

2005 *Public Bodies (Performance and Accountability) No.5*  
*Amendment*

**SAMOA**

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**2005, No.5**

**AN ACT to amend the Public Bodies (Performance and Accountability) Act 2001.** [22<sup>nd</sup> April 2005]

**BE IT ENACTED** by the Legislative Assembly of Samoa in Parliament assembled as follows:-

**1. Short title and commencement-**(1) This Act may be cited as the Public Bodies (Performance and Accountability) Amendment Act 2005 and shall be read with and form part of the Public Bodies (Performance and Accountability) Act 2001 (the Principal Act).

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

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

**2. Long title -** The Principal Act is amended by:

- (a) deleting the words “the provision of” in paragraph (a) of the long title; and
- (b) deleting paragraph (d) of the long title and substituting the following:

“(d) Provide support for Shareholding Ministers on matters relating to Public Bodies.”

**3. Interpretation -** Section 2 of the Principal Act is amended:

(1) By deleting the definition “Governing legislation” and substituting the following:

“Empowering Act” means an Act which provides for the establishment, purposes, functions and governance of an individual public body;”.

(2) By deleting the definition “Public Body” and substituting the following:

“Public Body” means an organisation (whether called state-owned enterprise or otherwise under any other Act) that is listed in Schedule 4 of the Public Finance Management Act 2001 or is deemed to be a

public body under section 91 of the Public Finance Management Act 2001 and shall include a subsidiary of the Public Body and includes the organisations listed in Schedule 1 of this Act;”.

(3) By deleting the definition “Public Beneficial Body” and substituting the following:

“Public Beneficial Body” means an organisation that exists mainly for the provision of service to the community in accordance with government policy and includes the organisations listed in Part B of Schedule 1 of this Act and any subsidiary of a Public Beneficial Body;”.

(4) By deleting the definition “Public Trading Body” and substituting the following:

“Public Trading Body” means an organisation that exists mainly for the purpose of optimising returns on investment of public funds and includes the organisations listed in Part A of Schedule 1 of this Act and any subsidiary of a Public Trading Body;”.

(5) By deleting the definition “Shareholding Ministers” and substituting the following:

“Shareholding Ministers” means the Minister of Finance and the Responsible Minister and, where the Minister of Finance is also the Responsible Minister, a Minister who is approved by Cabinet to be a Shareholding Minister for the purpose of this Act;”.

(6) By deleting the word “bare” in paragraph (c)(ii) of the definition “Shares” and substituting the word “bear”.

(7) By deleting the words “Schedule 1 provides the list of Public Bodies” in subsection (2).

**4. Transfer to the Companies Act 2001** - Section 5 of the Principal Act is deleted and the following substituted:

**“5. Transfer to the Companies Act 2001-**(1) Despite the provisions of any other law and subject to subsection (2), each Public Trading Body shall register as a company under the Companies Act 2001 at a time and in such form of registration as determined by the Minister of Finance.

(2) A Public Trading Body which is incorporated as a mutual society shall not be required to comply with subsection (1) but, despite the provisions of any other law, shall comply with the provisions of this Act as if the Shareholding Ministers were the major shareholders of the Public Trading Body. For the purposes of this Act, Samoa National Provident Fund, Samoa Life Assurance Corporation and Accident Compensation Corporation are mutual societies.

(3) Save for the organisations referred to in subsection (2), each Public Trading Body shall have Articles of Incorporation under the Companies Act 2001 and such Articles of Incorporation shall be the Articles of Incorporation in Schedule 7 of this Act with such amendments and modifications as may be approved by the Shareholding Ministers on the advice of the Financial Secretary.

(4) Despite the provisions of any other law:

- (a) If there is any inconsistency between an individual public trading body's empowering Act, the Companies Act 2001, the Public Finance Management Act 2001 and this Act, the provisions of this Act shall prevail to the extent of the inconsistency;
- (b) If there is any inconsistency between an individual public trading body's empowering Act, the Companies Act 2001 and the Public Finance Management Act 2001, the provisions of the Public Finance Management Act 2001 shall prevail to the extent of the inconsistency;

- (c) If there is any inconsistency between an individual public trading body's empowering Act and the Companies Act 2001, the Companies Act 2001 shall prevail to the extent of the inconsistency;
- (d) If there is any inconsistency between the Companies Act 2001 and a public trading body's Articles of Incorporation the provisions of the Articles of Incorporation shall prevail to the extent of the inconsistency."

**5. Ministerial Shareholding** - Section 6 of the Principal Act is amended:

(1) By deleting subsection (1) and substituting the following:

“(1) Shares in a Public Trading Body held by Shareholding Ministers are:

- (a) held ex officio on behalf of the Independent State of Samoa; and
- (b) to be registered in accordance with paragraph (a).”

(2) By deleting from subsection (4) all words after the word “purpose”.

(3) By deleting subsection (5) and substituting the following:

“(5) The Responsible Minister is responsible to Parliament for the performance of Public Bodies under the Minister's portfolio.”

(4) By deleting from subsection (7) the words “Responsible Minister” and substituting the words “Shareholding Ministers”.

**6. Principal objective to be a successful business** - The Principal Act is amended by deleting section 8 and substituting the following: