

SAMOA

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2014, No. 26

AN ACT to regulate plumbers and plumbing trade and services, and for related purposes. [28th October 2014]

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 Plumbers Act 2014.

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

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

“Account” means the Plumbers Association of Samoa Account established and maintained under section 27(2);

“Annual General Meeting” means an Annual General Meeting of the members of the Association held pursuant to section 23;

“approved form” means a form approved under section 45(2);

“Association” means the Plumbers Association of Samoa continued under section 16;

“certificate of registration” means a current certificate issued under section 11;

“Executive Committee” means the Executive Committee of the Association established by section 19;

“member of the Association” means a member who holds a certificate of registration;

“Minister” means the Minister responsible for the Ministry;

“Ministry” means the Ministry responsible for Works;

“plumber”:

(a) means a registered plumber or provisionally or temporarily registered plumber who holds a certificate of registration; but

(b) does not include an unregistered person.

“plumbing works” means any trade, business or undertaking principally concerned with:

(a) plumbing work, including installation alteration, renewal or maintenance carried out in connection with -

(i) the supply of hot and cold water, mechanical pipe-fitting and the fixing of ducts, the covering of roofs (excluding non-metallic tiles and slates) and the fixing of roof gutters, flashings and rainwater piping; or

(ii) heating, cooling and ventilation system and sanitary system (including work incidental to the manufacture and fabrication of such systems); and

(b) includes gas fitting work, including the installation of pipes, fittings or apparatus in or on premises for cooking, domestic hot water supply, heat, industrial uses or motive power by means of air gas, oil gas or similar agencies.

“President” means the President of the Association;

“provisionally registered plumber” means a person who is granted provisional registration under section 7(1)(b);

“Register” means the Register of Plumbers kept and maintained under section 13;

“registered plumber” means a person who is granted a full registration under section 7(1)(a), and includes a person who is granted a temporary registration;

“Secretary” means the Secretary of the Association specified under section 19(c);

“temporary registration” means a temporary registration granted under section 7(1)(c);

“Tribunal” means the Disciplinary Tribunal established by section 32;

“unregistered person” means:

(a) a person whose registration has been revoked or not renewed under this Act (including a person whose registration has been suspended, during the period of suspension); or

(b) a qualified person who has not been registered under this Act.

3. Act binds Government - This Act binds the Government.

PART 2 **REGISTRATION OF PLUMBERS**

Division 1 - General

4. Prohibition-(1) A person must not undertake any kind of plumbing works in Samoa unless the person:

- (a) is registered under this Act and holds a certificate of registration; or
- (b) holds a certificate of exemption under section 5; or
- (c) is the owner or occupier of a premises who carries out minor repairs on a tap or pipes within the premises; or
- (d) is a plumbing apprentice working under the supervision of a registered plumber.

(2) A person who contravenes subsection (1) commits an offence and on conviction is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 12 months, or both.

5. Exemptions-(1) The Executive Committee:

- (a) may determine that a person, group of persons, or persons employed by certain entity, or that certain classes or types of work, be exempted from the provisions of this Act; and
- (b) must consider each case on its merit and make a final decision.

(2) The Secretary must publish the details of an exemption in any newspaper in circulation in Samoa, but the non-publication does not invalidate the exemption.

(3) Exemptions may be applied for, and approved on an annual basis.

(4) A certificate of exemption signed by the President is to be issued upon payment of an exemption fee.

6. Engagement of registered plumbers-(1) Subject to section 4, a person who undertakes plumbing works must engage a registered plumber to carry out the plumbing works.

(2) A provisionally registered plumber must not be engaged under subsection (1) except to carry out plumbing works under the direction and supervision of the registered plumber who is responsible for the plumbing works of the provisionally registered plumber.

(3) A person who contravenes subsection (1) or (2) commits an offence and on conviction is liable to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding two (2) years, or both.

