



SAMOA

SAMOA QUALIFICATIONS AUTHORITY ACT 2010

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**SAMOA QUALIFICATIONS AUTHORITY ACT 2010
2010, No. 9**

AN ACT to establish the Samoa Qualifications Authority, to prescribe its functions, powers and duties and matters incidental thereto.

[Assent and commencement date: 7 April 2010]

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 Qualifications Authority Act 2010.

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

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

“accreditation” means a prescribed process through which the Authority endorses an education or training provider to offer Post School Education and Training

(PSET)programmes, and includes but is not limited to an evaluation process which assesses the general capabilities of a provider in providing support for a specified programme and ensures that the programme is delivered or is to be delivered in a manner that is effective, efficient and to the required standard or level as approved by the Authority;

“accredited programme” means an education or training programme accredited by the Authority under this Act;

“Authority” means the Samoa Qualifications Authority continued under section 3;

“Board” means the Board established under section 6;

“Chief Executive Officer” or “CEO” means the Chief Executive Officer of the Authority appointed under section 13;

“developer of national qualifications” means a person or organisation that is approved by the Authority to be a developer of national qualifications;

“formal Post School Education and Training provider” means a Post School Education and Training provider which falls into 1 or more of the following categories:

- (a) provides an education or training programme that leads to a qualification registered under the Samoa Qualifications Framework;
- (b) receives or applies for funding from the Government or from any other donor through the Government in respect of any of the provider’s education and Training programmes designed to meet the requirement of qualifications;
- (c) uses or wishes to use a protected term in the name of the provider or in the names of any of the courses, programmes or qualifications that the provider provides;
- (d) enrolls foreign students for a period, of more than 2 months, in the aggregate, in a calendar year in any of the education and training programmes the provider provides;
- (e) is a Samoa-based provider providing programmes or courses in Samoa through cross-border arrangements such as cooperative, joint, twinning

or franchising arrangements with a foreign-based provider; or

- (f) is a provider based in a foreign country that wishes to provide education and training programmes in Samoa;

“Government” means the Government of the Independent State of Samoa;

“Government fund” includes funds received or is disbursed through the Government from any aid donor;

“guidelines” in relation to sections 19 and 21 means a list of requirements or set of instructions approved by the Authority which need to be met or achieved by a provider in order to have its programmes accredited or for registration of it as a provider, as the case may be, under this Act;

“information” in relation to section 30, means any document, whether electronic or otherwise relating to the operation of the provider and includes but is not limited to records of qualifications awarded by the provider for any given period of its operation;

“learning activity” means any structured process of instruction required to be undertaken by a person in order to achieve or obtain a learning outcome;

“learning outcome” means any competency or end knowledge or skill achieved by a person as a result of an education or training activity;

“Minister” means the Minister responsible for Education;

“non-formal Post School Education and Training provider” means a Post School Education and Training provider that is not a formal Post School Education and Training provider;

“organisation” means an incorporated or unincorporated body of persons sharing a common goal, and includes an institution;

“Post School Education and Training” or its acronym “PSET” means all forms of education and training activities that occur outside of the school system utilising any structured mode of delivery;

“programme” means a coherent set of courses, modules, papers or units designed to meet the requirements of a qualification;

- “protected term” means a term protected under section 23;
- “provider” means an organisation or person that intends to offer or is offering PSET in Samoa;
- “qualification” means a formal certification that a person has successfully achieved all learning outcomes or competencies relevant to identified individual, professional, workplace or community needs;
- “quality assurance” and “quality assured” in relation to a qualification, programme or learning activity, means that a qualification, programme or learning activity, is recognised by the Authority as achieving the Authority’s approved criteria and standards for registration or recognition of the qualification, programme or learning activity, under this Act;
- “record of achievement” means a record required to be kept by the Authority under section 17(1);
- “registered” means registered under the provisions of this Act;
- “registered provider” means an organisation that is registered to provide PSET services under this Act;
- “registered qualification” means a qualification registered under the provisions of this Act;
- “repealed Act” means the Samoa Qualifications Authority Act 2006 repealed by this Act;
- “requisite fee” means a fee determined by the Authority under section 26(3);
- “Samoa Qualifications Framework” or “SQF” means the Samoa Qualifications Framework established under Part 5.

