



SAMOA

PROFESSIONAL ENGINEERS (REGISTRATIONS) ACT 1998

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**PROFESSIONAL ENGINEERS (REGISTRATIONS) ACT
1998**

1998**No. 40**

AN ACT to provide for the registration of professional engineers and for the regulation and control of their profession and for related purposes.

*[Assent date: 24 December 1998]
[Commencement date: 1 April 2000]*

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 Professional Engineers (Registrations) Act 1998.

(2) This Act comes into force upon the publication by the Minister of Works of a notice to that effect in the *Gazette*.

2. Interpretation – In this Act, unless the contrary intention appears:

“Board” means the Professional Engineers Registration Board established under this Act;

“Institution” means the Institution of Professional Engineers of Samoa (or Western Samoa) incorporated under the Incorporated Societies Ordinance 1952;

“Professional Engineering Work” includes work that:

(a) requires the understanding of the scientific principles which form the basis of the engineering disciplines, and the quantitative expression of these principles through analytical mathematics (where appropriate) and requires education in depth in a branch of engineering or in any other related disciplines; or

(b) is essentially mental in nature, and varied, involving competence in a branch of engineering and leadership, judgement, originality and responsibility in the economical solution of

engineering problems and the execution of engineering work; or

(c) involves the application of professional engineering knowledge and experience to activities such as design, planning, applied research and development, education and training, including the organisation and management of these activities and other activities such as production and construction, installation, operation and maintenance of engineered facilities, systems, equipment and associated services; or

(d) relates to engineered facilities, systems, equipment and associated services within Samoa that are planned, designed, studied, organised, managed, developed, supervised, produced, constructed, installed, operated or maintained by persons, within and outside Samoa;

“Register” means the Register of Professional Engineers maintained under section 11;

“registered engineer” means a person registered as a professional engineer under this Act;

“Registrar” means the Registrar appointed under section 4(3).

PART 2

PROFESSIONAL ENGINEERS REGISTRATION BOARD

3. Establishment of the Board – (1) A Professional Engineers Registration Board is established.

(2) The Board is comprised of the Council of the Institution of Professional Engineers.

(3) In order to assist and facilitate its functions and work the Board may co-opt additional members for any specified period, but such period shall not exceed the term of office of the Board.

4. Composition of the Board – (1) The President of the Institution is the Chairperson of the Board.

(2) The Vice-President of the Institution is the Deputy Chairperson of the Board.

(3) The Secretary of the Institution is the Registrar of the Board.

(4) All other members of the Council are ordinary members of the Board.

5. Tenure of office – (1) A member of the Board, unless the member sooner vacates his or her office as a Board member or ceases to hold office as a Council member of the Institution, is to be appointed for a period not exceeding one year, in accordance with the election of the Council of the Institution, and is eligible for reappointment.

(2) A member of the Board may resign from office or may be removed from office by the Institution in special general meeting on the grounds of insolvency, neglect of duty, disability or misconduct proved to the satisfaction of the meeting.

(3) When the position of a member becomes vacant before the expiration of the member's term of office, the vacancy may be filled by the Institution in special general meeting by the election of a Council member to hold office for the unexpired portion of the term.

6. Meetings of the Board – (1) The Chairperson or in the Chairperson's absence the Deputy Chairperson shall preside at all meetings of the Board.

(2) The Board shall meet at such times and places as in the opinion of the Chairperson are necessary for the efficient conduct of its affairs.

(3) If requested to do so by not less than three members, the Chairperson shall call a meeting of the Board as soon as practicable after receiving the request.

(4) At a meeting of the Board:

- (a) four members form a quorum; and
- (b) all matters before the Board are to be decided by a majority of votes of the members present at the meeting; and
- (c) the person presiding has a deliberative vote, and in the event of an equality of votes on a matter, also a casting vote.

(5) The Registrar shall keep minutes of all meetings of the Board.

(6) Subject only to this Act and any regulations, the procedures of the Board are as determined by the Board.

7. Indemnity of Registrar and members of the Board –

No action shall lie against the Registrar or any member of the Board in respect of any act or matter done or omitted to be done in good faith pursuant to their respective functions under this Act or under any regulation.

PART 3

POWERS AND FUNCTIONS OF THE BOARD

8. Functions of the Board – The functions of the Board are:

- (a) the registration of persons qualified to be a registered engineer;
- (b) the provisional registration of persons qualified to be provisionally registered as engineers;
- (c) the deregistration in accordance with this Act of persons registered as registered engineers or as provisionally registered engineers;
- (d) to determine the criteria, qualifications and standards necessary for registration and provisional registration in the various fields of professional engineering;
- (e) to conduct inquiries and investigations into the activities and conduct of registered engineers or provisionally registered engineers and to make final determinations in that regard;
- (f) to institute and conduct prosecutions for offences committed against this Act; and
- (g) to promote and encourage proper conduct amongst engineers and to preserve and maintain the integrity and status of the engineering profession in Samoa.

