

SAMOA

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2008, No. 31**AN ACT to provide for the management, protection and conservation of the water resources of Samoa.***[5th November 2008]*

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 Water Resources Management Act 2008.

(2) This Act shall commence on a date set by the Minister by the publication of a notice to that effect in the Savali.

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

“abstract” and “abstraction” means the taking of water from a water source;

“aquifer” means any naturally occurring underground source of freshwater;

“Board” means the Samoa Water Resources Board established under section 16;

“by-law” means a by-law made under section 33;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry of Natural Resources and Environment;

“discharge” means to throw, place, put, pump, allow, pour, permit or otherwise cause any pollutant to enter or affect the water resource, either directly, indirectly or through run-off;

“Electric Power Corporation” means the Electric Power Corporation established by the Electric Power Corporation Act 1980, and includes any body that might later assume the role of that Corporation under law;

“Fire and Emergency Service” means the Samoa Fire and Emergency Services Authority established under the Fire and Emergency Service Act 2007;

“groundwater” means water naturally stored or flowing beneath the surface of the ground and which is not apparent on the surface of the ground;

“Independent Water Scheme” means –

(a) a Water Supply Committee originally established under the Water Act 1965 or any other law; or

(b) an Independent Water Scheme registered under this Act –

which continues to provide a water supply to any village or community in Samoa.

“lens” means an underground sheet of freshwater suspended above saline water;

“Minister” means the Minister of Natural Resources and Environment;

“Ministry” means the Ministry of Natural Resources and Environment;

“overdraft” means the abstraction of water within a particular geographic area at such a rate or in such a quantity that the abstraction exceeds the rate of recharge of the groundwater aquifer or other water source from which the water is abstracted;

“pollutant” means any liquid, gaseous or solid substance that contaminates the water so as to change the physical or chemical condition of it in such a manner as to make the water unclean, noxious, offensive or impure, or so as to be detrimental to the health, safety or welfare or persons using, consuming or residing in the vicinity of the water;

“safe yield” means the abstraction of water from a water source at a rate and in an amount so as not to cause an overdraft from that source;

“Water Authority” means the Samoa Water Authority established under the Samoa Water Authority Act 2003, and includes any body that might later assume the role of the Samoa Water Authority under law;

- “Water” includes any river, stream, watercourse, reservoir, well, bore, tank, dam, channel, lake, swamp and all ground water;
- “water resource” means the surface and ground waters in aquifers, lakes, falls, rivers, streams, springs and watershed or water catchment areas under the control of the Ministry in accordance with this Act, and includes water in coastal areas where freshwater accumulates or discharges and is mixed with seawater;
- “watershed” means any area of land that a river system drains through, and which is determined to be a watershed by the Board, and includes all watershed areas saved by section 42;
- “water source” includes all sources of water from lakes, rivers, streams, wells, aquifers, streams, springs and any other source of freshwater within Samoa which is or may be used for water supply purposes.

3. Act to bind the State - This Act shall bind the State.

PART II PRINCIPLES OF SUSTAINABLE MANAGEMENT

4. Water resources to be managed on a sustainable basis-(1) For the purposes of this Part -

“sustainable development” means promoting development at a rate and in such a way as to ensure that the quality of the environment and the supply of resources is maintained and, wherever practicable, enhanced to meet the needs of the present generation without compromising the needs of future generations.

(2) The Ministry shall ensure that the principles of sustainable development are applied to the management and development of the water resource.

(3) The principles of sustainable development are to be applied to the conservation and management of the water resource by –

- (a) the formulation, approval and application of policies and programmes which are based on those principles; and
- (b) the declaration and effective management of protected and closed areas, watershed management areas and water reserves and easements.

5. Application of the precautionary principle-(1) All persons and agencies having responsibilities under this Act, or whose functions and powers may relate to any matter or thing involving the management of water resources in Samoa, or the regulation, control, or management of any substance, matter or thing which may adversely impact upon Samoa's water resources, shall apply the precautionary approach when discharging their responsibilities and functions, or exercising their powers.