PART 2 THE AUTHORITY

3. Continuation of the Samoa Qualifications Authority (SQA) – (1) The Samoa Qualifications Authority established under the repealed Act is continued under the name of the Samoa Qualifications Authority, and has the powers, functions and administrative arrangements provided for by this Act.

(2) A member, agent or employee of the Samoa Qualifications Authority established under the repealed Act is, without further authority than this Act, taken to have been

appointed as a member, agent or employee of the Samoa Qualifications Authority under this Act in the position held by the member, agent or employee in the Samoa Qualifications Authority as at the commencement of this Act and may resign, be removed or dismissed in accordance with the provisions of this Act.

(3) The Authority shall:

- (a) have perpetual succession and a common seal; or
- (b) be capable of suing and being sued in its corporate name; or
- (c) be capable of entering into contracts, acquire, hold and dispose of real and personal property and be capable of doing all such other acts and things as bodies corporate may lawfully do; or
- (d) be capable of exercising all such authorities and powers as shall be necessary or expedient for the due administration of this Act.

(4) The Chief Executive Officer shall have custody of the common seal which shall only be affixed to a document under a resolution of the Board, and which shall be attested to by the signature of the Chairperson of the Board or, in the absence of the Chairperson, by a member nominated by the Board.

(5) For the purposes of the Public Bodies (Performance and Accountability) Act 2001, the Samoa Qualifications Authority is to be regarded as a Public Beneficial Body.

4. Functions of the Authority – (1) The functions of the Authority are:

- (a) to provide policy advice to Government on strategies and priorities for PSET; or
- (b) to monitor and report to Government and the PSET sector, on the activities, resourcing, and overall performance of the PSET sector in relation to national strategic goals for economic, social and cultural development; or
- (c) to provide advice to Government and the PSET sector on findings and implications arising from research, monitoring or evaluation conducted by the Authority or other agencies, bodies or persons; or

- (d) to regulate qualifications and quality standards for all the PSET providers in Samoa; or
- (e) to co-ordinate and strengthen all the PSET, so as to better focus the PSET sector on national development goals and to promote and develop articulation among programmes; or
- (f) to promote links and learning pathways between the school sector and the PSET sector, and offer career advisory services; or
- (g) to develop and facilitate partnerships between stakeholders in business, industry, professional, non-government and community organisations and the PSET organisations; or
- (h) to work with national stakeholder groups to ensure standards and training requirements are established, in particular for trade, technician and professional occupations; or
- (i) to determine a national qualifications structure for Samoa, including the definition of terms to ensure and maintain the national and international credibility of qualifications and the good standing of the PSET organisations; or
- (j) to develop criteria and processes for the registration of all providers of the PSET; or
- (k) to develop criteria and processes for the accreditation and quality audit of all PSET providers; or
- (l) to promote quality assurance in non-formal education and training programmes; or
- (m) to work collaboratively with all the PSET providers, in particular to verify that they are using quality management policies and processes that ensure qualifications meet or exceed international standards, and that their programmes align with national priorities; or
- (n) to work with overseas government agencies and other organisations to recognise overseas qualifications in Samoa and to achieve international recognition for qualifications awarded in Samoa; or
- (o) to provide assurance that PSET in Samoa maintains international comparability; or

- (p) to coordinate and conduct registration of providers, accreditation of providers, programmes, registration of qualifications, and quality audit of providers and to maintain appropriate registers to this effect; or
 - (q) perform any other function conferred on the Authority by this or any other Act, or requested by the Government from time to time.
- (2) The Authority, may consult with any other relevant person or body, in carrying out its functions.

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

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

- (a) to purchase, lease, sub-lease or otherwise acquire and hold any property, whether movable or immovable, required for the carrying out of its functions and dispose of any such property no longer required for such purposes; and
- (b) to develop its land or other property and erect and maintain buildings or other structures; and
- (c) to purchase, rent or erect houses for the use of its employees; and
- (d) to enter into any contract with a person for the supply to or by it of any goods or services; and
- (e) to pay any expenses it has properly incurred; and
- (f) to produce, publish, issue, circulate and distribute, whether for payment or otherwise, in papers, electronic or magnetic form such reports, papers, periodicals or other information as may be conducive to the carrying out of its functions; and
- (g) to provide training schemes, with the cooperation of such other persons or bodies as the Authority thinks fit, for its employees or other persons concerned with carrying out its functions; and
- (h) to utilise its property, whether movable or immovable, in such manner as it thinks fit,

including the raising of loans by using such property as security for such loans; and

- (i) to establish pension schemes or other welfare schemes for the benefit of its employees in accordance with government policy; and
- (j) to do all things which may be incidental to any of its powers and functions.

