



SAMOA

SAMOA WATER AUTHORITY ACT 2003

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SAMOA WATER AUTHORITY ACT 2003

2003

No. 13

AN ACT to continue the operations of the Samoa Water Authority under revised legislative provisions aimed at promoting its financial independence and its role as a provider of economically viable services through an accountable management structure.

[Assent and commencement date: 26 June 2003]

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 Samoa Water Authority Act 2003.

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

(3) Notice of commencement of this Act shall be published in Samoan and English in the *Savali* and 1 other newspaper circulating in Samoa.

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

“Authority” means the Water Authority originally established under the repealed Act, and continued under this Act under the name of “Samoa Water Authority”;

“Board” means the Board of Directors of the Authority;

“Chairperson” means the Chairperson of the Board of the Authority;

“customer” means:

(a) a person to whom water or any other service is supplied by the Authority;

(b) the owner and the occupier of any premises to which water or any other service is supplied by the Authority; and

(c) a person who assumes responsibility to the Authority in relation to a communal water supply to a village or community:

PROVIDED THAT in relation to the customers referred to in paragraph (b), the person primarily responsible for the payment of monies due to the Authority is the owner of the premises;

“Government” means the Executive referred to in Part IV of the Constitution;

“Managing Director” means the person holding the office of Managing Director under section 12, and includes any person acting in the office under this Act;

“Minister” means the Minister responsible for public works;

- “officer” includes any employee of the Authority vested with a power or duty in accordance with this Act;
- “other services” includes sewerage disposal, storm water disposal, waste water disposal, trade waste disposal and engineering services, construction services and consultancy services where such services relate to or concern the supply of water or sewerage disposal or storm water disposal or waste water disposal or trade waste disposal;
- “premises” means any piece of land and if there are buildings or structures of any sort erected on that land, and includes those buildings or structures, and a ship or other vessel;
- “repealed Act” means the Water Authority Act 1993/1994;
- “Secretary” means any officer of the Authority performing the functions of Secretary as provided for by section 7;
- “works” or “works of the Authority” includes the whole of the water and associated works controlled and managed by the Authority for any purpose associated with its functions under this Act.

PART 2 SAMOA WATER AUTHORITY

Division 1 Board of Directors

3. The Samoa Water Authority– (1) Subject to the provisions of this section, the entity known as the Water Authority established by the repealed Act continues and is to be known as the Samoa Water Authority.

(2) The Authority shall:

- (a) have perpetual succession and a common seal; and
- (b) be capable of acquiring, holding and disposing of property, including real property; and
- (c) be capable of suing and being sued; and
- (d) be able to do all acts and things lawfully able to be done by bodies corporate.

(3) The Secretary of the Board shall have custody of the common seal, which shall only be affixed to a document pursuant to a resolution of the Board, and which shall be attested to by the

signature of the Chairperson and 1 other Director or in the absence of the Chairperson by 2 directors.

(4) The structuring of the Authority shall comply with any law in force relating to the governance, structure, operations, performance and accountability of public bodies, if such a law is said to apply to the Authority.

4. The Board of Directors – (1) The Board of the Authority comprises of not less than three (3) and not more than five (5) directors who are appointed by the Head of State on the advice of Cabinet in accordance with law and approved Government policy relating to the management of public bodies.

(1A) The directors of the Authority are appointed by the Head of State, acting on the advice of Cabinet, and may be removed from office by Cabinet.

(1B) Cabinet shall appoint 1 of the directors to be Chairperson, and may appoint a Deputy Chairperson.

(1C) No person may be appointed or continue to hold office as a director, while that person is holding a full-time office or is an officer, of the Authority.

(1D) Unless the Board decides otherwise, the Managing Director must attend all Board meetings but shall have no voting rights.

(2) *(repealed by Act 2012, No.15)*

(3) No director is regarded as a representative of a department, agency, organization, group or interest which the director may work for or belong to or be associated with.

(4) & (5) *(repealed by Act 2012, No.15).*

(6) The Board shall exercise the powers of the Authority and shall ensure that its functions are discharged under this Act.

(7) Subject to this section, the directors appointed under subsection (1) shall:

(a) be entitled by written notice delivered to the Chairperson, to nominate an alternate director to act in his place if the director is incapacitated by illness or otherwise cannot attend a meeting of the Board; and

(b) *(repealed by Act 2012, No.15)*

(c) be entitled to resign from office by delivering a written notice to that effect to the Chairperson; and

(d) *(repealed by Act 2012, No.15)*

- (e) devote such time and attention to the affairs of the Authority as may be necessary to ensure the proper supervision and control of the Authority; and
- (f) act in accordance with any obligations imposed by any law applying relating to the governance, structure, operations, performance and accountability of public bodies, if such a law is said to apply to the Authority.

(8) No director of the Authority is personally liable for an act done or omitted to be done in good faith in the exercise of the functions and powers of the Authority, or for any debt lawfully incurred by the Authority.

5. Delegation of Board Powers – (1) The Board may, either generally or as otherwise provided by the instrument of delegation under its common seal, delegate to a person any of its powers and the powers of the Authority under this Act, other than this power of delegation.

(2) A power delegated under subsection (1) is, when exercised by the delegate, deemed to have been exercised by the Authority.

(3) A delegation under this section does not prevent the exercise of any power by the Board.

(4) A delegation under this section is revocable at the will of the Board.

6. Meetings of the Board – (1) Meetings of the Board are to be held at such times and at such places as the Chairperson determines,

PROVIDED THAT the Board shall meet at least twice in each calendar year.