(2) To clarify the application of subsection (1), the precautionary approach is applied if, in the event of a threat of damage to Samoa's water resources or to the environment of Samoa, or a risk to human health in Samoa, a lack of full scientific certainty regarding the extent of adverse effects is not used as a reason for not acting to prevent or minimise the potential adverse effects or risks arising in any way from a matter or thing regulated under any law.

PART III RIGHTS TO CONTROL AND MANAGE THE WATER RESOURCE

6. State control of water resources-(1) The sole right to permit the use of water in lakes, falls, rivers, streams, springs and aquifers in Samoa for the purpose of supplying water for domestic, agricultural, pastoral, industrial or commercial uses, or for the purpose of generating or storing electricity or other power, and to otherwise manage and control such waters, remains vested in the Government.

(2) The granting of rights to take or use water referred to in subsection (1) may only be done in accordance with the provisions of this Act.

(3) The powers of the Government under this section are to be exercised in a manner which takes account of the rights of use of the water resource recognised in the Samoa Water Resource Management Plan as provided for in section 12 (7), and the local management of water sources in accordance with by-laws made under section 33.

(4) Nothing in this Act affects any rights of customary ownership of land in Samoa, and no action may be taken under this Act to deprive existing rights to land and resources held in accordance with the customs and traditions of Samoa.

(5) The regulatory controls exercised by government under the authority of this Act shall be applied so as to ensure that the benefits of the water resources of Samoa are maximised and enjoyed fairly by all persons having needs of water.

7. The rights of State Utilities and Independent Water Schemes-(1) The Samoa Water Authority, Independent Water Schemes and the Electric Power Corporation shall be entitled to take and use water for the discharge of their respective functions, but shall comply with any conditions, procedures, restriction or controls imposed in the exercise of powers under this Act.

(2) The Ministry shall have the right to use the water resource for any purpose associated with the protection or management of the environment, where such use is consistent with the Samoa Water Resource Management Plan.

(3) The Ministry shall recognise the rights of individuals and communities to access water for the purposes of supplying water to meet the needs of those individuals and communities, and the provisions of this Act shall be applied accordingly.

8. Rights of the Fire Service to access and use water for fire prevention and response-(1) The Fire and Emergency Service may take water from any water source for the purpose of controlling or extinguishing fires which threaten human life or property.

(2) The use of water from water sources by the Fire and Emergency Service for activities relating to fire prevention shall be undertaken in accordance with the Samoa Water Resource Management Plan.

(3) The Fire and Emergency Service may take any action necessary and consistent with the Fire and Emergency Service Act 2007 to protect water sources from the effects of fire.

PART IV POWERS OF THE MINISTRY OVER THE WATER RESOURCE

9. Objectives of water resource management - The Ministry shall implement this Act and manage the water resource so as to achieve the following objectives -

- (a) the sustainable management of the water resource through coordinated and scientifically sound planning of water resource development and regulated water utilisation for all lawful purposes;
- (b) the avoidance of overdrafts of available water supplies through the establishment of an inventory of water resources and the effective monitoring of water levels;
- (c) the improvement of the chemical, physical and biological integrity of the water resource by -
 - (i) regular monitoring of water quality;
 - (ii) promoting coordination amongst all agencies of government having roles and functions associated with the testing and monitoring of water quality and supply;
 - (iii) recording the results of monitoring and maintaining records of other matters associated with the management of the water resource; and
 - (iv) the control of pollutant discharges;and

- (d) assisting with the proper assessment of the impacts of proposed developments on the water resource, and facilitating the implementation of effective urban and rural planning regimes that take account of water supply and water quality issues.