PART 3 BOARD

6. Board members – (1) The Authority shall be administered by a Board comprising of 9 members, including the Chairperson, who shall be responsible for the policy and general governance of the Authority.

(2) The Board shall consist of the following:

- (a) one person appointed by the Minister upon the advice of the Board to be the Chairperson;
- (b) the Chief Executive Officer of the Ministry responsible for Education;
- (c) the Chief Executive Officer of the Ministry responsible for Labour;
- (d) the Chief Executive Officer of the Ministry responsible for Women, Community and Social Development;
- (e) the President of the Samoa Association of Manufacturers and Exporters;
- (f) the President of the Samoa Chamber of Commerce and Industry;
- (g) the Vice Chancellor and President of the National University of Samoa;
- (h) one person appointed by the Minister to represent non-Government Schools and providers;
- (i) the Chief Executive Officer of the Authority.

(3) A person appointed a member under subsection (2)(a) and (h) shall:

- (a) be removed from office by the Minister for disability, inefficiency, bankruptcy, neglect of duty, failing to attend a meeting of the Board for 3 consecutive meetings without reasonable

cause, misconduct or permanent departure from Samoa; and

- (b) subject to paragraph (a), hold office for a period of 3 years and may be eligible for reappointment; and
- (c) be entitled to resign from office by delivering a written notice to that effect to the Minister.

(4) The Board may invite a person to assist it at any of its meetings:

PROVIDED THAT such invited person does not have the right to vote at any Board meeting.

(5) If there is a vacancy for any reason in the position of the Chairperson of the Board, the Board shall appoint a person who shall act as the Chairperson of the Board until such time as the Minister has appointed a new Chairperson under subsection (2)(a).

(6) From 1 July 2010:

- (a) no Member of Parliament, public servant or constitutional officer shall be a member or be re-appointed as a member of the Board unless Cabinet has certified that such appointment or re-appointment is necessary; and —
 - (i) in the national interest; and
 - (ii) that the member of Parliament, public servant or constitutional officer, as the case may be has particular qualifications or business experience which the Authority requires on its Board and such qualifications or business experience cannot be found elsewhere; and
- (b) if a member of Parliament, public servant or constitutional officer is appointed or re-appointed under this section that person shall not receive remuneration or other benefits from the Authority for services as a member of the Board.

7. Deputies of members – (1) If a member of the Board is temporarily incapacitated for any sufficient cause from attending a meeting of the Board, such member, other than the Chairperson, may authorise a senior officer from his or her Ministry, agency, firm, society or corporation, as the case may be, to attend that meeting as the deputy of such member.

(2) A deputy whilst acting as such, is taken to be a member of the Board.

(3) The appointment of a deputy member, and any act done by the deputy as a Board member shall:

- (a) not be questioned in any proceedings on the ground that the occasion for the deputy's appointment had not arisen or ceased; and
- (b) not be a ground to invalidate the decisions of the Authority made during any meeting at which such deputy was purported to have acted as appointed.

8. Remuneration of members – Members and deputy members of the Board shall be paid such remuneration, sitting allowance, traveling and other expenses as may be fixed by Cabinet.

9. Meetings of the Board – (1) The Chairperson may call meetings of the Board as often as may be required at such times and such places as the Chairperson shall from time to time determine provided that:

- (a) the Board shall meet at least once every 2 months; and
- (b) upon the written request of at least 2 other members of the Board, the Chief Executive Officer shall call a meeting of the Board at a date not more than 14 days after receipt of that request.

(2) The quorum at all meetings of the Board shall be at least 5 members.

(3) Any matters arising at a meeting of the Board shall be decided by a simple majority of the members present and voting, and in the case of an equality of votes, the Chairperson shall have a casting vote.

(4) All orders and directions of the Board shall be given under the hand of the Chief Executive Officer or, in the Chief Executive Officer's absence by a member specifically authorised and appointed by the Board.

(5) The Board shall keep proper minutes of its proceedings.

(6) A meeting of the Board shall be presided over by the Chairperson, or in the Chairperson's absence, by a member elected on a simple majority vote by members of the Board present at such meeting to chair the meeting.