(2) A meeting of the Board shall be presided over by the Chairperson, or in the Chairperson's absence, by a director elected by the Board to chair that meeting.

(3) Despite subsection (1), a meeting of the Board is convened if notice requiring the convening of a meeting is delivered to the Chairperson by not less than 2 directors.

(4) At a meeting of the Board, 50% of Directors present in person constitutes a quorum.

(5) A question before the Board is resolved by a simple majority of directors present and voting.

(6) A resolution signed or assented to by letter, facsimile transmission or email message by each director shall have the same effect as a resolution passed at a meeting of the Board.

(7) The Chairperson at any meeting shall have a casting vote as well as a deliberative vote.

(8) Subject to the provisions of this section, the Board may regulate its proceedings in such manner as it thinks fit.

7. Minutes of Board Meetings – (1) The Authority shall make available the services of 1 of its officers to act in the capacity as Secretary to the Board.

(2) The Board shall ensure that the Secretary maintains accurate minutes of its meetings which shall faithfully record all resolutions of the Board (including a notation of dissent by a director if that director requests that his dissent be recorded).

(3) The minutes of any meeting shall, if signed as confirmed by a person purporting to be the Chairperson of that meeting, be received in evidence in any Court without further proof and is accepted as evidence of the truth of the matter recorded in the minutes.

(4) A copy of the minutes of each meeting is provided to each director not later than 7 days after the completion of the meeting to which the minutes relate.

8. Duties and obligations of directors – (1) A director shall act at all times in a manner so as to:

- (a) advance the interests of the Authority and its customers; and
- (b) comply with the obligations of directors as provided for by the Companies Act 2001 and any law relating to the governance, structure, operations, performance and accountability of public bodies, if such a law is said to apply to the Authority; and
- (c) subject to any law relating to the governance, structure, operations, performance and accountability of public bodies, if such a law is said to apply to the Authority, implement the policies of the Government as indicated by the Minister, where those policies are consistent with

the functions of the Authority as prescribed by this Act; and

- (d) not publicly disclose any matter relevant to the deliberations of the Board unless authorised by the Board to make that disclosure, or unless it is in the public interest that the disclosure be made; and
- (e) ensure that any direct or indirect interest that he or she may have in any matter being considered or about to be considered by the Board is disclosed to the Board.

(2) A disclosure of interest under subsection (1)(e) is recorded in the minutes, and upon making the disclosure the director shall leave the meeting while the matter is under consideration, but his or her presence shall still be counted for the purpose of a quorum for that meeting.

(3) The obligations to maintain confidentiality in subsection (1)(d) and disclosure of interest in subsection (1)(e) also apply to the Managing Director and any other officer of the Authority attending a meeting at the request of the Board.

Division 2

Functions and Powers of the Authority

9. Functions of the Authority – The functions of the Authority are:

- (a) to harvest, treat and reticulate water for supply to the people of Samoa; and
- (b) to set and to meet standards in relation to the supply of and quality of water supplied by the Authority ;and
- (c) to create, operate and maintain systems for the provision of water in Samoa; and
- (d) to preserve the assets previously operated by Government for the provision of water supplies; and
- (e) to provide other services as provided for by section 29;and
- (f) to provide relevant specialist advice and technical services; and

- (g) to progressively achieve economic viability in the provision of water supply services; and
- (h) to encourage and require the responsible use of Samoa's water resources; and
- (i) to be environmentally responsible in the performance of all its activities; and
- (j) to assist in protecting, managing and conserving Samoa's water resources; and
- (k) to identify new sources of water; and
- (l) to assist in the formulation of national policies relating to the use and control of Samoa's water resources; and
- (m) to provide assistance to the Board; and
- (n) to be a responsible and fair employer.

10. Powers of the Authority – (1) The Authority has such powers as are necessary or incidental to the proper performance of its functions.

(2) Without limiting subsection (1), and in addition to any other powers provided for by this Act, the Authority has the following powers:

- (a) to acquire, construct, maintain and operate facilities, plant, equipment and infrastructure associated with the supply of water and the related activities of the Authority;
- (b) to erect works, and install any necessary equipment, machinery and plant for the purpose of treating water and for any other purpose related to the functions of the Authority;
- (c) to obtain the right and to draw water from lakes, streams, waterfalls, rivers, wells, bores and any other source of water in accordance with law;
- (d) to enter upon and break up any soil or surface on any roads or other public land and excavate and sink trenches, and do all other such things as it deems expedient for making, altering, cleansing, repairing, maintaining and improving any pipe, fitting, valve or related object in accordance with law;
- (e) to erect or make use of, on or under any roads, ways or other public or other places and any buildings,

structures, machinery, manholes and other entrances, light and lamp holes, ventilating grids and such other works and things for the efficient sanitary drainage of any locality, or for the supply of water thereto in accordance with law;

- (f) to utilise any natural watercourse for the discharge of overflows from any of its facilities, in accordance with law;
- (g) to purchase or otherwise acquire and maintain such personal and real property, easements and rights of way as the Authority may deem necessary for the furtherance of its functions;
- (h) to enter into any contract for the sale, lease or purchase of property related to the performance of its functions;
- (i) to hire out plant or equipment of the Authority;
- (j) to recover prescribed rates and fees for the supply of water and for any other service provided by the Authority;
- (k) to recover prescribed surcharges on prescribed rates and fees for the supply of water during, any period when it may be reasonable anticipated that the supply of water may be affected by a shortage of supply;
- (l) to ration or differentially allocate the supply of water, particularly during but not exclusively in times of shortage;
- (m) to recover the capital cost of supplying water or other services to particular premises on such terms and conditions as the Authority determines;
- (n) to investigate any failure to comply with this Act, or any act that affects the ability of the Authority to provide services under this Act, and to take such steps as it considers necessary to secure compliance with this Act or to prevent interference with the activities of the Authority;
- (o) to make policies, procedures, standards, codes of practice and practice directions relating to any work intended to form part of, or to be directly or indirectly connected to any works of the Authority;

