

SAMOA

Arrangement of Provisions

PART I PRELIMINARY

1. Short title and commencement
2. Interpretation
3. Application of Act

PART II ESTABLISHMENT, FUNCTIONS AND POWERS OF THE MINISTRY OF HEALTH

4. Establishment of the Ministry
5. Functions of the Ministry
6. Powers and Responsibilities of the Ministry

PART III FUNCTIONS AND POWERS OF THE MINISTER

7. Functions of the Minister
8. Powers of the Minister

PART IV APPOINTMENT, FUNCTIONS AND POWERS OF THE CHIEF EXECUTIVE OFFICER

9. Appointment of the Chief Executive Officer
10. Functions of the Chief Executive Officer
11. Powers and Responsibilities of the Chief Executive Officer

PART V MINISTRY PERSONNEL

12. Appointment and working arrangements for personnel

PART VI ADVISORY BODIES

13. Advisory bodies established by the Minister
14. Remuneration of advisory bodies
15. Status and authority of members of advisory bodies

PART VII DELEGATIONS

16. Delegations by the Minister
17. Delegations by the Chief Executive Officer
18. General requirements

	PART VIII	24. Regulations
	MISCELLANEOUS	25. Amending Schedules
19. Minister to determine fees and charges		26. Consequential Amendments
20. Refunds		27. Savings and transitional provisions
21. Evidence by certificate		
22. Validity of acts		Schedules
23. Civil protection for Minister and Chief Executive Officer		

2006, No. 19

AN ACT to establish and define the functions and powers of the Ministry of Health, the Minister and the Chief Executive Officer of the Ministry and for related purposes.
[04th December 2006]

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

**PART I
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Ministry of Health Act 2006.

(2) This Act shall commence on a date nominated by the Minister.

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

“Chief Executive Officer” means the Chief Executive Officer of the Ministry;

“eligible people” and “eligible person” means citizens of Samoa, residents of Samoa and other persons meeting

- the eligibility criteria for access to publicly funded health services specified by Cabinet or by regulation;
- “Government” means the Government of Samoa;
- “health service” includes but is not limited to:
- (a) Public health services, including services to prevent, limit and suppress infections and other diseases;
 - (b) Health promotion services;
 - (c) Primary care health services;
 - (d) Secondary health services;
 - (e) Tertiary health services;
 - (f) Disability health services;
 - (g) Environmental health services;
 - (h) Any other service or activity determined from time to time to be a health service by the Minister by Notice, acting on the advice of the Chief Executive Officer; and
 - (i) Any service, facility, institution or body concerned with or related to any health service under paragraphs (a) - (g);
- “land law” means any law in force relating to the acquisition, use and disposal of land and includes the –
- (a) Land Survey and Environment Act 1989
 - (b) Taking of Land Act 1964
 - (c) Land and Titles Act 1981;
- “Minister” means the Minister responsible for the Ministry from time to time;
- “Ministry” means the Ministry of Health established pursuant to this Act and the Ministerial and Departmental Arrangements Act 2003 and includes the former Department of Health established under the provisions of the Health Ordinance 1959;
- “National Health Service” means the National Health Service established under the National Health Service Act 2006;
- “personnel” includes officers, employees and servants;
- “provider” means a provider of a health service and includes but is not limited to:
- (a) The Ministry;
 - (b) The National Health Service;

- (c) Any other Government Body or Agency providing a health service;
 - (d) A medical practitioner;
 - (e) A dental practitioner;
 - (f) A pharmacist;
 - (g) A nurse;
 - (h) A midwife;
 - (i) Any allied healthcare professional regulated under any Act;
 - (j) Any traditional birth attendant or healer regulated under any Act;
 - (k) Any person (incorporated or otherwise) providing a health service for reward or otherwise;
 - (l) Any community group (incorporated or otherwise) providing a health service for reward or otherwise; and
 - (m) Any other person or body determined from time to time to be a provider of a health service by the Minister by Notice, acting on the advice of the Chief Executive Officer;
- “Public Service” has the same meaning as provided by Article 83 of the Constitution;
- “public sector law” means any law in force relating to the public sector and includes:
- (a) The Public Service Act 2004;
 - (b) The Public Bodies (Performance and Accountability) Act 2001; and
 - (c) The Public Finance Management Act 2001;
- “Samoa” means the Independent State of Samoa.

- 3. Application of Act-**(1) This Act binds the Government.
- (2) This Act shall be read as subject to:
- (a) The Ministerial and Departmental Arrangements Act 2003;
 - (b) Public sector law; and
 - (c) Land law.