10. Disclosure of interest – (1) A member of the Board who has any direct or indirect personal or pecuniary interest in any matter coming before the Board shall, on each and every occasion on which the matter comes before the Board, and as soon as possible after the relevant facts have come to the member's knowledge, declare his or her interest in the matter.

(2) Subject to subsection (3), a disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Board and the member shall not:

- (a) be present during any deliberation of the Board with respect to that matter; and
- (b) take part in any deliberations or vote of the Board with respect to that matter.

(3) If, as a result of the operation of subsection (2), the Board is unable to maintain a quorum to determine a matter, the Board member or members affected, after complying with subsection (1), may take part in any deliberations of the Board with respect to the matter and may vote on the matter and the minutes of the meeting of the Board shall record the reason for the affected member's or members' participation in any deliberations and vote.

11. Board may establish Committees – (1) The Board may establish special committees and may refer to any such committee any matters for consideration, inquiry or management.

(2) The Board may by special resolution at any of its meetings adopt written rules of procedure for such committees.

12. Delegation – (1) The Board may, either generally or as otherwise provided by the instrument of delegation under its common seal, delegate to the Chief Executive Officer or to 1 of its members, any of its powers and the powers of the Authority under this Act, other than the powers under section 13 and this power of delegation.

(2) Where a power of delegation under subsection (1) relates to the grant of a licence or certificate, the Chief Executive Officer shall not issue such licence or certificate except in accordance with the terms of the delegation, instructions, guidelines or conditions imposed by the Board.

(3) A power delegated under subsection (1) shall, when exercised by the Chief Executive Officer, be deemed to have been exercised by the Authority.

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

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

PART 4

CHIEF EXECUTIVE OFFICER AND STAFF

13. Chief Executive Officer – (1) The Chief Executive Officer shall be appointed by the Head of State acting on the advice of Cabinet.

(2) Cabinet may consider a recommendation made by the Board on the appointment of the Chief Executive Officer.

(3) The Board may recommend to Cabinet a suitable person to be appointed as the Chief Executive Officer.

(4) The Chief Executive Officer shall be the Chief Executive Officer of the Authority and shall in addition perform such other functions and exercise such other powers to him or her conferred by this or any other Act.

(5) The Chief Executive Officer may, with the approval of the Board, delegate the performance of any of the Chief Executive Officer's functions or the exercise of any of the Chief Executive Officer's powers to an employee of the Authority.

(6) The Chief Executive Officer may be removed or suspended from office by Cabinet on the recommendation of the Board for sufficient cause and shall be eligible for re-appointment upon the expiry of the term of appointment.

(7) In the event of incapacity, absence, removal or suspension from office of the Chief Executive Officer, the Board shall appoint another person to act as Acting Chief Executive Officer under this Act until the Chief Executive Officer is appointed or resumes office.

14. Appointment of employees of the Authority – (1) Subject to the provisions of Government policy, the Authority may appoint, at such remuneration and upon such terms and conditions as it thinks fit such employees, agents, advisers or consultants as it thinks necessary for the proper and efficient

discharge of its functions and may dismiss any such employee, agent, adviser or consultant as the Authority determines.

(2) The Authority may make rules regulating the terms of service, discipline and training of all persons employed by or acting on behalf of the Authority.

(3) The employees and other persons acting on behalf of the Authority shall be responsible to and under the control of the Chief Executive Officer.

PART 5

SAMOA QUALIFICATIONS FRAMEWORK

15. Samoa Qualifications Framework – (1) The Samoa Qualifications Framework is established.

(2) The Samoa Qualifications Framework is a classification structure indicating the levels and types of quality assured qualifications which may fall into categories as may be prescribed by regulations.

16. Registration of Qualifications – (1) Subject to subsection (2), any provider or developer of qualifications may apply to the Authority to register a qualification.

(2) Despite subsection (1), any provider or developer of national qualifications must apply to the Authority for registration of its national qualifications on the Samoa Qualifications Framework.

(3) The Authority may register a qualification where it is satisfied that the prescribed standards and criteria for registering the qualification have been satisfied and who has paid the requisite fee.

(4) The Authority shall establish and maintain a record of all qualifications obtained, achieved or offered in Samoa through the PSET providers.