9. Powers of the Board – (1) The Board has, in addition to any other powers conferred on it by this Act or any other Act, all the powers that are necessary or expedient to enable it to carry out and give full effect to its functions.

(2) Without limiting subsection (1), the Board may:

- (a) appoint committees or sub-committees for such purposes as it thinks necessary and may delegate to such committees or sub-committees any of its powers; and

- (b) institute prosecutions against any person for breach of this Act or any other enactment relating to the practice of engineering; and
- (c) appoint a barrister or solicitor to appear in any Court for or on its behalf; and
- (d) under this Act, prescribe, impose, levy and collect fees or other charges.

10. Fees – The Board shall set the fees payable for applications for registration under this Act and for the issuing and annual renewal of certificates of registration, re-registration, certificates of exemption and for inspection of the Register.

PART 4 QUALIFICATIONS, REGISTRATION AND THE REGISTER

11. Register of Registered Engineers – (1) The Registrar shall keep a Register of Registered Engineers, in which shall be entered the name of each person registered or provisionally registered under this Act, the qualifications by virtue of which the person is so registered, any restrictions or conditions imposed in respect of the registration, the place of his or her practice, his or her postal address and such other particulars in relation thereto as may from time to time be determined by the Board.

(2) The register shall be open, at all reasonable times, for public inspection at the office of the Registrar, subject to the payment of an inspection fee determined by the Board or prescribed by Regulation.

(3) The Registrar shall cause a list of all persons registered under subsection (1), together with their postal address and any restrictions or conditions imposed on their registration, and a list of persons deregistered, to appear in the Gazette or the Savali as follows:

- (a) a list, which shall cancel all previous lists, of person currently registered shall appear annually during the month of March, or at such other times as are determined by the Board; and
- (b) an addendum to the annual list, of person subsequently registered, or deregistered, shall

appear quarterly during the months of June, September and December.

12. Qualifications and registration of engineers – (1) No person shall after the expiration of a period of 3 months following the commencement of this Act practice engineering or undertake professional engineering work of any form nature or kind in Samoa unless the person is registered under this Act and the person holds a current certificate of registration issued under section 15.

(2) A person is qualified to be fully registered a registered engineer if the person:

- (a) meets the criteria and standard of qualification established by the Board pursuant to section 8(d);
- (b) since becoming academically qualified, has had 5 or more years of experience in his or her respective field of engineering to a level considered satisfactory by the Board;
- (c) is a current and financial member of the Institution; and
- (d) satisfies the Board he or she is of good character and reputation.

(3) Despite anything in this section, a person shall not be registered as a registered engineer unless the person is a corporate member of the Institution or the person holds qualifications that would entitle him or her to corporate membership of the Institution.

(4) A person who is academically qualified but does not meet the requirements of subsection (2) or (3) shall be provisionally registered until the person meets the requirements and the maximum period of provisional registration shall in no case exceed 7 years.

(5) A person provisionally registered under this Act may undertake Professional Engineering work in Samoa, subject to the terms and conditions that are imposed by the Board.

13. Applications for registration–(1) A person may, in the form and in the manner determined by the Board, apply to the Board for registration.

(2) A person applying for registration under subsection (1) shall provide to the Registrar:

- (a) the person's full details, including residential address and place of business or employment; and
- (b) evidence of qualifications and work experience; and
- (c) evidence that the person is a current financial member of the Institution; and
- (d) two references as to the person's good character given by senior engineers (whether in Samoa or elsewhere); and
- (e) evidence of such other matters as the Board may require.

(3) Applications for registration are to be accompanied by the application fee determined by the Board or prescribed by Regulation.

14. Board to make a decision – (1) At its first meeting after any application for registration has been submitted to the Registrar, or so soon thereafter as may be practicable, the Board shall consider the application and shall give such direction in respect thereof as it thinks fit.

(2) The Board may require an applicant to attend personally before it to be examined or to verify to it any statement made by the applicant with respect to the application and if the applicant fails to so attend or verify, the Board may refuse the application.

(3) If the Board after due consideration of the application is of the opinion that the applicant fulfils the requirements of this Act and is entitled to be registered either fully or provisionally, or to be registered subject to any restrictions or conditions it shall direct the Registrar accordingly, and the Registrar shall thereupon register the applicant in the manner directed, and notify the applicant of same in writing.