10. Powers of the Minister-(1) In order to meet the objectives stated in section 9, the Minister shall have the power to -

- (a) consider applications for the taking and use of water in accordance with Part V;
- (b) give approvals, and to vary and revoke any approval, in accordance with Part V;
- (c) consider competing claims for the taking and use of water and make determinations in relation to disputes between water users, such determinations being binding and final on the parties competing for the use of water;
- (d) place restrictions on the right to take or use water, either in relation to particular users or so as to apply generally, if circumstances require that water conservation measures be imposed;
- (e) set standards applying to any activity or equipment associated with the taking of water or the utilisation of the water resource, and regulate or prohibit any such activity or the use of any such equipment;
- (f) declare any area to be a water source protection zone on the recommendation of the Board, and determine that the designated area shall be managed in accordance with a management plan approved by the Board to apply to the water source protection zone;
- (g) otherwise regulate and control the utilisation of the water resource, and any activity that may effect the quality of water or the quantity of water supply;

- (h) direct that notices be given to persons to cease activities or practices having a detrimental affect on the quality of water or the quantity of the water resource, which may require the removal of any structure or thing having such an impact;
- (i) arrange for the removal of any structure or thing not having been removed in accordance with a notice given under paragraph (h), and to recover the cost from the person in default; and
- (j) require that certain matters relating to the water resource be considered in the assessment of environmental impacts of proposed developments required under the Environment Impact Assessment requirements applying under the Planning and Urban Management Act 2004, and any other applicable law.

(2) The Minister may, by written notice, require any person who has drilled any borehole or who has been taking water prior to the commencement of this Act to comply with any requirement imposed by this Act and by the Minister under subsection (1), and the written notice delivered to that person shall state a date by which compliance is to be achieved.

(3) The powers of the Minister under this section may be exercised –

- (a) by the making of written determinations and orders under the hand of the Minister; or
- (b) in accordance with Regulations made under this Act to give effect to the objectives stated in section 9, and to facilitate the exercise of the powers conferred by this section.

(4) Any regulations made under subsection (3) may prescribe offences and impose penalties for the breach of such offences being fines not exceeding 100 penalty units, or to a term of imprisonment not exceeding one (1) year, or to both such fine and imprisonment.

(5) The Minister may delegate, by instrument in writing, any of the powers provided for by this section to the Chief Executive Officer or any other officer of the Ministry.

11. Offences against this Part - Any person who -

- (a) fails to comply with a determination made by the Minister under section 10(1)(c) in relation to competing uses of the water resource;
- (b) fails to comply with any restriction placed by the Minister under section 10(1)(d);
- (c) fails to comply with any standard set under section 10(1)(e) while undertaking any activity or using any equipment associated with the taking of water;
- (d) unlawfully undertakes any activity or uses any equipment which has been regulated or prohibited under section 10(1)(e);
- (e) fails to comply with any notice given by the Minister under section 10(1)(h);
- (f) fails to meet the cost of complying with the requirement of any notice given by the Minister under section 10(1)(h); or
- (g) fails to comply with a notice given under section 10(2) -

commits an offence and shall upon conviction be liable to a fine not exceeding 250 penalty units if the offence is committed by an individual person or persons, or 500 penalty units if the offence is committed by a company, and to imprisonment for a term not exceeding one (1) year, or to both such a fine and imprisonment.

**PART V
REGULATING THE TAKING OF WATER**

12. Licences and permits to take water-(1) Subject to subsection (7), no person may –

- (a) drill for water;
- (b) dig for water or construct a well;
- (c) make or use a bore for the purpose of taking water from the water resource;
- (d) otherwise take water from the water resource of Samoa;

(e) investigate the water resource for the purpose of identifying a commercial source of water or for scientific research; or

(f) undertake any activity in or affecting the water resource which the Minister determines by Order to require a licence under this Part –

unless he or she is the holder of a licence or permit to do so issued by the Ministry in accordance with this Act.