7. Power to grant registration-(1) The Executive Committee may:

- (a) grant the application and the full registration of the applicant if the Committee is satisfied that the applicant fulfils the requirements of this Act; or
- (b) grant the application and the provisional registration of the applicant for up to three (3) years, with conditions, if the Committee is satisfied that the applicant partially fulfils the requirements because the applicant is in the process of satisfying the qualification or experience requirements under section 8 until the requirements are met; or
- (c) grant the application and the temporary registration of the applicant for up to a period prescribed by regulations, with conditions to be imposed, if the Committee is satisfied that the applicant is a non-citizen of Samoa who is a qualified plumber required to work temporarily in Samoa; or
- (d) refuse the application if the Committee is satisfied that the applicant does not meet the qualification for registration under this Act.

(2) The Executive Committee must direct the Secretary to notify the applicant in writing of its decision and reasons, before registering the applicant in the Register pursuant to section 13.

(3) The Secretary may destroy applications for registration after three (3) years from the date of registration.

8. Qualifications - A person is qualified to be registered as a plumber if the person:

- (a) meets the qualification and work experience requirements as prescribed by regulations; and
- (b) satisfies the Executive Committee that he or she is of good character; and

(c) meets any other requirement prescribed by regulations.

9. Application-(1) A person may apply for registration in the approved form.

(2) The application must:

- (a) be accompanied by the application fee; and
- (b) be submitted to the Secretary; and
- (c) be submitted with the following -
 - (i) evidence of relevant qualifications; and
 - (ii) evidence of relevant work experience; and
 - (iii) two (2) written references as to the person's good character; and
 - (iv) any other information required by the Executive Committee.

10. Processing of application-(1) When an application is received, the Secretary must inform the members of the Executive Committee.

(2) The Executive Committee:

- (a) must meet to consider any application; and
- (b) may make a decision on it.

(3) The Executive Committee may require an applicant to personally attend the Committee to be examined or to verify any matter in the application.

(4) The Executive Committee may:

- (a) refuse the application, if the applicant fails to attend the Committee; or
- (b) defer the application until the applicant responds to any matter required by the Committee.

Division 2 - Certificates and Register

11. Certificate of registration - A certificate of registration is to be issued and signed by the President, upon payment of the registration fee.

12. Annual renewals-(1) The Executive Committee may renew a certificate of registration annually on 31 December in each year upon payment of the renewal fee.

(2) The plumber must, at least three (3) months before 31 December in each year, apply in the approved form (submitted to the Secretary) for renewal of the certificate of registration by 31 December.

(3) If the renewal application is made but the Executive Committee has not considered the application by 31 December, the certificate of registration is taken to have been renewed.

13. Register of Plumbers-(1) The Secretary must keep and maintain a Register of Plumbers at the Association's office, and enter into it the following details:

- (a) the names and qualifications of registered persons; and
- (b) any restrictions or conditions of registration; and
- (c) the place and address of the registered person's employment or business; and
- (d) any other detail determined by the Executive Committee.

(2) The Secretary must make available the Register for public inspection at the Association's office during business hours, subject to the payment of inspection fee.

(3) The Secretary must, in a prescribed period, publish a list of all registered persons in the Register, including any restrictions or conditions of registration, and a list of persons deregistered, in any newspaper in circulation in Samoa.

Division 3 - Suspension, Removal and Restoration

14. Suspension and removal-(1) The Executive Committee may suspend or remove the registration of a plumber from the Register if the plumber:

- (a) obtains the registration by fraud or misrepresentation;
or
- (b) is convicted -
 - (i) of an offence under this Act; or

- (ii) in Samoa or another country, of any offence that, in the opinion of the Executive Committee, renders that person unfit to provide plumbing services as a plumber; or
- (c) ceases to hold the qualifications upon which the person was registered; or
- (d) fails to pay any fees determined under section 29 or any penalty imposed under section 34(b); or
- (e) refuses or fails to comply with any rules made by the Executive Committee under this Act.

(2) The plumber must be given an opportunity to be heard orally or in writing, and either in person or through a representative.