- (p) to set and to enforce policies, procedures, standards and codes of practice for work done by contractors and tradespersons relating to the supply of water or other services;
- (q) to prescribe certain plumbing and associated hardware as being restricted or prohibited from sale and for the exclusive use of the Authority, where such restriction or prohibition is necessary to ensure that the works or operations of the Authority are not tampered with or otherwise adversely affected;
- (r) to refuse to connect to, or permit to be connected to any works of the Authority, any work which has been carried out in any way which contravenes a policy, procedure, standard or code of practice made or set by the Authority, and to require the disconnection of any such work;
- (s) to prescribe penalties relating to breaches and contraventions referred to in paragraphs (p) and (q) not exceeding 10 penalty units, and the costs to the Authority of any action taken to rectify the breach or contravention;
- (t) to do all things which may be incidental to any of its powers and functions.

11. Government policies and development initiatives – (1)

In the exercise of its functions and powers, the Authority shall have regard to the general policies of the Government as they apply to the activities of the Authority.

(2) Cabinet may, by written direction given to the Board by the Minister, require the Authority to undertake development work specified in the direction.

(3) Any direction given to the Board by the Minister shall comply with the requirement of any law in force relating to the governance, structure, operations, performance and accountability of public bodies, if such a law is said to apply to the Authority.

(4) A direction given under subsection (2) is accompanied by payment, or an undertaking as to payment, to the Authority of all costs associated with that work.

(5) The Government and the Authority shall agree on terms for the repayment (if any) of any monies provided under subsection (4), and in the event that no agreement can be reached the matters of disagreement shall be referred to and determined by the Controller and Auditor General.

(6) In negotiating repayment (if any) under subsection (4), and in making a determination under subsection (5) regard shall be had to the income earning potential and financial viability of the development.

Division 3
Staff of the Authority

12. Managing Director – (1) The Board may, having obtained the approval of Cabinet, appoint a Managing Director of the Authority on terms and conditions approved by the Board.

(1A) The power to appoint a Managing Director under subsection (1) includes the power to discipline, suspend or terminate a Managing Director.

(1B) The Managing Director suspended under this section is entitled to receive a one (1) month's salary only, effective from the date of suspension.

(1C) If the Managing Director is acquitted of the charge for which he or she is suspended and cleared of all allegations or any investigation relating to the subject of his or her suspension, the Managing Director must be reinstated without loss of any benefit or status and be paid the salary he or she lost as a result of any suspension from duty.

(1D) The Managing Director is not entitled to his or her salary if, as a result of the investigation relating to the subject of his or her suspension, he or she is not reinstated.

(2) If the Authority is structured under law as a company with shareholding held for the Government by Ministers, the approval of Cabinet required under subsection (1) is sought from the Ministers holding the shares in the Authority.

(3) The Managing Director shall, where reasonably possible, be a qualified and experienced civil or mechanical engineer, and shall be the Chief Executive Officer of the Authority.

(4) The Managing Director is responsible to the Board for the effective control and management of the Authority.

(5) The Managing Director shall attend every meeting of the Authority unless a matter concerning his or her employment is under discussion and the Board directs the Managing Director to leave the meeting.

(6) At the expiration of the Managing Director's term of appointment, the Director is eligible for re-appointment.

(7) All remuneration and other entitlements payable to the Managing Director are to be paid out of the General Account of the Authority.

(8) The Managing Director shall not engage in any business related to the functions of the Authority whilst holding the position of Managing Director.

(9) The Board may appoint an appropriate person to act in the position of Acting Managing Director, and an Acting Managing Director may exercise the powers and rights of the Managing Director under this Act until the Managing Director is appointed or resumes office.

13. Other staff – (1) The Authority may employ other staff sufficient and appropriate for the efficient performance of its functions.

(2) The Board shall approve policies and procedures, not inconsistent with this Act, relating to the employment of staff of the Authority and such policies and procedures shall constitute the conditions of employment of the staff of the Authority.

(3) The policies and procedures referred to in subsection (2) shall relate to the following:

- (a) the appointment, suspension and termination of appointment of staff, including retirement and retrenchment;
- (b) job descriptions, job classifications, employer and employee duties, privileges, responsibilities and performance criteria;
- (c) the remuneration and conditions of employment of staff;
- (d) disciplinary offences and procedures;
- (e) the imposition of penalties for disciplinary breaches;
- (f) matters guaranteeing the equal opportunity and treatment all of employees;
- (g) matters relating to the welfare of staff;

(h) issues relating to safe work practices and the assurance of a safe and healthy working environment.

(4) An officer or an employee suspended under this section is entitled to receive one (1) month's salary only, from the effective date of the suspension.

(5) If an officer or an employee is acquitted of the charge for which he or she is suspended and cleared of all allegations or any investigation relating to the subject of his or her suspension, the staff member must be reinstated without loss of any benefit or status and be paid the salary he or she lost as a result of any suspension from duty.

(6) An officer or employee is not entitled to his or her salary if, as a result of the investigation relating to the subject of his or her suspension, he or she is not reinstated.