(2) Every application for a licence or permit under subsection (1) shall –

- (a) be made in writing to the Chief Executive Officer in a form approved by the Chief Executive Officer from time to time;
- (b) be accompanied by an application fee as prescribed by Order made by the Minister;
- (c) include such additional information in relation to the proposed or current activities, as may be required by the Chief Executive Officer; and
- (d) be accompanied by a signed undertaking by, or on behalf of the applicant, that the –
 - (i) drilling or water taking activities; or
 - (ii) investigation or scientific research -shall be in accordance with the provisions of the Samoa Water Resource Management Plan and the requirements of this Act.

(3) All applications made under this section shall be referred to the Division of Water Resources for confirmation that the drilling or water taking activities, or investigation and research, shall –

- (a) be in accordance with the provisions of the Samoa Water Resource Management Plan;
- (b) not contravene any standards, control, prohibition or requirement applying under this Act;
- (c) not adversely affect the water quality of the water resource or any aspect of the water supply in Samoa;
- (d) not deprive any village or community relying on that source;

- (e) in the case of a source in the vicinity of a village, be in accordance with an approval given by the relevant village fono for the drilling or water taking activities to be undertaken; and
 - (f) in the case of a source on privately owned land, be in accordance with an approval given by the owner for the drilling or water taking activities.
- (4) Upon confirmation of the matters specified in subsection (3), the Minister may authorise that a licence or permit be granted.
- (5) A licence or permit granted under this section –
- (a) may impose any conditions as to the means of abstraction, quantity of water, placement of a bore, well, abstraction equipment or head works, and any other matter that may assist in the protection, conservation and sound management of the water resource; and
 - (b) shall, if the licence or permit authorises the taking of water, state –
 - (i) the quantity of water that may be abstracted;
 - (ii) the rate at which the water may be abstracted (which may be stated on a daily, monthly or annual basis, or any combination of these); and
 - (iii) the permissible means by which the water may be abstracted.
- (6) A licence granted under this section shall be valid for a period of up to five (5) years as determined by the Minister, but may be varied, suspended or revoked by the Minister for any purpose that is consistent with the protection, conservation or sound management of the water resource.
- (7) The Samoa Water Resource Management Plan may apply processes for permitting certain persons to take water from a water source without a licence or permit issued under this section, if the person –
- (a) is entitled to a right of access to the particular water resource from a water source in accordance with this Act or an approved policy on rights of

access to the water resource, which shall form part of the Samoa Water Resource Management Plan; or

- (b) intends to abstract a quantity of water which is less than the volume of water set by the Samoa Water Resource Management Plan as being the maximum amount of water which may be abstracted without a licence.

(8) Any person who lawfully abstracts water without a licence by reason of subsection (7) must comply with all other provisions of this Act and with the requirements imposed by the Samoa Water Resource Management Plan.

(9) The Minister may suspend or cancel a licence or permit if it is necessary for the proper management of the water resource, or on the grounds that the holder of the licence or permit has –

- (a) breached any provision of this Act, or breached any other law which has had consequences on the proper management of the water resource;
- (b) provided any false or misleading information in an application, or which has otherwise been required to be provided under this Act;
- (c) failed to comply with a condition applying to the licence or permit; or
- (d) failed to pay any fee or charge relating to the licence or permit or the activities authorised by it.

13. Requests for a review of a decision-(1) An applicant who is aggrieved by a decision of the Minister made under section 12 may, within 28 days of the decision being made, request a reconsideration of the application or decision by -

- (a) giving written notice to the Chief Executive Officer stating the grounds upon which the request is made and providing evidence and information to establish that the proposed activities –
 - (i) are consistent with the Samoa Water Resource Management Plan; and
 - (ii) shall not adversely impact upon the quantity or quality of the water resource; and

(iii) shall not impact upon the availability of water to meet the needs of villages and communities; and

(b) paying any fee prescribed by Order made by the Minister.