(3) The Secretary must enter onto the Register, the Executive Committee's decision and its reasons, before notifying the plumber against whom the decision is made.

15. Restoration of names-(1) The Secretary must restore, to the Register, the name of the plumber who was suspended or removed under section 14 or 34, following the expiration of the suspension period or a successful appeal under section 35.

(2) The plumber whose name has been restored under subsection (1) must pay the restoration fee.

PART 3 **PLUMBERS ASSOCIATION OF SAMOA**

Division 1 - Association

16. Continuation of Association-(1) The Plumbers Association of Samoa incorporated under the Incorporated Societies Ordinance 1952 continues as if it were established by this section as a body corporate with perpetual succession and a common seal.

- (2) The Association may:
- (a) hold and dispose property; and
 - (b) enter into contracts or other arrangements; and
 - (c) sue and be sued; and

- (d) do and suffer any other thing that bodies corporate may lawfully do and suffer.

17. Functions and powers-(1) The functions of the Executive Committee are:

- (a) to consider and decide applications for registration and renewal; and
- (b) to determine the criteria, prescribed qualifications and standards necessary for registration of plumbers; and
- (c) to determine the different levels of membership and fees that apply; and
- (d) to conduct inquiries and investigations into the activities and conduct of plumbers and to make final determinations in that regard; and
- (e) to institute prosecutions for offences committed against this Act, with the consent of the Attorney General; and
- (f) to make demands or claim in connection with the plumbing industry matters on behalf of the Association, on any person or organisation owing monies to the Association; and
- (g) to employ staff to manage the Association's office; and
- (h) to appoint committees or sub-committees for such purposes as it thinks necessary and may delegate any of its powers to those committees or sub-committees; and
- (i) to collect fees determined under section 29; and
- (j) to promote and encourage proper conduct amongst plumbers and to preserve and maintain the integrity and status of the Association; and
- (k) to affiliate the Association with any organisation, association, chamber or body corporate or incorporate, with similar objects to those of the Association to the benefit of the Association; and
- (l) to advise the Ministry and other government Ministries or agencies on matters relating to plumbing trade and plumbing services; and

- (m) to carry out public awareness about plumbing trade and plumbing trade standards; and
- (n) to assist members maintain competency in the plumbing trade and delivery of plumbing services; and
- (o) to protect the interests of the Association and the interests of the public in relation to plumbing trade and the delivery of plumbing services; and
- (p) to carry out other functions conferred on it under this Act or any other enactment.

(2) The Association has all the powers that are necessary or expedient to enable it to carry out its functions under this Act.

18. Membership-(1) A person who is registered under this Act automatically becomes a member of the Association from the date of registration.

(2) The Association may make rules for membership, including admission of other persons as members of the Association.

Division 2 - Executive Committee

19. Establishment - The Executive Committee of the Association is established consisting of the following officers elected from amongst the members at an Annual General Meeting of the Association:

- (a) the President;
- (b) the Vice-President;
- (c) the Secretary;
- (d) the Treasurer;
- (e) five (5) other members.

20. Functions - The Executive Committee has the following functions:

- (a) to act as the executive body of the Association;
- (b) to carry out the functions and powers of the Association;
- (c) to manage the affairs of the Association;
- (d) to carry out other functions given to it under this Act or any other enactment.

21. Tenure of office - A member of the Executive Committee:

- (a) is elected until the date of the next Annual General Meeting; and
- (b) is eligible for re-election.

22. Resignation, removal and replacement-(1) A member of the Executive Committee may:

- (a) resign from office in writing to the Executive Committee; or
- (b) be removed from office by the Association at a Special General Meeting on any of the following grounds -
 - (i) neglect of duty; or
 - (ii) misconduct; or
 - (iii) bankruptcy; or
 - (iv) conviction in Samoa or another country of a serious crime punishable by imprisonment for at least two (2) years.