Division 4
Assets of the Authority

14. Property held by the Authority– (1) All real and personal property held by or owned by the Authority immediately prior to the commencement of this Act remains the property of the Authority in the form in which it was held by or owned by the Authority prior to the commencement of this Act until the Board disposes of or otherwise deals with such property according to law.

(2) Nothing in this section prevents the transfer by the Government of additional property to the Authority, or the completion of formalities relating to the transfer of property as provided for by the repealed Act.

(3) All waterworks constructed by the Authority under this Act, and previously constructed by the Authority under the repealed Act, is or remains vested in the Authority.

15. Transfer of assets to the Authority– (1) The transfer of any property to the Authority by the Government may be effected by the Head of State acting upon the advice of Cabinet, by Order in accordance with law.

(2) Nothing in the Lands, Surveys and Environment Act 1989, save for Part VIII, applies to the transfer of any land or interest in land pursuant to this Act.

(3) The use or occupation of any land by the Authority in connection with the carrying out of any of the provisions of this Act is taken to be use or occupation for a public purpose.

(4) An interest in land acquired by the Government under the Taking of Land Act 1964 for the purposes of this Act may be vested in the Authority.

16. Liabilities of the Authority due to Government – Any liability due to the Government by the Authority under the repealed Act shall remain due and payable to the Government to the extent that it has not been satisfied as at the commencement of this Act.

Division 5

Finances, Accounting and Reporting

17. Application of laws relating to public bodies – This Division is subject to any other legal requirements applying to the Authority in any law relating to the governance, structure, operations, performance and accountability of public bodies, if such a law is said to apply to the Authority.

18. Accounts of the Authority– (1) The Authority shall operate a General Account and such other accounts as the Board considers desirable for the effective operation and financial management of the Authority.

(2) All monies received by the Authority are paid into the General Account.

(3) All monies held by the Authority in other accounts at the commencement of this Act shall be paid into the General Account if the Board resolves to discontinue any of those accounts.

(4) The Authority may establish and maintain within the General Account such special purpose sub-accounts as the Board thinks fit.

19. Corporate plan and budget of the Authority – (1) The Authority shall prepare a corporate plan and arrange for the plan's approval in accordance with the provisions of the Public Bodies (Performance and Accountability) Act 2001.

(2) Prior to the commencement of each financial year the Authority shall prepare an annual budget for the Authority and arrange for its approval by the Minister for Public Enterprises and such budget is consistent with the corporate plan as approved in accordance with subsection (1).

(3) The annual budget under subsection (2) shall provide for:

- (a) the proposed expenditure of the Authority for the next financial year; and
- (b) the anticipated revenue of the Authority; and
- (c) the amount required to fund any development work required by the Government to be undertaken by the Authority; and
- (d) such other details as the Board may determine or which may be required by any law relating to the governance, structure, operations, performance and accountability of public bodies, if such a law is said to apply to the Authority.

(4) Based upon the corporate plan and annual budget, the Board shall enter into a performance agreement with the Minister for Public Enterprises for the financial year to which the corporate plan and annual budget applies and shall report to the Minister quarterly against the performance agreement.

(5) The expenditure of the Authority shall not exceed the total provided for in the annual budget but the Board shall consider and approve any necessary revised budget to take into account:

- (a) any additional revenues appropriated for the Authority by the Government; and
- (b) any other additional revenues of the Authority, including any funds made available from donor agencies; and
- (c) any additional expenditures arising from unforeseen circumstances.

(6) A change to the corporate plan and annual budget arising from matters referred to in subsection (5) is submitted and approved under the Public Bodies (Performance and Accountability) Act 2001 and is incorporated into the performance agreement referred to in subsection (4).

20. Accounts, Audit and Annual Report— (1) The Authority shall at all times keep full and correct records of

accounts of money received and expended by the Authority and of all transactions, assets, liabilities and funds.

(2) Within 4 months after the end of each financial year the Board shall ensure that the following accounts are prepared to show fully the financial position of the Authority and the financial results of its operations during that year:

- (a) a balance sheet; and
- (b) income and expenditure accounts; and
- (c) cash flow statement; and
- (d) performance compared to the corporate plan and performance agreement; and
- (e) such other accounts and records as the Board directs.

(3) All documents prepared under subsection (2) are audited by the Controller and Auditor General who for that purpose shall have the same powers as he or she has in respect of public money.

(4) Within 2 weeks of the completion of the audit referred to in subsection (3), the Board shall cause to be delivered to the Minister for Public Enterprises an Annual Report of the activities of the Authority during the preceding financial year together with a copy of the accounts and the auditor's report.

(5) The Minister for Public Enterprises shall cause the Annual Report and accounts to be tabled in the Parliament as soon as practicable.

PART 3 OPERATIONS OF THE AUTHORITY

Division 1 The Supply of Water

21. Rights of access to land etc.– (1) Subject to this section, an officer or agent of the Authority may be authorised by the Managing Director to enter and cross any land at any time to carry out the following:

- (a) inspect any pipe or installation used by the Authority or otherwise used in connection with the supply of water or any other service provided by the Authority;
- (b) construct, maintain, repair, reconstruct or remove any works of the Authority;

- (c) assess the quality of any water being supplied to a consumer;
- (d) disconnect the supply of water or of any other service provided by the Authority—
 - (i) if the supply of water is no longer required by a consumer;
 - (ii) if the continuation of the water supply or other service is considered by the Managing Director to be hazardous to life or property; or
 - (iii) for any other reason authorised by this Act;
- (e) make evaluation for development purposes;
- (f) clear any drain or watercourse or to clear, lop, cut down, dig up or remove any tree or vegetation that does or may pollute or interfere with any water source or any service or any works of the Authority;
- (g) take levels or make any survey or inspection;
- (h) do any other thing in pursuance of a function of the Authority for which access to the land is necessary.