(2) The notice and supporting evidence given under subsection (1) shall be referred to the Board for consideration in such manner as the Board determine, and the Board shall advise the Minister if grounds exist for granting the licence or for varying the decision.

(3) The Minister may make a decision in relation to a request made under this section based upon the findings of the Board.

14. Environment and health standards applying to water-(1) Environmental standards relating to –

(a) the taking of water; and

(b) any activity that may affect water quality or the integrity of any water source, including waste management operations and any commercial enterprise -

may be prescribed by the Minister, and the Ministry shall be responsible for the monitoring and enforcement of the approved standards.

(2) Public health standards relating to the taking of water and any aspect of water quality may be prescribed by the Minister of Health, and the Ministry of Health shall be responsible for the monitoring and enforcement of the approved standards.

(3) Standards imposed under this section may be applied to any agency of government whose activities relate to, or impact upon the water resource, and to their contractors, and to any other persons identified in the applicable standard.

(4) Any person to whom an approved standard applies who fails or refuses to comply with the standard commits an offence and shall be liable to a fine not exceeding 20 penalty units.

(5) In addition to any fine imposed under subsection (4), the failure to observe or comply with an approved standard shall be grounds for:

- (a) suspending or revoking any registration, licence or permit applying to the person in breach; and
- (b) refusing any subsequent registration, licence or permit sought by the person in breach.

15. Offences against this Part-(1) Any person who –

- (a) gives any false particular in an application made to the Ministry for a licence or permit, or any registration, under this Part;
 - (b) takes water from the water resource of Samoa without a licence or permit given under this Part, unless exempted by reason of section 12(7);
 - (c) fails to comply with conditions imposed in relation to a licence given under this Part;
 - (d) fails to comply with any requirement of the Samoa Water Resource Management Plan applying to the taking of water from a water source -
- commits an offence and shall upon conviction be liable to a fine not exceeding 250 penalty units if the offence is committed by an individual person or persons, or 500 penalty units if the offence is committed by a company, and to imprisonment for a term not exceeding one (1) year, or to both such a fine and imprisonment.

PART VI

SAMOA WATER RESOURCES BOARD

16. The Samoa Water Resources Board-(1) The Samoa Water Resources Board is established.

- (2) The membership of the Board shall comprise -
 - (a) the Minister, who shall be Chairperson;
 - (b) the Chief Executive Officer;
 - (c) the Chief Executive Officer of the Ministry of Finance;
 - (d) the Chief Executive Officer of the Ministry of Women and Community Development;
 - (e) the Chief Executive Officer of the Ministry of Agriculture;

- (f) the Chief Executive Officer of the Ministry of Health;
 - (g) the Commissioner for the Fire and Emergency Service;
 - (h) the General Manager of the Electric Power Corporation;
 - (i) the Managing Director of the Samoa Water Authority;
 - (j) the Chief Executive Officer of an agency in Samoa having responsibility for waste management (if any);
 - (k) the President of the Independent Water Schemes Association;
 - (l) the President of the Samoa Umbrella for Non-Government Organisations (SUNGO), or the President's nominee; and
 - (m) not more than four (4) representatives of the community, who may be appointed by the Minister for a period of up to three (3) years.
- (3) The Chief Executive Officer may appoint officers of the Ministry and any other person who may assist in the work of the Board, to be advisors to the Board.
- (4) In the event that any member is unable to attend any meeting of the Board, an alternate member may be nominated to attend in the place of the member.
- (5) Meetings of the Board shall be held at such times and at such places as the Minister shall determine.
- (6) Every meeting of the Board shall be presided over by the Minister, and in the absence of the Minister, by the Chief Executive Officer.
- (7) The Board may regulate its proceedings in such manner as it thinks fit.