(5) It is an offence for a person or provider to:

- (a) provide any information misrepresenting the purpose, title, outcomes or level of a qualification registered by the Authority;
- (b) falsely or fraudulently claim, whether verbally or in writing, that a qualification has been registered by the Authority under this section; or

- (c) knowingly fail to apply for registration on the Samoa Qualifications Framework under this Part when required to do so under subsection (2).

(6) A person or provider who commits an offence under subsection (5) and upon conviction is liable to a fine not exceeding 100 penalty units and 10 penalty units for every day that the offence continues.

17. Record of achievement – (1) The Authority shall establish and maintain a record, whether electronic or otherwise of:

- (a) registered qualifications, whether whole or sub components of such qualification; and
- (b) achieved learning outcomes or competencies of learning activities that have been quality assured by the Authority,–

obtained or achieved by any person in Samoa.

(2) The Authority may, upon being satisfied that it is appropriate to do so in the circumstances, and having received the requisite fee, issue a confirmation relating to a record of achievement upon request by any person.

(3) A person who:

- (a) without lawful cause tampers with the record of achievement kept by the Authority under this Act; or
- (b) without lawful cause tampers with a record of achievement certificate issued by the Authority under this Act so as to mislead or provide fraudulent information relating to a qualification awarded to a person, –

commits an offence and upon conviction is liable to a fine not exceeding 50 penalty units.

PART 6 PROVIDER REGISTRATION

18. Application for registration as a provider – (1) The governing body of an organisation, whether established inside or outside Samoa, may apply to the Authority for registration of the organisation as a formal Post School Education and Training provider for the purposes of this Act.

(2) An application for the renewal of registration shall be made annually by the governing body of an organisation which is granted registration under this Act.

(3) An application under this section for registration of the organisation shall be:

- (a) in the approved form; and
 - (b) accompanied by the approved fee,
- as may be determined by the Authority.

(4) Despite anything in this Act, any provider providing formal PSET prior to this Act coming into force shall be deemed to be registered under this Act but only for the first 12 months from the date of commencement of this Act.

(5) The Authority shall maintain a register of all providers of PSET for the purposes of this Act.

19. Grant, refusal and cancellation of an application for registration as a provider – (1) The Authority may subject to subsection (3) grant or refuse an application for registration of a provider following consideration by it of standards, criteria, processes and fees applicable to the granting or refusal of an application for registration under this Act.

(2) Despite anything in this Act, the Authority may cancel the registration of a provider where it considers that such cancellation is in accordance with the prescribed criteria and processes required under this Act.

(3) Despite subsection (1), the Authority has the power where it considers it appropriate, instead of refusing an application for registration, provide appropriate guidelines to the affected provider to comply with the prescribed criteria and standards to allow them to be granted registration under this Act.

20. Application for registration to be mandatory in certain cases – (1) Despite anything in this Act, any provider must apply for registration and comply with quality standards if such provider falls into 1 or more of the following categories:

- (a) provides an education or training programme that leads to a qualification registered under the Samoa Qualifications Framework;
- (b) receives or applies for funding from the Government or from any other donor through the Government in respect of any of the provider's education and

- training programmes designed to meet the requirements of qualifications;
- (c) uses or wishes to use a protected term in the name of the provider or in the names of any of the courses, programmes or qualifications that the provider provides;
 - (d) enrolls foreign students for a period, of more than 2 months, in the aggregate, in a calendar year in any of the education and training programmes the provider provides;
 - (e) is a Samoa-based provider providing programmes or courses in Samoa through cross-border arrangements such as cooperative, joint, twinning or franchising arrangements with a foreign-based provider; or
 - (f) is a provider based in a foreign country that wishes to provide education and training programmes in Samoa.

(2) A registration required under this section shall be made annually thereafter.

(3) A provider that fails to register as required under this section commits an offence and is liable to a fine not exceeding 1,000 penalty units upon conviction, and 100 penalty units for each day that the offence continues.

PART 7 PROGRAMME ACCREDITATION

21. Accreditation of programmes – (1) A provider may apply to the Authority for the accreditation of its programme.

(2) Subject to subsection (4), the Authority may grant or refuse accreditation of the programme and impose such conditions as may be determined by the Authority.

(3) An application under this section shall be in the approved form and accompanied by a fee as may be determined by the Authority from time to time.