(2) Subject to subsection (5), prior to the Authority exercising any right or power, under this Act or any other law to enter customary or freehold or public land, the Authority is required to enter into discussion with all persons having title to such land, with a view to obtaining agreement as to the manner in which the Authority may exercise such rights and powers.

(3) An agreement made under subsection (2) is recorded in writing and a copy provided to all parties.

(4) An agreement under subsection (2) may be general in nature or may concern a specific situation or set of circumstances and may be varied from time to time.

(5) If the Authority is required by sudden emergency to exercise its rights and powers of entry under this Act or any other law the Authority may do so despite the provisions of subsection (2).

(6) If no agreement is reached under subsection (2), the Authority may exercise its rights and powers in accordance with the provisions of this Act.

(7) Prior to exercising a power of entry under subsection (1), notice in writing in Samoan and English of that intention and of its purpose is given to the owner and occupier of the land at least 7 days prior to the date on which the entry is to be made,

PROVIDED THAT notice is not required to be given if:

- (a) reasonable attempts have been made to locate the owner or occupier and the person cannot be found; or
- (b) entry is necessitated by sudden emergency.

(8) Notice under subsection (7) may be addressed to the owner or the occupier, and it is sufficient for the notice to be sent to a postal address or by leaving the notice on the land with a person or in a place or position such that the notice is calculated, and is likely, to come to the attention of the owner or occupier, as the case may be.

(9) For the purposes of this Part, notice is taken to have been given to the owner or occupier, as the case may be, 3 days after such notice has been served in the manner provided in subsection (8).

(10) When exercising any power of entry under this section, the officer shall do as little damage as is possible, and shall restore the surface of the ground and otherwise repair any damage as far as is practicable.

22. Laying pipes on private land– (1) Before the Authority lays any pipes on or under private land, written notice in Samoan and English, including a general description of the proposed works, is given to the owner and occupier of the land.

(2) A notice given under subsection (1) may be given in the manner provided in section 21(8) and gives the owner and occupier the right to lodge a written objection to the proposed works within 1 month of the date of the notice being given to the owner and occupier.

(3) If no objection is lodged within the prescribed time the Authority may proceed with the work.

(4) An objection is lodged with the Managing Director and referred to the Minister.

(5) Both the Authority and the objector shall be given an opportunity to present their case to the Minister.

(6) After due consideration of the objection, the Minister shall decide whether the proposal shall be put into effect with or

without alteration, and shall inform the objector and the Managing Director in writing accordingly.

(7) If the Minister's decision is favourable to the Authority it may proceed with its proposal in accordance with the decision of the Minister.

(8) Subject to subsections (1) to (7), the Authority may cause to be placed on or under any land such pipes as it considers necessary for the supply of water,

PROVIDED THAT the Authority shall not place any pipe other than an underground pipe unless the permission in writing of the owner and occupier of the land has been first obtained.

(9) In laying any pipes, the Authority shall do as little damage as possible and shall restore the surface of the ground and otherwise repair any damage done as far as is practicable.

(10) An owner and occupier of land who suffers loss by reason of the laying of any pipes on such land is entitled to compensation from the Authority for the amount of such loss.

(11) The procedure for the assessment of the amount of the loss referred to in subsection (10) shall be as provided by Part III of the Taking of Land Act 1964.

(12) For the purpose of removal of doubt, the Authority's rights and powers under this section are subject to section 21(2),(3),(4), (5) and (6).

23. Authority may supply water– (1) An owner or occupier of premises in an area where the Authority is able to supply water may apply in writing to the Authority for water to be supplied to the premises.

(2) The Authority may agree to supply water to any premises and may impose conditions upon such a supply, including conditions relating to the payment of costs associated with the supply.

(3) The Authority shall use its best endeavours to fulfil any application made under subsection (1) but is under no:

- (a) obligation to supply water to any premises; or
- (b) liability for its refusal or failure to do so.

24. Installation of pipes and appliances by customers – (1) The Authority may agree to provide a service connection to any premises on a road boundary in the proximity of the premises or

at such other location as the Authority deems, in its absolute discretion, most convenient for the connection of the supply.

(2) If a service connection has been provided under subsection (1), the Authority shall issue a written permit to the owner or occupier to connect those premises to the water supply through the service connection.

(3) A connection made by a consumer under subsection (2) is to be done by the customer at his expense, subject to any conditions, specifications or requirements made by the Authority.

25. Customers to keep pipes and appliances in good repair – (1) The owner or occupier of any premises being supplied with water from any water service or connection controlled by the Authority shall at all times keep the pipes, taps, stopcocks and any appliances in good repair and in such condition and state so as to prevent water running to waste.

(2) A person who breaches subsection (1) is liable to have the water supply disconnected.

26. Inspection of appliances – (1) An officer or agent of the Authority authorised by the Managing Director may enter upon any premises for the purpose of determining whether water is being wasted or misused or to determine whether a condition, specification or requirement under sections 24 and 25 has been complied with, and if the officer or agent is refused admission to the premises or is obstructed in such examination, the Authority may disconnect the water supply to the premises.

(2) For the purpose of removal of doubt, the Authority's rights and powers under this section are subject to section 21 (2), (3), (4), (5) and (6).