17. Functions and Powers of the Board-(1) The functions of the Board are to -

- (a) advise the government on any matter affecting the quantity and quality of the water resource;

- (b) promote coordination amongst government agencies having responsibilities relating to the water resource;
 - (c) ensure that there is effective monitoring of the water resource by the responsible agencies and that records of such monitoring are maintained and made accessible;
 - (d) promote the dissemination of information about the water resource to government agencies and the general community;
 - (e) take over the functions of the Watershed Management Committee established under the Watershed Protection and Management Regulations 1992, and ensure that the measures provided for in this Act and regulations made under this Act relating to the watershed management and protection are implemented;
 - (f) recommend to the Minister that an area be declared to be a water source protection zone in accordance with section 10 (1) (f);
 - (g) formulate and endorse a management plan to be applied to any designated water source protection zone in accordance with section 10 (1) (f);
 - (h) arrange for the preparation, endorsement and implementation of the Samoa Water Resource Management Plan in accordance with Part VII, and for its periodic review and amendment; and
 - (i) identify and endorse projects to be undertaken with the aim of protecting, conserving and improving the water resource.
- (2) All plans endorsed by the Board shall not take effect until they are approved by Cabinet.

PART VII
SAMOA WATER RESOURCE MANAGEMENT PLAN

18. Elements of the Samoa Water Resource Management

Plan-(1) The Samoa Water Resource Management Plan shall address the following matters –

- (a) an inventory of the surface water and groundwater resources and water sources;
- (b) an assessment of the available water supply and the sources of the water supply;
- (c) a determination of the average quantity of water abstracted from water sources on a daily and monthly basis;
- (d) a determination of the average quantity of water consumed in Samoa (and at certain strategically important locations in Samoa) on a daily and monthly basis;
- (e) a determination, or means of determining, the safe yield of water from water sources;
- (f) a determination of the losses of water that occur between the source and the consumer;
- (g) an assessment of environmental flows in specific water sources;
- (h) an assessment of water waste by domestic, commercial, industrial and agricultural users, and also by the reticulated water schemes;
- (i) water conservation measures and a timetable for their implementation;
- (j) a projection of demand for surface water and ground water by domestic, commercial, industrial and agricultural users;
- (k) mandatory well and intake construction standards, including provisions for the sealing and fencing of wells;
- (l) a water quality monitoring programme of existing and proposed water sources, and the identification of the role in such a programme for the responsible government agencies;

- (m) procedures for the recording of information about water quality and quantity, for the sharing of it amongst the responsible government agencies and for its public disclosure;
 - (n) contingency plans to be actioned in the event of threats to the quantity and quality of the water resource;
 - (o) appropriate cost recovery proposals to redress problems of salinity, pollution and other adverse environment effects that arise from the taking of water from the water resource; and
 - (p) the classes of water users and types of water use that do not require a licence or permit as provided by section 12(7).
- (2) When preparing and approving the Samoa Water Resource Management Plan, the Board shall apply the following principles –
- (a) the abstraction of water from surface water sources should not exceed the safe yield from those sources;
 - (b) the abstraction of water from any groundwater lens should not exceed the safe yield of the lens;
 - (c) wastage of water by any person must be kept to a minimum;
 - (d) water use must be beneficial and based on principles of sustainability;
 - (e) use of water for human consumption in Samoa is the highest priority, and in the case of competing uses of the water resource, the needs for such use shall prevail;
 - (f) the water resource must be safeguarded from all types of pollutants; and
 - (g) conditions may arise when the water resource must be safeguarded by the imposition of restrictions applying to all or to specific water users.
- (3) The Plan shall be comprised of –
- (a) all approved government policies relating to water resource management and conservation;

- (b) all technical reports identifying the hydrological, meteorological and other matters influencing or affecting the water resource;
- (c) inventories of the water resource;
- (d) approved strategies and plans for water resource conservation and management; and
- (e) all watershed management plans approved or applying under this Act –

if such documents are expressed to be part of the Plan and approved as such by Cabinet.