(4) Despite subsection (2), the Authority has the power where it considers it appropriate, instead of refusing an application for the accreditation of a programme, provide guidelines approved by the Authority to the affected provider to comply with the

prescribed standards and criteria to allow their application to be assessed for accreditation of its programme.

(5) A person or organisation that fraudulently or falsely claims that they offer, provide, or undertake a programme that is accredited by the Authority commits an offence and is liable to a fine not exceeding 10, 000 penalty units upon conviction, and 100 penalty units for each day that the offence continues.

22. Only registered providers to provide accredited programmes – (1) A provider shall not provide an accredited programme unless it is a registered provider.

(2) A person who contravenes subsection (1) commits an offence and is liable to a fine not exceeding 100 penalty units upon conviction, and 10 penalty units for each day that the offence continues.

PART 8 PROTECTED TERMS

23. Applications for consent for use of protected terms – (1) Subject to subsection (2), a registered provider must apply to the Authority for its consent to use the term “degree”, “bachelor degree”, “doctoral or doctorate degree”, “masters degree”, “University”, “Samoa”, “Samoan” or “National”, including translations of these terms in the vernacular, where the provider intends:

- (a) to use such words for the purpose of naming the provider; or
- (b) to use such words for the purpose of naming a qualification to be awarded by the provider.

(2) Despite subsection (1), if a provider is established by an Act of Parliament, such provider shall not be required to seek a consent for the purpose of naming the provider under this section.

(3) The Authority may, upon receipt of an application under subsection (1) and the requisite fee, grant, withdraw or suspend the Authority’s consent in a manner consistent with prescribed criteria and processes.

(4) A person or provider who contravenes subsection (1), commits an offence and is liable to a fine not exceeding 10,000 penalty units, and 100 penalty units for every day that the offence continues.

**PART 9
QUALITY AUDIT**

24. Authority to conduct quality audit – (1) The Authority shall evaluate a provider’s effectiveness against the Authority’s quality standards and criteria and monitor that such provider continues to comply with prescribed standards and criteria.

(2) Any costs incurred by the Authority for carrying out a quality audit under subsection (1) shall be borne by the provider and shall be a debt owing to the Authority where the provider fails to make payment within 2 months of the audit being completed.

25. Compliance notice – (1) The Authority may, issue a compliance notice to a provider where the Authority is satisfied that the provider is not complying with any prescribed requirements for maintaining its registration status and accreditation of its programmes.

(2) Despite anything in this Act, but subject to section 35, the Authority may cancel or suspend the accreditation of programmes, the registration of qualifications, or the registration of a provider where that provider does not comply with a compliance notice.

(3) Nothing in this section prohibits the right of a provider to re-apply for registration or re-accreditation of its programmes, once registration or accreditation requirements have been complied with.

**PART 10
FINANCES**

26. Revenues and fees of the Authority – (1) The revenues of the Authority consist of the following:

- (a) such fees, charges and penalties payable under this or any other Act or regulation as may be assigned to the Authority by that Act or regulation;
- (b) such grants as may be provided to it by the Government;
- (c) such other funds as may properly accrue to the Authority from any other source.

(2) Consistent with any policy of the Government and any applicable law, the Authority may invest any of its monies that are not immediately required for the discharge of its functions.

27. Financial Year – The financial year of the Authority shall begin on 1 July of each year and shall end on 30 June of the following year.

28. Accounts, audit and Annual Report – (1) The Authority shall cause to be kept proper accounts and records of the transactions and affairs of the Authority and shall do all things necessary to ensure that:

- (a) all funds received are brought to account; and
- (b) all payments are properly authorised and correctly made and accounted for; and
- (c) there are adequate controls over the Authority's—
 - (i) assets; and
 - (ii) property under the Authority's control; and
 - (iii) expenditure; and
 - (iv) liabilities.

(2) The Authority shall be subject to the Public Finance Management Act 2001 and for this purpose, despite the provisions of that Act, the funds received by the Authority is deemed public money and the assets and property of the Authority is deemed public property.

(3) The Authority shall cause to be prepared and submitted to the Minister for Public Enterprises, within 6 months after the end of the financial year of the Authority, an annual report containing:

- (a) financial statements for the financial year;
- (b) performance indicators and such information as may be directed by the Minister of Finance;
- (c) a report on the operations of the Authority during the preceding financial year; and
- (d) such other information as Cabinet may require.