PART II
ESTABLISHMENT, FUNCTIONS AND POWERS OF
THE MINISTRY OF HEALTH

4. Establishment of the Ministry - There shall be a Department of the Government known as the Ministry of Health.

5. Functions of the Ministry-(1) The Ministry shall have the following functions:

- (a) To administer or assist the Minister to administer, as the case may require, the legislation set out in Schedule 1;
- (b) To administer any other enactment, subject or matter as may be determined by Cabinet from time to time; and
- (c) To fulfill the responsibilities, functions and duties set out in Schedule 2.

(2) In undertaking its functions under this Act the Ministry shall give preference to policies, programs and practices which increase the capacity of the people of Samoa to have greater access to and control over and participation in their health and well-being.

6. Powers and Responsibilities of the Ministry-(1) The Ministry shall have the power to perform all of the functions provided by this Act and any applicable law.

(2) The Ministry shall be responsible and accountable to the Minister through the Chief Executive Officer for the carrying out of its functions under this Act and any applicable law.

(3) The Government and the Ministry shall have the power to arrange for and provide any health service by or through any provider.

PART III
FUNCTIONS AND POWERS OF THE MINISTER

7. Functions of the Minister – The Minister shall have the following functions:

- (a) To administer the legislation set out in Schedule 1;
- (b) To fulfill the responsibilities set out in Schedule 3;

- (c) To provide governance and strategic leadership to the Ministry;
- (d) To monitor the Ministry's performance, including its compliance with all applicable laws;
- (e) To evaluate the Chief Executive Officer's performance, including the Chief Executive Officer's compliance with the requirements of all applicable laws; and
- (f) To approve the annual report on the Ministry's performance and to lay the annual report before the Legislative Assembly within 7 months of the end of the financial year to which it relates.

8. Powers of the Minister-(1) The Minister shall have the power to perform all of the functions provided by this Act and any applicable law.

(2) Without limiting subsection (1), the Minister shall have the power to:

- (a) Direct the Chief Executive Officer in relation to high level outcomes, priorities, policies and performance requirements for the Ministry and the Chief Executive Officer;
- (b) Regulate or arrange for the regulation of the areas of the Minister's responsibilities set out in Schedule 3;
- (c) Subject to land law, acquire and maintain any asset, resource or physical facility, including land, which relates to or supports the functions of the Ministry; and
- (d) Fulfill the Minister's functions as necessary.

PART IV APPOINTMENT, FUNCTIONS AND POWERS OF THE CHIEF EXECUTIVE OFFICER

9. Appointment of the Chief Executive Officer - A Chief Executive Officer for the Ministry shall be appointed as administrative head of the Ministry and hold office as administrative head of the Ministry in accordance with the provisions of public sector law.

10. Functions of the Chief Executive Officer-(1) The Chief Executive Officer shall have the following functions:

- (a) To advise the Minister;
- (b) To direct Ministry operations in compliance with the law;
- (c) To ensure that the Ministry applies its resources effectively, efficiently and economically to fulfill the functions set out in section 5 in accordance with any applicable law;
- (d) To work co-operatively with, and to require Ministry personnel to work co-operatively with the National Health Service and other government and non-government organisations; and
- (e) To represent the Ministry on boards, councils, non-government bodies and international forums as required by the Minister or by law.

(2) The functions given to the Chief Executive Officer by or under this Act are in addition to those given to the Chief Executive Officer by or under any other Act.

11. Powers and Responsibilities of the Chief Executive Officer-(1) The Chief Executive Officer shall have the power to perform all of the functions provided by this Act and any applicable law.

(2) The Chief Executive Officer shall be responsible and accountable to the Minister for:

- (a) The management of the Ministry's personnel; and
- (b) The engagement of contractors and the management of the contracts engaging the contractors:

but shall not be subject to direction by the Minister as to the appointment, promotion, suspension, demotion, transfer, discipline or dismissal of the Ministry's personnel or the engagement of contractors.

PART V MINISTRY PERSONNEL

12. Appointment and working arrangements for personnel-(1) All personnel of the Ministry are to be appointed, promoted, suspended, demoted, transferred, disciplined or dismissed and otherwise regulated in accordance with public sector law.

- (2) All Ministry personnel shall act:
 - (a) Under the direction of the Chief Executive Officer in the discharge of their functions, powers and duties; and
 - (b) In accordance with public sector law.
- (3) All office holders of special positions in the former Department of Health are deemed to be office holders of such special positions in the Ministry provided that these positions may be disestablished or otherwise determined.