(4) Whilst the Samoa Water Resource Management Plan is being formulated or in the event that any matter of significance to the proper management of the water resource is not yet part of the Plan, the Minister may make Orders in relation to any matter referred to in subsection (1), and such Orders shall be deemed to be part of the Plan for all purposes of this Act.

19. Environment Impact Assessments, Planning Schemes and other plans to be consistent with the Plan-(1) The

provisions of the Samoa Water Resource Management Plan must be considered and reported upon in relation to all assessments of impacts to the environment from proposed developments undertaken under the authority of the Planning and Urban Management Act 2004, and any other relevant law.

(2) All urban and rural planning schemes prepared in accordance with any law shall be consistent with the provisions of the Samoa Water Resource Management Plan, and all such planning schemes shall have the objective of protecting and conserving the water resources in accordance with the objectives stated in section 9.

(3) No approval may be given under any law dealing with development controls and the assessment of impacts on the environment if the effect of the approval is to breach any provision of the Samoa Water Resource Management Plan.

(4) The National Disaster Management Plan applied under the Disaster and Emergency Management Act 2007 shall make appropriate provision in relation to –

- (a) the protection of Samoa's water resources from events that may constitute disaster and emergency situations;
 - (b) the provision of adequate water during periods of disaster and emergency; and
 - (c) rights to access water sources on a temporary basis for the purposes of meeting demands and needs for water during periods of disaster or emergency.
- (5) All plans and licences or other approvals relating to forestry and other natural resource management and exploitation, and for the management of national parks and reserves shall make appropriate provision in relation to the protection of Samoa's water resources from the activities or within the areas covered by such plans and approvals.

PART VIII WATERSHED MANAGEMENT

20. Interpretation in this Part – In this Part, unless the context otherwise requires.

“Customary bodies” means –

- (a) the relevant Village Fono under the Village Fono Act 1990; and
- (b) the relevant Pulenu'u and the Sui o le Malo appointed under the Pulenu'u and Sui o le Malo Act 1978;

“Protected watershed” means an area designated as a protected watershed by any watershed management plan;

“Purpose of watershed protection” means the protection of the climate, soil conservation, or water conservation and storage (whether for water supply, irrigation, or generation of electricity);

“Watershed management plan” means a watershed management plan approved by the Head of State under section 23, subject to any variation made under section 28.

21. Functions of the Board in relation to watershed management – The Board shall -

- (a) advise the Minister on the need, with respect to any watershed, to prepare a watershed management plan or to vary any such plan;
- (b) finalise a watershed management plan in accordance with section 26;
- (c) ensure that the existence and contents of a watershed management plan are made known generally to the people residing in, or adjacent to the land, the subject of the plan;
- (d) use its best endeavors to ensure that the contents of a watershed management plan are implemented;
- (e) review, from time to time as appropriate, the effectiveness of each watershed management plan in achieving its purposes of watershed protection, and recommend any variation of its contents in accordance with section 28; and
- (f) perform any other functions conferred on it by this Act or regulations made under this Act.

22. Powers of the Board in relation to watershed management – The Board, in the performance of its functions, shall have the power to direct any authorized officer to exercise any power provided for in Part X to ensure that proper protection and management is given and applied to watershed areas in accordance with this Part and regulations made under this Act.

23. Preparation of a watershed management plan-(1) Whenever directed by the Minister with respect to any watershed, the Chief Executive Officer shall cause a watershed management plan to be prepared in accordance with the provisions of this Part.

(2) The purpose of a watershed management plan is to provide the framework for rational and effective management of the watershed concerned and its resources with a view to –

- (a) the progressive introduction and application of appropriate standards and techniques for the protection management, sustainable use and improvement of the watershed and its resources;
- (b) the planning and coordination of all Government and private activities which have a significant effect upon the watershed and its resources;
- (c) the provision of water from the watershed suitable for domestic purposes, the generation of hydroelectricity, industrial and commercial use, agriculture, irrigation and the watering of stock, fishing, conservation of flora and fauna and recreation;
- (d) the retreatment and proper disposal of waste in the watershed;
- (e) the protection of the watershed from activities likely to cause damage to its soil and water;
- (f) monitoring of soil and water resources and land use activities in the watershed; and
- (g) the promotion of public awareness of and commitment to the responsible use of the watershed and its water.