27. Powers of the Director-General of Health – (1) The Director General of Health may set standards and impose requirements relating to the disinfection or other treatment of pipes and equipment for the supply of water and may direct either the Authority or the owner or occupier of any premises supplied with water to meet the standards and comply with the requirements, as the case may be.

(2) The Authority and the owner and occupier of any premises being supplied with water shall meet the standards and

comply with the requirements which the Director-General of Health may impose.

(3) If the standards and requirements under subsection (1) are not complied with, the Authority may disconnect the water supply to any affected premises.

28 Notice to be given of removal of pipes – (1) A person may remove any pipe or appliance belonging to that person which is connected to any water service connection under the control of the Authority after giving the Authority 14 days' notice in writing of the intention so to remove and of the time and date on which the pipes or appliances are to be removed.

(2) A person removing pipes or appliances is liable to the Authority for any damage done to the works of the Authority occasioned by the removal and for the value of any water lost or wasted as a result of such removal.

Division 2

Provision of Other Services

29. Other Services – (1) The Head of State, acting on the advice of Cabinet, may make regulations empowering the Authority to provide other services, or for the Authority to regulate matters relating to other services.

(2) Regulations made under this section may include the creation of offences and the imposition of penalties of up to 20 penalty units or imprisonment for a term of up to 6 months or both.

Division 3

Customers of the Authority

30. Conditions of Supply– (1) At the time of connecting premises to the works of the Authority, conditions of supply are provided by the Authority to the customer and such conditions shall form the basis of the contractual relationship between the Authority and the customer.

(2) Conditions of supply may be amended by the Authority and may be applied to any existing customer by providing the customer with written notice of the amendments in Samoan and English.

(3) For the purposes of subsection (2), it is sufficient notice to an existing customer of the amended conditions of service if the notice, in Samoan and English, is published on 3 separate days in at least 2 newspapers circulating throughout Samoa and announced on 3 separate days on a radio station and television station broadcasting throughout Samoa.

(4) Without limiting subsection (1), the conditions of supply shall take into account the obligations of:

- (a) each customer to—
 - (i) be aware of his or her liability to the Authority and to promptly pay for services provided by the Authority;
 - (ii) protect the works of the Authority and all pipes and appliances;
 - (iii) provide correct and up to date information to the Authority, including changes of ownership and occupation of the premises;
 - (iv) promptly advise the Authority of any defects in the works of the Authority and to minimise any damage or consequence of such defects;
 - (v) permit officers of the Authority to have access to the customer's premises in order to carry out the Authority's work in accordance with this Act; and
- (b) the Authority to—
 - (i) avoid the imposition of unexpected charges or sudden price increases;
 - (ii) provide timely response to reports of defects in the works of the Authority affecting the supply to customers and posing risks to life or property; and
 - (iii) to provide as efficient and affordable a service as is possible to as many areas as are possible.

(5) The conditions of service may specify procedures for resolving disputes between the Authority and its customers.

31. Communal supplies— (1) The Authority may determine and apply conditions of service applying to the provision of communal water supplies to villages and communities.

(2) The Authority may require that arrangements relating to the payment for communal water supplies be made to its satisfaction before such a supply is connected, reconnected or continued.

(3) Failure to make payments relating to the provision of a communal water supply for a period of 3 months from the date on which the payment is due entitles the Authority to limit or discontinue the supply.

(4) If a communal water supply is limited or discontinued under subsection (3) and a person interferes or attempts to interfere with any works of the Authority without the approval of the Authority then:

- (a) that person commits an offence and upon conviction is liable to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 3 months, or to both; and
- (b) the Authority may decline to continue the communal supply until it is satisfied that satisfactory arrangements have been made to ensure prompt payment of charges and protection of the works of the Authority in the future.

32 Power to discontinue or ration supplies– (1) In addition to any other powers of the Authority under this Act, the Authority may, if necessary without notice, discontinue, ration or limit any supply or other service provided by it if it considers it necessary or desirable to do so:

- (a) by reason of any accident or emergency; or
- (b) to facilitate any work done or to be done by the Authority; or
- (c) to avoid or limit pollution; or
- (d) for the conservation of water.

(2) Subject to subsection (1), as soon as possible after it has taken any decision to act under subsection (1), the Authority shall, either:

- (a) by 3 or more radio or television announcements; or
- (b) by personal notice given to affected customers, – give notice in Samoan and English of its action and indicate the likely duration of the discontinuance or rationing.

33. No claim for failure of or interruption to supply – (1)

The Authority is not liable to a person for any loss or damage suffered by that person, and no person shall have a claim against the Authority, where there is an increase, diminution or discontinuance in the supply of water or any other service provided by the Authority, or where there is a diminution in the quality of water:

- (a) caused by accident, drought or other natural phenomenon or other unavoidable cause;
- (b) caused by the Authority purporting to act in good faith in the proper exercise of its functions; or
- (c) resulting from the exercise by the Authority of a power under this Act.

(2) If the Authority intends to do any act which is likely to increase, diminish or discontinue the supply of water or any other service, or to diminish the quality of water supplied to any premises, the Authority shall, if practicable, give 24 hours' notice in Samoan and English of such intention to the consumers likely to be affected.

(3) For the purpose of subsection (2), it is sufficient notice to consumers if the notice, in Samoan and English, is published at least once in at least 2 newspapers circulating throughout Samoa and announced at least once on a radio station and television station broadcasting throughout Samoa.