(4) If the Board after due consideration of the application is of the opinion the applicant does not fulfil the requirements of this Act or is not entitled to be registered in any capacity, it shall direct the Registrar accordingly and the Registrar shall in writing notify the applicant of the Board's decision and the reasons for its decision.

(5) All applications for registration shall be held by the Registrar for a period of 3 years after the expiry of registration, after which time the applications may be destroyed.

15. Certificate of registration – (1) A person registered under this Act shall, on the payment of the registration fee, receive a numbered certificate of registration under the hand of the Registrar and the Chairperson.

(2) Unless suspended or cancelled, a certificate issued under subsection (1) is renewed annually on 31 December in each year upon payment of the renewal fee determined by the Board or prescribed by Regulation.

16. Exemption from registration – (1) The Board may determine that a person, group of persons, or persons employed by certain organisations, or that certain classes or types of work, be exempted from the provisions of this Act.

(2) The Board shall consider each case on its merits and make a decision accordingly.

(3) The decision of the Board is final.

(4) The Registrar shall cause details of an exemption to appear in the *Gazette*, or the *Savali* at the same time as the lists appear as provided under section 11.

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

(6) A certificate of exemption under the hand of the Registrar and Chairperson shall be issued upon payment of the fee determined by the Board or prescribed by Regulation.

17. Fraudulent Registration – A person who, in connection with an application under this Act, makes a false or misleading statement or produces a false certificate, testimonial or other document, commits an offence.

Penalty: A fine not exceeding 5 penalty units.

18. Change of Address, etc., to be notified–(1) A person registered under this Act who changes his or her name or the location of his or her place of business or his or her postal address must, within 21 days after the change, notify the Registrar in writing.

(2) A person who contravenes subsection (1) commits an offence.

Penalty: A fine not exceeding 1 penalty unit.

19. De-registration or suspension of registration – The Board may deregister or suspend for such period as it thinks fit, the registration of a person:

- (a) whose registration has been obtained by fraud or misrepresentation; or
- (b) who is convicted, whether in this country or elsewhere, of a crime, or of any offence that, in the opinion of the Board, renders that person unfit to practise professional engineering; or
- (c) who is convicted of an offence under this Act; or
- (d) who ceases to hold the qualifications by virtue of which that person was registered; or
- (e) who fails to pay the prescribed fee; or
- (f) who fails to comply with the Code of Ethics as adopted by the Institution; or
- (g) who is found by the Board to have been guilty of—
 - (i) disgraceful or improper conduct in his or her professional capacity; or
 - (ii) allowing a person other than a registered person to practise in his or her name as a registered engineer; or
 - (iii) directly or indirectly giving or offering to a person any valuable consideration for securing or attempting to secure for himself or herself employment or work as a registered engineer; or
 - (iv) refusing or failing to comply with any rules made by the Board under this Act.

20. Complaints to the Board—(1) If a complaint is made to the Board against a registered engineer for improper professional conduct, or in any case where the Board thinks advisable, the Board may hold an inquiry.

(2) Before holding the Inquiry the Board shall forthwith serve on the person concerned a notice:

- (a) specifying the allegations against the person in sufficient detail to enable the person to adequately prepare any defence he or she may have to the allegations; and
- (b) specifying the time and place at which he or she may appear before the Board to answer the allegations,

but allowing the person concerned reasonable opportunity to prepare any defence he or she may have;and

- (c) informing the person that he or she may appear either personally or by legal counsel or other representative and cross examine any witnesses called against him or her call evidence in his or her defence or address the Board on the allegations;and
- (d) informing the person of his or her right to have the assistance of an interpreter at the expense of the Board if he or she so desires; and
- (e) informing the person if he or she enters no appearance at the time and place specified that the matter will be finally determined by the Board in his or her absence.

(3) The Board may appoint legal counsel or a member of the Institution to present the case against the engineer concerned, or to assist the Board in the conduct of the Inquiry.

(4) The Board may adjourn the Inquiry and may reserve its decision on any matter; but in the latter event it must deliver its decision expeditiously and without undue delay.

(5) For the purposes of the Inquiry, the Board has the same powers and privileges as are conferred on a Commission of Inquiry by the Commissions of Inquiry Act 1964 and witnesses at the Inquiry have the same protection as they have under that Act.

(6) Pending the holding and the making of a final determination at the Inquiry, the Board may suspend the registration of the engineer concerned.