PART VI ADVISORY BODIES

13. Advisory bodies established by the Minister-(1) The Minister, acting on the advice of Cabinet, by Notice may appoint any advisory body that the Minister considers appropriate to assist in carrying out the Minister's or the Ministry's functions under this Act or any applicable law and may:

- (a) Authorise an advisory body appointed under this section to make enquiries, conduct research or make reports that the Minister considers will assist the Minister or the Ministry to efficiently carry out the Minister's functions or the Ministry's functions, as the case may be;
 - (b) Regulate the procedures in relation to any matter concerning any advisory body appointed under this section;
 - (c) Appoint or dismiss any advisory body member appointed under this section; and
 - (d) By Notice, dissolve any advisory body established under this section.
- (2) The Minister must consider the nature of the community interest and the matters to be addressed by an advisory body when determining its membership.
- (3) Any Notice establishing an advisory body under this section shall:
- (a) Specify the name of the advisory body;
 - (b) Specify the purpose for establishing or dissolving the advisory body, as the case may be;

- (c) In the case of a Notice establishing an advisory body, specify the advisory body membership;
 - (d) Be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.
- (4) The appointment of an advisory body shall not reduce or otherwise affect the accountability of the Minister and the Chief Executive Officer to fulfill the functions required by this or any other law.

14. Remuneration of advisory bodies - Subject to monies being appropriated by Parliament for the purpose and any directions issued by Cabinet, the Chief Executive Officer may:

- (a) Pay such fees and allowances to members of advisory bodies established under this Act at such rates as may be approved by Cabinet; and
- (b) Reimburse members of advisory bodies for authorised expenses reasonably incurred in performing any services required to be performed on behalf of such advisory bodies.

15. Status and authority of members of advisory bodies-

(1) No person shall be deemed to be employed in the Public Service by reason of appointment to an advisory body under this Act.

(2) Except where the Minister authorises otherwise in writing, no member of an advisory body appointed under this Act shall have authority to bind or speak on behalf of the Government, the Ministry, the Minister, the Chief Executive Officer or any advisory body so appointed.

PART VII DELEGATIONS

16. Delegations by the Minister - The Minister may delegate to any person any or all of the functions and powers which are conferred on the Minister by this or any other Act.

17. Delegations by the Chief Executive Officer - The Chief Executive Officer may delegate to any person any or all

of the functions and powers that are conferred on the Chief Executive Officer by this or any other Act.

18. General requirements-(1) Any delegation made under this Act must be made in writing.

(2) Any person who delegates a function or power under this Act may still exercise that function or power.

(3) Any person who delegates a function or power under this Act may in writing revoke the delegation at will.

(4) Any delegation made under this Act by a person who subsequently ceases to hold office continues in force as if made by that person's successor in office until such delegation is revoked.

PART VIII MISCELLANEOUS

19. Minister to determine fees and charges-(1) Subject to public sector law, in particular Part 6 of the Public Finance Management Act 2001, the Minister may by Notice:

(a) Determine fees and charges concerning any matter under or concerning this Act or any applicable law and for any goods or services provided by the Ministry or for any goods or services funded by the Ministry and provided by another person or body; and

(b) Provide for the time and manner of payment of any fee or charge determined by the Minister under this section.

(2) Subject to section 20, any fee or charge under subsection (1) shall be non-refundable unless the Minister determines otherwise.

(3) Any Notice under this section shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

20. Appropriation of refunds-(1) Any refund of fees or charges under this Act may be made without further appropria-

tion than this section and shall be statutory expenditure payable out of the Treasury Fund.

(2) In exercising any discretion concerning refunds under section 19, the Minister shall be subject to any Cabinet directions issued from time to time.

21. Evidence by certificate-(1) The Chief Executive Officer, and any personnel of the Ministry authorised in writing by the Chief Executive Officer, may provide a certificate stating any fact known to the Ministry, or indicating the content of any record or register maintained by the Ministry.

(2) Despite any other law, a certificate complying with the requirements of subsection (1) shall be admissible in Samoa or elsewhere as sufficient evidence of the fact so stated or the content so stated in such certificate before:

- (a) Any court or tribunal; or
- (b) Any statutory or administrative body or agency; or
- (c) Any person exercising judicial or quasi-judicial or statutory or administrative authority.