(2) In subsection (1):

“misconduct” includes any of the following:

- (a) failure to disclose or to take all reasonable steps to avoid any real or apparent conflict of interest in relation to his or her membership of the Executive Committee;
- (b) use of information belonging to or under the control of the Association or the Executive Committee other than for the purpose or functions of the Association or the Executive Committee;
- (c) failure to act with integrity as a member of the Executive Committee;
- (d) misuse of status or authority as a member of the Executive Committee to seek or obtain a benefit for him or her or any other person;
- (e) any other prescribed conduct.

“neglect of duty”, includes:

- (a) failure to attend three (3) consecutive meetings of the Executive Committee without approval of the Committee; or

- (b) neglect of duty arising out of physical or mental disability; or
- (c) leaving Samoa permanently; or
- (d) any other prescribed conduct.

(3) If there is a vacancy in the Executive Committee, the Association may, in a Special General Meeting, elect a member of the Association to fill the vacancy for the unexpired term.

(4) A vacancy in or any irregularity in the appointment of a member of the Executive Committee does not affect any decision made by the Committee.

Division 3 - Meetings

23. Annual General Meetings-(1) An Annual General Meeting:

- (a) is to be held in the first quarter of each calendar year, at a date, time and place as determined by the Executive Committee; and
- (b) is to be notified by the Secretary, at least 10 working days before the nominated meeting date, by notice in any newspaper in circulation in Samoa; and
- (c) is to be convened with a quorum of at least 25% of the members.

(2) At an Annual General Meeting, the Executive Committee must present at the Meeting a report on the affairs of the Association during the preceding year together with a financial report duly audited.

24. Special General Meetings - The Executive Committee may, at any time and whenever required to do so by 10% of the members of the Association, call a Special General Meeting of the Association at a time and place (being within 20 working days after receipt of a written notice) to be determined.

25. Meetings of Executive Committee - The following rules apply to a meeting of the Executive Committee:

- (a) to meet at the time and place it determines;
- (b) four (4) members constitute a quorum;

- (c) the decision is the decision of the majority;
- (d) the chair of the meeting has an ordinary vote and a casting vote;
- (e) it may invite a member or other person to attend its meeting and assist in its deliberations but without voting rights.

26. General provisions-(1) This section applies to:

- (a) any Annual General Meeting; and
 - (b) any Special General Meeting; and
 - (c) any meeting of the Executive Committee.
- (2) A meeting is to be chaired:
- (a) by the President; or
 - (b) if the President is absent, by the Vice-President; or
 - (c) if the President and Vice President are both absent, by a member of the Executive Committee elected by those present.
- (3) Subject to this Act, the Association may regulate procedures for meetings.

Division 4 - Funds and Fees

27. Funds and accounts of Association-(1) The funds of the Association consist of:

- (a) any fees determined under section 29(1) and penalties imposed under section 34(b); and
 - (b) any other money received by or on behalf of the Association.
- (2) The Association must:
- (a) establish and maintain the “Plumbers Association of Samoa Account”, at a bank in Samoa; and
 - (b) ensure that all monies lawfully received by the Executive Committee or by any officer, member or agent of the Association on its behalf, are deposited into the Account.
- (3) Funds for the Account may only be drawn by cheque signed by the Treasurer and countersigned by the Secretary as authorised for that purpose by the Executive Committee.

(4) Despite subsection (2), the Executive Committee may open any other account of the Association if it considers appropriate that a separate account should be kept for any specific purpose or to ensure that the Association's funds are properly managed and invested.

28. Accounting records and audit-(1) The Association must keep proper records and books of accounts and cause its Account and other accounts to be audited annually by an independent external auditor appointed by the Executive Committee.

(2) The Treasurer must provide to every member a copy of the annual accounts together with the auditor's report of the accounts at the Annual General Meeting.

29. Fees-(1) The Executive Committee may, by Notice in the Savali, determine the fees under this Act by resolution at an Annual General Meeting or a Special General Meeting.

(2) In this section, "fees" includes application fee, registration fee, membership fee, renewal fee, Register inspection fee, exemption fee, restoration fee and any other fees as may be determined by the Executive Committee.