21. Board to record its findings – (1) Following the inquiry, the Board shall:

- (a) make a final determination in respect of the subject of the inquiry; and
- (b) record the findings on which the decision was based and its reasons; and
- (c) if the engineer so requests, provide a copy of the findings and reasons.

(2) If the Board's decision is in respect of an employee of the Public Service, the Registrar shall forthwith notify the Public Service Commission, in writing, of the decision.

22. Appeals – (1) A person who is dissatisfied with a decision of the Board made pursuant to section 19 may, within 21 days after the decision has been communicated to him or her, or within such further time as the Supreme Court may allow, appeal to the Supreme Court against the Board's, decision.

(2) The Supreme Court shall hear the appeal as soon as practicable and may confirm reverse or modify, in accordance with this Act, the decision of the Board.

(3) A decision of the Supreme Court is final.

(4) On any such appeal the Court may make such order as to costs as it shall think fit.

(5) Unless the Supreme Court so directs, no decision of the Board is taken to be stayed by reason only of the fact that an appeal is pending against the decision.

PART 5

REGULATION OF THE PRACTICE OF ENGINEERING

23. Employment of registered engineers – (1) A person, company, statutory body, Government body or organisation that undertakes professional engineering works (including design work, investigations and other works carried out offshore relating to projects within Samoa), where the estimated value of works is in excess of that specified in the regulations, shall employ registered engineers for the engineering management, design and implementation of these works.

(2) A person who fails to employ registered engineers under subsection (1) commits of an offence.

Penalty: A fine not exceeding 1,000 penalty units.

(3) A provisionally registered engineer cannot be engaged directly or indirectly under subsection (1) unless the engineer is under the full time direction of a registered engineer who accepts responsibility for the engineering work of the provisionally registered engineer.

24. Unregistered persons purporting to be registered – A person other than a registered engineer, who uses any name,

style, title, addition or description, whether in itself or in the circumstances in which it is used states or implies that such person is a registered engineer, commits an offence.

Penalty: A fine not exceeding 50 penalty units.

25. Unregistered persons signing documents –A person who is not registered in the Register, but who claims to be registered, or who signs engineering documents as though he or she is registered, commits an offence.

Penalty:A fine not exceeding 50 penalty units.

26. Employing an unregistered person – A person, company, statutory body, Government body or organisation that employs an unregistered person as a registered engineer knowing the person to be unregistered, commits offence.

Penalty:A fine not exceeding 50 penalty units.

PART 6 MISCELLANEOUS

27. Officers of company to be liable –If the person convicted of an offence against this Act is a company, statutory body, government body or other organisation, every director, secretary, manager and every officer concerned in the management of the company, statutory or government body or other organisation commit the same offence, unless he or she proves that the act or omission constituting the offence took place without his or her knowledge or consent.

28. Board to direct prosecutions –The Board may order either generally or in any particular case, proceedings to be taken for the recovery of fees or penalties due under this Act and for the prosecution of any person, company statutory body, Government body or other organisation offending against this Act.

29. Certificate of Registrar to be conclusive – A certificate signed by the Registrar to the effect that a person was or was not registered under this Act at any specified time, or as to any entry in the Register, or as to any act or proceeding of the Board, is, unless the contrary is proved, conclusive evidence of the matters

in the certificate, and is admissible as proof of such matters in any Court in Samoa.

30. Act bind State – This Act binds the State.

31. Right to sue for fees – A person who is registered or authorised under this Act to practise engineering or undertake Professional Engineering Work is entitled to sue in any Court of competent jurisdiction in Samoa for the recovery of any fee or other remuneration for professional services rendered.

32. Regulations – The Head of State, acting on the advice of Cabinet, may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or expedient to be prescribed for carrying out or giving full effect to this Act, and the due administration thereof.

REVISION NOTES 2008 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 – 2019 respectively, under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa;
- (b) Insertion of the commencement date;
- (c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an”;
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”;
 - “shall have” changed to “has”;
 - “is empowered to” changed to “may”;
 - “hereby” and “from time to time” removed;
 - (iii) Offence provisions: “shall be guilty” changed to “commits”;
 - (iv) Removal/replacement of obsolete and archaic terms with plain language:
 - “notwithstanding” changed to “despite”;
 - “in accordance with the provisions of” changed to “under”;
 - “under the hand of” changed to “signed by”

- “furnish” changed to “provide”;
- “where” changed to “if”;
- (v) Numbers in words changed to figures;
- (vi) Removal of superfluous terms:
 - “the generality of”;
 - “and conclusive” after “final”;
- (vii) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate;
- (viii) Section 6(4) paragraphed – new paragraph (c);
- (ix) Part numbering changed to decimal.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Works, Transport and Infrastructure.*