(3) A certificate purporting to comply with the requirements of subsection (1) shall be presumed to comply with subsection (1) unless the contrary is proved.

(4) Despite any other law, the issuance of a certificate under this section and filing of such certificate with a court, tribunal or other body, authority or person shall be sufficient discharge of the Government's or the Minister's or the Ministry's or the Chief Executive Officer's or any Ministry personnel's obligation to answer a summons issued by such court, tribunal or other body, authority or person to give evidence or produce documents, provided that such court, tribunal or other body, authority or person may require the person signing such certificate to appear in person for the purpose of examination.

22. Validity of acts – All actions and decisions of the Minister or the Chief Executive Officer or any personnel acting under the authority of the Minister or the Chief Executive Officer under the provisions of this Act or any applicable law shall be deemed to have been validly done or made notwith-

standing any defect, expiration, error or lapse in the appointment of the person taking such action or making such decision.

23. Protection from liability-(1) Claims made by or against the Ministry shall be made pursuant to the Government Proceedings Act 1974.

(2) A person exercising a function under this Act does not incur civil liability for anything done or omitted to be done in good faith:

- (a) In the exercise of a power or the discharge of a duty under this Act; or
- (b) In the reasonable belief that the act or omission was in the discharge of a duty under this Act.

24. Regulations-(1) The Head of State, acting on the advice of Cabinet, may make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and any legislation listed in Schedule 1, and for the due administration thereof.

(2) Without limiting the regulation power conferred under subsection (1), the power to make regulations shall include:

- (a) Defining who shall be deemed an eligible person for the purposes of access to publicly funded health services, including medicines, and defining classes of persons who are non residents and liable for the cost of publicly funded health services; and
- (b) Providing for the arrangement and management of health services and patients including the admission, discharge and treatment arrangements for patients, the admission of visitors and the powers and duties of staff and the provision of quality control and consumer complaints systems; and
- (c) Providing for the creating of offences and to prescribe fines of up to 100 penalty units for such offences concerning this Act and any legislation listed in Schedule 1.

25. Schedules-(1) For all purposes, Schedules 2 and 3 shall be read as subject to this Act and the specific provisions contained in applicable laws and shall not be interpreted or applied so as to extend the responsibilities and powers of the Minister or Ministry, as the case may be, beyond:

- (a) Any responsibilities and powers contained in this Act and the legislation set out in Schedule 1;
 - (b) Any responsibilities and powers as may be directed in writing by the Prime Minister from time to time under Article 35 of the Constitution; and
 - (c) Any responsibilities and powers provided under public sector law.
- (2) Despite any other law, Schedules 2 and 3 shall not be used for the purpose of making the Government, the Minister and the Ministry liable by way of any prerogative writ or judicial review.

(3) The Schedules may be amended by the Minister, acting on the advice of Cabinet, by Notice published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

26. Consequential amendments - The Health Ordinance 1959 is amended:

(1) By deleting the definitions of “Board”, “Director General”, “Minister” and “Department” in section 2 and inserting the following definitions in correct alphabetical order:

“Chief Executive Officer” has the same meaning as provided in the Ministry of Health Act 2006;

“Minister” has the same meaning provided in the Ministry of Health Act 2006;

“Ministry” has the same meaning as provided in the Ministry of Health Act 2006.

(2) By deleting the words “Director-General” wherever they appear (whether in any heading, marginal notes, section or elsewhere) and substituting the words “Chief Executive Officer”.

(3) By deleting the word “Department” wherever it appears (whether in any heading, marginal notes, section or elsewhere) and substituting the word “Ministry”.

(4) By deleting sections 3, 4, 5, 6, 7, 8, 9, 10, 11 and 59.

27. Savings and transitional provisions-(1) All references in law to the Department of Health shall be read as referring to the Ministry unless the context otherwise requires.

(2) All references in law to the Minister of Health shall be read as referring to the Minister responsible for the Ministry unless the context otherwise requires.

(3) All references in law to the Director-General of Health and the Director of Health shall be read as referring to the Chief Executive Officer of the Ministry unless the context otherwise requires.

(4) Every document and act of authority so far as they are subsisting or in force at the time of the commencement of this Act relating to any legislation set out in Schedule 1 shall continue and have effect until such time as they are altered or amended or cancelled in accordance with such provisions or under the corresponding provisions of this Act, as the case may require.

(5) Every advisory body existing at the time of commencement of this Act relating to any legislation set out in Schedule 1 shall be deemed to be an advisory body established by the Minister under Part VI of this Act.