Division 4
Rates and Fees

34. Rates, fees and charges – (1) Rates, fees and charges to be paid in respect of any service and matter associated with the provision of services under this Act, are to be prescribed in regulations.

(2) Any rates, fees and charges prescribed in regulations under section 48 must be published in the Savali and any other newspaper circulating widely in Samoa.

(3) Rates, fees and charges are set, as far as is practicable, in order that the Authority may derive sufficient revenues to be as profitable and efficient as comparable businesses that are not owned by the Government.

(4) The conditions of supply or Regulations made under this Act may make provision for matters relating to the metering of water supplies.

(5) Unless otherwise proposed by the Authority, all rates, fees and charges are payable on a monthly basis where the rate, fee or charge relates to a continuing service and for other charges shall provide for them to be payable within 30 days from when they are incurred.

(6) Despite subsections (1) to (5), rates, fees and charges may be prescribed for any service provided by the Authority that is not otherwise provided for (including a charge relating to specialist advice and technical services provided by the Authority and the hire of its plan and equipment).

35. Obligation to pay rates, fees and charges – (1) The owners and occupiers of all premises to which services are provided by the Authority are jointly and severally liable to pay any rates, fees and charges due to the Authority in respect of those services.

(2) As soon as any rates, fees or charges and any interest payable to the Authority become due and payable in respect of any service provided by the Authority, they shall become a charge on the premises in respect of which they are payable.

(3) If any rates, fees or charges in respect of premises or any interest payable to the Authority remain unpaid for a period of 60 days after becoming due for payment, the Managing Director may lodge a notice with the Registrar of Titles describing the premises in respect of which they are payable, and thereupon the Registrar of Lands shall register that notice of charge against the title to the premises without fee.

(4) After registration of a notice of charge under subsection (3) that charge shall rank before any charge, mortgage, lien, lease transfer or any other interest subsequently registered.

(5) Upon payment in full of all outstanding amounts to which a registered charge relates, the Managing Director shall lodge with the Registrar of Lands a notice of release of charge and the Registrar shall register the release of that charge.

(6) This section does not apply to customary land.

36. Interest on rates, fees and charges – (1) If any rates, fees and charges remain unpaid at the expiration of 30 days from

the date on which they fall due the Authority may charge interest at a rate determined by regulation on the amount of the unpaid sum from the date they fall due until the date of payment.

(2) Interest payable under this section is to be charged at simple interest rate and added to the amount of rates, fees and charges due to the Authority by the defaulting customer.

37. Discounts on rates, fees and charges – The Authority may fix and allow discounts for prompt payment of rates, fees and charges.

38. Disconnecting supply of water– (1) If any rates, fees or charges in respect of any premises remain unpaid for a period of 60 days after becoming due for payment the Managing Director may limit or disconnect the supply of water to the premises without notice.

(2) If the supply of water is limited or disconnected under subsection (1), the supply shall not be resumed unless the owner or occupier of the premises applies for resumption and pays all costs associated with the limitation, disconnection or resumption of the supply and all outstanding amounts.

39. Rebate of rates on failure of supply – In the event of complete cessation of supply to any premises for a period of at least 1 month for any reason other than the cutting off of the supply for any reason provided for by this Act, the liability of a person to pay rates in respect of the supply of water is reduced proportionately for each complete month of such cessation, **PROVIDED THAT** the Authority may refuse to grant a rebate under this section where the interruption to the supply has not been brought to its attention at all, or after a time when remedial action could have avoided a continuance of the interruption.

40. Recovery of debts – The Authority may commence legal action to recover any rates, fees or charges that have fallen due for payment and which remain unpaid, even if no demand for payment has been made or delivered to the owner or occupier liable to make such payment.

41. Offences – (1) It is an offence for any person:

- (a) to obstruct or attempt to obstruct any officer or employee or agent of the Authority in the exercise of any power or duty under this Act; or
- (b) to negligently or wilfully destroy, injure, tamper with or interfere with any part of the works of the Authority; or
- (c) to sell or offer for sale any plumbing or associated hardware which has been prescribed under section 10(2)(q), or to use such plumbing or associated hardware in any manner inconsistent with the requirements made by the Authority under that provision; or
- (d) to fail to comply with any requirement or obligation prescribed by this Act; or
- (e) to fail to comply with any direction or requirement lawfully given or imposed under a power given by this Act.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding 100 penalty units or to a term of imprisonment not exceeding 6 months, or both.

(3) A person who breaches any provision of a policy, procedure, standard or code of practice lawfully made or applying under this Act commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

42. Authority may prosecute – (1) The Authority may institute and conduct prosecutions in respect of any offence alleged to have been committed against this Act, or any Regulation, by-law, policy, procedure, standard, direction, requirement or code of practice made under this Act.

(2) Upon securing a conviction in relation to a prosecution taken under subsection (1), the Authority is entitled to receive any fine imposed on the offender and is entitled to an award of costs incurred by the Authority in the conduct of the prosecution.

PART 4 MISCELLANEOUS

43. No liability for escape of water – The Authority is not liable for, and no person shall have a claim against the Authority

in respect of, any loss or damage arising from the escape of water from the works of the Authority.

44. Protection of persons acting under authority – An officer or employee or agent of the Authority shall not be under any civil liability arising from his performance in good faith of any power or duty provided for by this Act.

45. Taxation – (1) The Authority is not liable for income tax or Value Added Goods and Services Tax.

(2) The provision of any services by the Authority under this Act relating to the supply of water or the provision of sewerage and waste water services is zero rated under the Value Added Goods and Services Tax.