(4) The financial statements referred to in subsection (3) shall be prepared and shall consist of:

- (a) a statement of financial transactions of the Authority for the financial year; and
- (b) a statement of the financial position of the Authority at the end of the financial year; and

- (c) proper and adequate notes to the financial statements.
- (5) The financial statements referred to in subsection (3) shall:
 - (a) present fairly the financial transactions of the Authority during the financial year to which they relate; and
 - (b) present fairly the financial position of the Authority at the end of the financial year.
- (6) The Authority shall, within 4 months after the end of each financial year, cause to be submitted to the Controller and Auditor General for audit the financial statements and other information required under this section.
- (7) The Minister for Public Enterprises shall table the annual report of the Authority together with the Controller and Auditor General's report on the Authority's financial statements before Parliament within 14 sittings days of receiving the Controller and Auditor General's audit report.

29. Exemption from Taxation – The income of the Authority is wholly exempted from taxation.

PART 11 MISCELLANEOUS

30. Authority to obtain information – (1) Subject to subsection (2), a person or provider shall provide information to the Authority relating to a person or provider where the Authority so directs by giving notice in writing.

(2) The powers conferred by subsection (1) may be exercised only where the obtaining of the information or documents is necessary for the purposes of the performance of the functions of the Authority.

(3) Despite anything in this Act, a formal Post School Education and Training provider registered under this Act, must on an annual basis and no later than 28 February of each year; submit all information prescribed by regulations throughout the previous year to the Authority.

(4) A person who obtains any information for the Authority under this provision shall take every reasonable step to ensure that such information is kept in such manner to ensure that the

contents of the information are kept confidential and used only for the purposes of performing the functions of the Authority.

(5) A person or provider who contravenes a provision of this section commits an offence and is liable to a fine not exceeding 100 penalty units and 10 penalty units, for each day that the offence continues.

31. Power to approve forms – The Authority may approve, amend, or replace the form for any application, certificate, licence, notice, agreement or any other document required under this Act.

32. Research – The Authority has power to carry out research activities it considers relevant for the performance of its functions.

33. Evidence – A certificate signed by the Chief Executive Officer purporting to record a determination, resolution or decision of the Authority is evidence of the making of that determination, resolution or decision by the Authority.

34. Application for Government funds by providers – (1) A provider applying for Government funds for a programme or training relating to Post School Education and Training shall consult with the Authority.

(2) If the Authority considers it appropriate to do so in the circumstances, the Authority may enter into an agreement with a provider, whether formal or non-formal, before giving its approval for any application for Government Funds under this section.

(3) No Government funds shall be granted to any provider seeking funding unless the application for funding is endorsed in writing by the Authority.

35. Appeal – (1) Subject to subsection (7), a provider who has cause to believe that the provider has not received a fair decision relating to the registration, accreditation or audit of it by the Authority, may apply in writing to the Minister for a review of that decision within 14 days of receipt of that decision and copy such application to the Attorney General.

(2) When an application is made under subsection (1), the Minister shall appoint an appeals committee:

- (a) which shall comprise of a panel of 3 members;
- (b) who are not staff or board members of the Authority;
- and
- (c) have knowledge and experience relating to quality assurance of the Post School Education and Training, –

to consider the application.

(3) The Minister shall appoint a chairperson from the panel of 3 members appointed under subsection (2).

(4) The appeals committee appointed under subsection (2) has the powers of a Commission of Inquiry under the Commissions of Inquiry Act 1964 in order to carry out the review.

(5) The Attorney General may appoint Counsel to assist the appeals committee and such Counsel shall be referred to as “Counsel Assisting the Appeals Committee”.

(6) The appeals committee shall report to the Minister, its recommendation within a month of being duly appointed, and the Minister shall make a decision based on that recommendation.

(7) If an applicant is dissatisfied with the decision of the Minister, the applicant may appeal the decision to the Supreme Court for a review of that decision within 21 days of receiving the Minister’s decision.

(8) Despite anything in this section, the Minister shall not consider an appeal unless the Minister has received written notice from the Board of the Authority that all attempts to settle the matter in accordance with prescribed regulations have failed.

36. Protection from liability – (1) No action shall lie against the Government, the Minister, the Authority, the Chief Executive Officer or any board member, employee or agent of the Authority or any person acting under any authority conferred by the Authority or the Chief Executive Officer, as the case may be, in respect of any act or matter done or omitted to be done in good faith in the exercise or purported exercise of their respective functions conferred by or under this Act or any regulations made thereunder.