(3) The fees are effective from the date they are published in the Savali, but the non-publication does not invalidate the fees.

(4) This section does not apply to fees and charges for plumbing services which are to be prescribed by regulations.

PART 4 **DISCIPLINARY MATTERS**

Division 1 - Handling of Complaints

30. Complaints-(1) In this Part, "plumber" means the plumber who is subject to a complaint for disciplinary proceedings under this Part.

(2) A person may make a written complaint to the Executive Committee against a plumber for improper professional conduct as prescribed by regulations.

(3) The complaint is to be sent to the Secretary.

31. Investigation and prosecution-(1) When a complaint is received, the Executive Committee may appoint one of its members, a member of the Association or any other person to investigate the complaint.

(2) When the investigation is completed, the Executive Committee must immediately serve on the plumber a notice:

- (a) specifying the allegations against the plumber in sufficient detail to enable the plumber to adequately prepare a response to the allegations; and
- (b) specifying the time and place for the inquiry by the Tribunal; and
- (c) informing the plumber that he or she may appear either in person or with legal or other representative; and
- (d) informing the plumber of the right to call witnesses and cross-examine witnesses called against him or her; and
- (e) informing the plumber of the right to have the assistance of an interpreter at the expense of the Association if he or she so desires; and
- (f) informing the plumber that if he or she does not appear at the time and place specified in the notice, then the Tribunal will proceed with determining the matter in his or her absence.

(3) The Executive Committee may appoint a lawyer to present the case against the plumber, or to assist the Executive Committee in the conduct of the disciplinary proceedings.

*Division 2 - Hearing and
determination of complaints*

32. Disciplinary Tribunal-(1) The Disciplinary Tribunal is established comprising the following members:

- (a) a lawyer with at least five (5) years of practice, as chairperson; and
- (b) a member of the Association (other than a member of the Executive Committee); and
- (c) a lay person.

(2) The Executive Committee appoints the members of the Tribunal, subject to terms it considers appropriate.

33. Powers of Tribunal-(1) The Tribunal has the following powers:

- (a) to hear and determine complaints;
- (b) to hear and determine any preliminary matters;
- (c) to adjourn its proceedings and regulate other procedures;
- (d) to reserve its decision which is to be delivered expeditiously and without undue delay;
- (e) to carry out any other powers conferred on it by this Act.

(2) The Tribunal has the same powers and privileges that are conferred on a Commission of Inquiry by the Commissions of Inquiry Act 1964 and witnesses at the disciplinary proceedings have the same protection as they have under that Act.

(3) The Tribunal may suspend the registration of the plumber pending the determination of the complaint.

(4) Following the hearing of the complaint, Tribunal must:

- (a) make a final determination of the complaint; and
- (b) record its decision, including the findings on which the decision is based and reasons for the decision; and
- (c) provide a copy of the decision to the plumber.

(5) If the decision is against a plumber who is a public servant, the Secretary must immediately send a copy of the decision to the Public Service Commission and to the plumber's Chief Executive Officer.

34. Penalties - If the Tribunal finds against a registered plumber for improper professional conduct, the Tribunal may impose one (1) or more of the following penalties:

- (a) reprimand the plumber; or
- (b) impose a penalty not exceeding 50 penalty units, payable to the Association; or
- (c) suspend the registration of the plumber from the Register for a period to be determined by the Executive Committee; or

- (d) remove the registration of the plumber from the Register.

Division 3 - Appeals

35. Appeals-(1) A plumber who is dissatisfied with a decision of the Executive Committee under section 14 or the Tribunal under this Part may, within 15 working days after the decision has been communicated to the plumber or within such further time as the Supreme Court may allow, appeal to the Supreme Court.

(2) The Supreme Court may:

- (a) hear and determine an appeal; and
- (b) confirm, reverse or modify, in accordance with this Act, the appealed decision; and
- (c) make any order on costs.

(3) An appeal does not amount to a stay of the decision appealed unless a Judge of the Supreme Court orders a stay.