46. Act to bind the Government – This Act binds the Government.

47. Policies, Procedures, Standards and Codes of Practice – (1) Policies, Procedures, Standards and Codes of Practice made under this Act are made by resolution of the Board.

(2) Policies, Procedures, Standards and Codes of Practice come into force upon notice to that effect in Samoan and English being published in the *Savali* and 1 other newspaper circulating in Samoa.

48. Regulations – (1) The Head of State, acting on the advice of Cabinet, may, make regulations as are necessary for the purpose of giving full effect to the provisions of this Act.

(2) Without limiting subsection (1), regulations may be made for the following purposes:

- (a) prescribing forms for applications, permits, notices, approvals or any other matter under this Act;
- (b) prescribing water quality standards and the standard of any work associated with the supply of water and related services;
- (c) vesting in the Authority the responsibility for the provisions of any service provided for by this Act or related to any service to be provided by the Authority under this Act;

- (d) ensuring the conservation of Samoa's water resources;
 - (e) preventing pollution to water resources and preventing or minimising any adverse effect upon those resources that may impact upon the services provided by the Authority;
 - (f) ensuring a continuous supply of water as far as practicable and restricting the use of water resources in times of shortage or anticipated shortage;
 - (g) making provision for the continuation or variation of any water supply provided by a Water Supply Committee under the Water Act 1965, despite that that Act might be repealed, under whatever arrangements are considered appropriate;
 - (h) creating offences and penalties for breaches of those offences up to a maximum of 20 penalty units; and
 - (i) prescribing rates, fees or charges for the purposes of this Act.
- (2A) The amount of a rate, fee or charge prescribed in subsection (2)(i):
- (a) shall be proposed by the Authority with the concurrence of the Board; and
 - (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.
- (3) If forms are prescribed under subsection (2) then the Authority shall use the prescribed forms, but nothing in this section prevents the Authority from using or requiring the use of forms approved by the Board, if no applicable form has been prescribed.

49. Certificates of Managing Director concerning criminal or civil proceedings – (1) In any criminal or civil proceedings against a person under this Act or any other law, a certificate signed by the Managing Director as to:

- (a) any debt or money owed to the Authority by a person named on the certificate and as to the amount of such debt or money owed to the Authority; and
- (b) the Authority's ownership of any property (including real property) or any other thing; and

- (c) the loss of or damage to any property (including real property) or any other thing owned by the Authority and as to the value of such property or thing and as to the costs incurred by the Authority in repairing or replacing any such property or thing, –

is, in the absence of proof to the contrary, sufficient evidence of the matters stated in the certificate.

(2) A certificate under subsection (1) purportedly signed by the Managing Director is presumed to be signed by the Managing Director unless the contrary is proved.

(3) A certificate under subsection (1) is in a form approved by the Minister.

PART 5 REPEAL, TRANSITIONAL AND SAVINGS

50. Repeal – The Water Authority Act 1993/1994 is repealed.

51. Transitional – The rates, fees and charges prescribed under the repealed Act and current as at the commencement of this Act shall continue to apply until varied in accordance with this Act.

52. Savings – (1) The appointment of the General Manager under the repealed Act and current as at the commencement of this Act continues on the same terms and conditions as if it was made under this Act and the person holding the appointment as General Manager under the repealed Act and current at the commencement of this Act is treated for all purposes as the Managing Director of the Authority.

(2) The staff of the Authority appointed under the repealed Act and employed by the Authority as at the commencement of this Act shall remain as the staff of the Authority on their existing terms and conditions, unless varied under the provisions of this Act.

(3) All contracts and legal proceedings to which the Authority is a party as at the commencement of this Act shall continue as if made or taken in accordance with this Act.

(4) All rights, entitlements, obligations and liabilities, whatsoever and howsoever described, to which the Authority is a party as at the commencement of this Act shall continue unless and until the Authority resolves otherwise according to law.

(5) All approvals and permits given by the Authority under the repealed Act are saved.

(6) All debts and monies owed to the Authority and unpaid as at the commencement of this Act shall remain payable to the Authority and may be recovered by the Authority under the provisions of this Act.

REVISION NOTES 2008 – 2022

This is the official version of this Act as at 31 December 2022.

This Act has been revised by the Legislative Drafting Division from 2008 – 2022 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) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) Numbering for Parts changed from Roman to decimal numbers.

The following amendments were made to this Act since the publication of the Consolidated and Revised Statutes of Samoa 2007.

By the Samoa Water Authority Amendment Act 2012, No. 15

sections 11(5) and 20(3) references to “Chief Auditor” substituted by “Controller and Auditor General” by the Audit Act 2013, No.22.

By the Public Bodies (Performance and Accountability) Amendment Act 2015, commenced on 25 April 2014 and as such has retrospective effect:

sections 19(2) & (4), 20(4) & (5) after “Minister” insert “for Public Enterprises”.

By the Fees and Charges (Miscellaneous Amendments) Act 2017, No. 13, (commenced on 4 July 2017):

Amendments made to this Act reflect that fees charged under the Act are to be prescribed by Regulations. Amendments are made to sections 10, 34 and 48.

By the Miscellaneous (Board of Public Bodies) Amendment Act 2020, No 6, (commenced 28 January 2020):

Section 4(1) substituted.

By the Miscellaneous (Salary Conditions Upon Suspension) Amendment Act 2021 No. 6 (commenced on 3 March 2021):

Section 12 inserted new subsections (1A) – (1D).

Section 13 inserted reference to “suspension” in subsection (3)(a) and inserted new subsections (4) to (6).

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