(6) Despite the provisions of this Act, all applications and other matters arising out of or under any legislation set out in Schedule 1 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 such provisions or under the corresponding provisions of this Act, as the case may require, with such modifications, adaptations and alterations as the Minister may determine in writing from time to time.

(7) Despite the provisions of this Act, where this Act does not provide or provides insufficient or inadequate provision for the transition from any legislation set out in Schedule 1 to this Act, the Minister by Notice may make such provisions as the Minister deems necessary in order for all matters under or concerning any legislation set out in Schedule 1 and this Act to be properly and effectively determined or otherwise dealt with.

SCHEDULE 1**LEGISLATION WHICH THE MINISTRY IS
RESPONSIBLE TO ADMINISTER OR ASSIST THE
MINISTER TO ADMINISTER**

- Burials Ordinance 1961
- Dental Practitioners Act 1975
- Food and Drugs Act 1967
- Health Ordinance 1959
- Medical Practitioners Act 1975
- Mental Health Ordinance 1961
- Narcotics Act 1967
- National Health Service Act 2006
- National Kidney Foundation of Samoa Act 2005
- Nursing Act 1969
- Pharmacy Act 1976
- Poisons Act 1968
- Samoa Red Cross Act 1993
- Oceania University of Medicine (Samoa) Act 2002

SCHEDULE 2**MINISTRY'S RESPONSIBILITIES, FUNCTIONS AND
DUTIES**

1. In performing the functions set out in section 5 of this Act, and subject to any applicable laws and available resources, the Ministry has the following responsibilities, functions and duties:

1.1 To provide the Government and the Minister with advice as to strategies, policies and planning concerning the development, resourcing, provision and management of health services;

1.2 To establish, regulate and enforce standards concerning the training, qualifications and performance required for providers in accordance with any applicable laws;

1.3 To monitor the performance of providers;

1.4 To establish and provide for quality control and consumer complaints systems for the provision of health services in accordance with any applicable laws;

1.5 To provide the following health services:

- Strategic Development Services, including:
 - (a) Health Resourcing;
 - (b) Health Planning;
 - (c) Health Information; and
 - (d) Health Research.
- Health Library
- Health Promotion and Preventive Services, including:
 - (a) Health Education and Health Promotion;
 - (b) Preventive Services;
 - (c) Public Health Services Surveillance;
 - (d) Environmental Health Services;
 - (e) Dental Promotion;
 - (f) Nutrition; and
 - (g) Reproductive Health.
- Health Services Performance, including:
 - (a) Medical Services;
 - (b) Dental Services;
 - (c) Pharmacy Services;
 - (d) Allied Health Professional Services;
 - (e) Nursing Services;
 - (f) Midwife Services;
 - (g) Traditional Healing and Birth Attendant Services;
and
 - (h) Other Providers of Health Services;
- Corporate Services for the Ministry, including:
 - (a) Corporate Services;
 - (b) Administration;
 - (c) Finance; and
 - (d) Legal Services.

1.6 Such other responsibilities, functions and duties required by this Act and any applicable laws; and

1.7 To report to the Government and the Minister, as required, concerning any matter referred to in paragraphs 1.1, 1.2, 1.3, 1.4, 1.5 and 1.6.

2. In undertaking the above responsibilities, functions and duties the Ministry shall:

- (a) Cooperate with, assist and support the Government, the Minister, the National Health Service, other Ministries, Statutory Bodies, Government Agencies and Persons in undertaking their constitutional and statutory functions and duties under this Act, the National Health Service Act 2006 and any applicable laws; and
- (b) Assist the Government, the Minister and the National Health Service to arrange for and provide any health service by or through any provider where the Government determines that such provider can provide the health service most effectively and efficiently.

SCHEDULE 3

MINISTER'S RESPONSIBILITIES

In performing the functions set out in section 7(b) of this Act, the Minister has the following responsibilities -

- (a) To ensure that the governance and strategic leadership of the Ministry by the Chief Executive Officer and staff of the Ministry are such that the resources under the Ministry's control are applied to activities to improve, promote and protect the health of the eligible people of Samoa;
- (b) To advise the Ministry and Chief Executive Officer of the Government's objective, policies and priorities concerning improving, promoting and protecting the health of the eligible people of Samoa; and
- (c) Such other responsibilities as provided by this Act and any other laws.

The above responsibilities are to be read subject to this Act and the specific provisions contained in applicable laws.

**The Ministry of Health Act 2006 is administered in the
Ministry of Health.**