PART 5
OFFENCES

36. Fraudulent registration - A person commits an offence who makes a false or misleading statement or produces a false certificate, testimonial or other document relating to an application.

37. Unlawful use of name, logo, etc. - A person, other than a plumber, commits an offence who uses any name, logo, title, addition or description, whether in itself or in the circumstances in which it is used states or implies that the person is a plumber.

38. Persons claiming to be plumbers - A person, including an unregistered person, commits an offence if the person:

- (a) claims to be a plumber; or
- (b) signs a document as if the person is a plumber.

39. Employing unregistered persons - A person commits an offence who employs or engages an unregistered person as if the person were a plumber knowing the person to be an unregistered person.

40. Penalties - A person convicted of an offence under section 36, 37, 38 or 39 is liable to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 12 months.

PART 6 **MISCELLANEOUS**

41. Minister's directive-(1) If the Minister is satisfied that the affairs of the Association has not been conducted properly or it is in the public interest that a directive be given, the Minister may give written directive ("directive") to the Association.

(2) The Executive Committee must ensure that a directive given under subsection (1) is complied with.

(3) If the Minister is satisfied that the directive has not being complied with within a reasonable time, the Minister may dissolve the Executive Committee and appoint an interim Executive Committee, subject to terms and conditions, from amongst other members or from amongst other members and persons who are not members:

(a) to act as the interim Executive Committee for a term determined by the Minister or until the election of a new Executive Committee at an Annual General Meeting; and

(b) to deal with the directive.

(4) The Minister may issue new directives to the interim Executive Committee.

42. Service of notices-(1) Any claim against the Association or appeal under this Act must be served on the Secretary of the Association.

(2) The document may be served personally or by registered post addressed to the Secretary or by other prescribed means.

43. Exemption from personal liability - A member of the Executive Committee or Tribunal or a member of the Association or any other person required to carry out any functions, duties or powers under this Act is not personally liable for carrying out in good faith those functions, duties or powers.

44. Disputes-(1) The Association may make rules to resolve any dispute between any of the following:

- (a) the Association and a member;
- (b) two (2) members;
- (c) a member and a non-member.

(2) If rules are not made under subsection (1), the Association may adopt the provisions under the Alternative Dispute Resolution Act 2007, with necessary modifications, to resolve the dispute.

45. Regulations and forms-(1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to or for the purposes of this Act, and in particular may make the following regulations:

- (a) to prescribe the qualifications and work experience for registration under this Act;
- (b) to prescribe requirements for the use of funds the Plumbers Association Account or other accounts of the Association;
- (c) to prescribe requirements for continuous training for plumbers;
- (d) to regulate temporary registration of plumbers;
- (e) to prescribe fees and charges for plumbing services take into account the level or type of registration of the registered plumber engaged in the plumbing works.

(2) The Executive Committee may approve forms for the purpose of this Act.

46. Transitional and saving-(1) At the commencement of this Act:

- (a) subject to its continuance by section 16 of this Act, the Plumbers Association of Samoa incorporated under the Incorporated Societies Ordinance 1952 is taken to have been wound-up voluntarily under that Ordinance; and
- (b) current members of the Executive Council continues as if they were elected under this Act until the next Annual General Meeting under this Act or unless they are removed before the Annual General Meeting; and
- (c) subject to subsection (2), current members of the old Association are taken to be registered under this Act; and
- (d) assets and liability of the old Association are vest with the Association continued under section 16; and
- (e) reference to old Association in any document is taken to be reference to the new Association; and
- (f) any proceedings against old Association continue against the new Association.

(2) For subsection (1)(c), the members must, within 12 months of the commencement of this Act, apply for registration under this Act.

(3) A member who fails to comply with subsection (2) ceases to be a registered member at the expiry of that 12 month period.

(4) Regulations may be made under section 45 to deal with any other transitional or saving matter.

**The Plumbers Act 2014 is administered by the
Ministry of Works, Transport and Infrastructure.**

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