(2) The legal costs of defending any action instituted against the Minister, the Chief Executive Officer or any board member,

employee or agent of the Authority or any person acting under any authority conferred by the Authority or the Chief Executive Officer, as the case may be, may be borne by the Authority.

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

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

- (a) prescribing the criteria, timeframes for registration, annual registration and processes required for the granting, refusal or cancelling of the registration of the Post School Education and Training provider under this Act;
- (b) prescribing the manner of keeping any register and maintaining the Samoa Qualifications Framework established under this Act;
- (c) prescribing the criteria and process required for the accreditation of programmes of the Post School Education and Training required under this Act and such conditions and processes as may apply to the granting, suspension or withdrawal of such accreditation by the Authority;
- (d) prescribing the processes required for maintaining the record of achievement;
- (e) prescribing the criteria and review process required for the registration of a qualification;
- (f) prescribing the criteria, timeframe and process required for the granting, suspension or withdrawal of consent by the Authority of the use of protected terms and symbols, including the Authority's common seal, logos and such other signs as may be protected under this Act;
- (g) prescribing the process required for the issuing of directions and notices required for obtaining information from persons or providers under the provisions of this Act;
- (h) prescribing the process required for the issuing of a compliance notice under the provisions of this Act, the forms and timeframes required and the

sanctions that will apply for failure of a person or provider to adhere to a compliance notice;

- (i) prescribing processes for the review and appeal of decisions of the Authority;
- (j) prescribing the required process for undertaking audits;
- (k) prescribing lists or types of information required to be provided by providers on an annual basis;
- (l) prescribing categories of the different levels and types of qualifications on the Samoa Qualifications Framework;
- (la) to prescribe fees or charges for the purposes of this Act;
- (m) creating offences and penalties for breaches of those offences up to a maximum of 100 penalty units.

(3) The amount of fees and charges prescribed under subsection (1):

- (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.

38. Repeal – The Samoa Qualifications Authority Act 2006 is repealed.

39. Savings and transition – (1) All references in law or any document or act of authority to the Samoa Qualifications Authority shall be read as referring to the Authority unless the context otherwise requires.

(2) Any authorisation, registration, appointment, approval, cancellation, suspension, condition, declaration, petition, permit, prohibition, exemption, order, advice, direction or act of authority under or concerning the Samoa Qualifications Authority Act 2006, so far as they are subsisting or in force at the time of the repeal of such Act, shall continue and have effect under the corresponding provisions of this Act until such time as they are altered, amended or cancelled, as the case may require, under the provisions of this Act and, where there is any question or concern as to what is a corresponding provisions of this Act,

the Minister by notice in writing may for all purposes declare a provision of this Act to be a corresponding provision.

(3) Despite the provisions of this Act, all applications and other matters arising out of or under the provisions of Samoa Qualifications Authority Act 2006 which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall be determined or otherwise dealt with under the corresponding provisions of this Act with such modifications, adaptations and alterations as the Minister may determine in writing from time to time.

(4) Every advisory body or committee existing at the time of the commencement of this Act relating to the Samoa Qualifications Authority Act 2006 shall be deemed to be an advisory body or committee established by the Minister under the corresponding provisions of this Act.

(5) Despite the provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from the Samoa Qualifications Authority Act 2006, the Minister, by notice published in Samoan and English in the Savali, may make such provisions as the Minister deems necessary in order for all matters under the Samoa Qualifications Authority Act 2006 to be properly and effectively determined or otherwise dealt with under the provisions of this Act.

REVISION NOTES 2010 – 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 2010 to 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) 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) Acronym PSET or its full citation is used instead of both.
- (xiii) Part numbering changed to decimal.

The following amendments were made to this Act since its enactment:

By the *Audit Act 2013* by changing reference from “Controller and Chief Auditor” to “Controller and Auditor General”.

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

sections 28(3) & (7) after “Minister” insert “for Public Enterprises”.

By the *Fees and Charges (Miscellaneous Amendments) Act 2017, No. 13*:

Amendments made to this Act reflect that fees charged under the Act are to be prescribed by Regulations. Amendments are made to sections 26 and 37.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Samoa Qualifications Authority.*
