(1) A person commits an offence against this Act if he or she -

- (a) refuses or fails to comply with an order made by a Tribunal; or

- (b) refuses to provide evidence, documents or information to a Tribunal when ordered to do so;  
or
  - (c) interferes with or destroys any document required to be provided to a Tribunal or which the person knows to be relevant to any Tribunal proceeding;  
or
  - (d) interferes with or threatens any person who is under a lawful duty to attend or assist a Tribunal proceeding; or
  - (e) attempts to obstruct or pervert the course of any proceeding before a Tribunal; or
  - (f) disrupts any proceeding of a Tribunal, or shows contempt for the Tribunal, in the face of the Tribunal or otherwise; or
  - (g) otherwise fails to cooperate with a Tribunal during the course of its proceedings; or
  - (h) incites, counsels or procures any person to commit an offence against this section -
- and shall be liable upon conviction to a fine not exceeding 20 penalty units, or to imprisonment for a term not exceeding six (6) months, or both.

**26. Rules of Procedure-**(1) In this section -

“Rules Committee” means the Rules Committee established under section 40 of the Judicature Ordinance 1961.

(2) The Head of State may, acting on the advice of Cabinet, and with the concurrence of the Rules Committee, make, alter, or revoke, rules for the purpose of -

- (a) regulating the practice and procedure of the Tribunal;  
and
- (b) fixing scales of fees and costs payable in respect of any Tribunal proceeding; and
- (c) prescribing forms to be used in connection with Tribunal proceedings.

(3) Nothing in this section affects the rights of the Tribunal to determine its own procedures if no rules of procedure, or no applicable rule of procedure, have been made under this section.

**27. Regulations** - The Head of State, acting on the advice of Cabinet, may make regulations for the administration of this Act and the proper conduct of proceedings of the Tribunal.

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**The Sports Disputes Resolution Act 2008 is administered by the  
Ministry of Justice and Courts Administration.**