24. Contents of plans—(1) A watershed management plan shall:

- (a) describe the location and general physical features of the land the subject of the plan;
- (b) designate closed areas, reserves and buffer zones;
- (c) describe the Government work and private activities currently being conducted in the watershed, and their effects, both individually and in combination upon the watershed and its resources;
- (d) specify -
 - (i) the Government work which it is planned to carry out in the watershed; and
 - (ii) likely changes in private activities being conducted in the watershed, which will have a significant effect upon the watershed

and its resources, and describe those effects both individually and in combination:

- (e) specify the prohibitions or restrictions, if any, which will apply to land use within the watershed, including –
 - (i) the prohibition or regulation of any agricultural, commercial or development activity likely to impact upon the water resource; and
 - (ii) prohibitions or restrictions on the removal of trees or other vegetation;
 - (f) specify the arrangements to be made for participation by representatives of the people residing in or adjacent to the watershed in the ongoing management of the watershed including by the appointment of advisory Boards;
 - (g) specify the standards and techniques to be used for monitoring the watershed and its resources; and
 - (h) ensure that the biodiversity within the watershed is protected.
- (2) A watershed management plan may contain a map or maps to illustrate its contents and scope of application.

25. Process of Plan Preparation-(1) The Chief Executive Officer shall first prepare a watershed management plan in draft form, and shall then -

- (a) cause the draft plan to be publicised in such a manner as is likely to bring it to the notice of people residing in, or adjacent to the watershed;
- (b) cause consultations on the contents of the draft plan to be held with the customary bodies in each village located in or adjacent to the watershed;
- (c) cause meetings to be held to discuss the contents of the draft plan with any persons known to be clearing or cultivating any land, or grazing any animals, within the watershed;
- (d) forward a copy of the draft plan to the members of the Board; and

(e) call for comments from interest members of the public on the contents of the draft plan.

(2) After the Chief Executive Officer has complied with subsection (1), and a reasonable time has been allowed for public comment, the Minister shall convene a meeting of the Board to finalise the watershed management plan for that watershed.

26. Finalisation of a watershed management plan-(1)

Upon presentation of a Plan the Board, shall consider the draft watershed management plan and taking due account of the results of all consultations and meetings held and any comments received shall decide on the final form of the plan and submit it to the Minister.

(2) Upon receiving a finalised management plan the Minister shall refer it to Cabinet for its consideration.

(3) Upon its consideration of a watershed management plan Cabinet may advise the Head of State to approve it, or Cabinet may refer it back to the Board for reconsideration and revision.

(4) The Head of State, acting on the advice of Cabinet, may by Order approve a watershed management plan.

27. Publication of a plan-(1) When a watershed management plan comes into force, the Chief Executive Officer shall:

(a) forward a copy of the plan to each member of the Board; and

(b) cause a notice to be published in the Savali, and in a newspaper circulating in the area to which the notice relates; and

(c) cause a notice to be broadcast by radio, advising how interested persons may obtain a copy of the plan, or may examine the plan.

(2) The Chief Executive Officer may require a fee to be paid, in the amount fixed by him for obtaining a copy of a watershed management plan.

28. Variation of a plan-(1) A watershed management plan may be varied in the same manner as is provided for in sections 23 and 26 for the preparation and finalization of a watershed management plan.

(2) A variation in a watershed management plan shall be published in the same manner as is provided for in section 27 for the publication of a watershed management plan.

29. Reserves and Closed Areas-(1) A watershed management plan may designate water reserve areas or easements adjacent to water reserves for the purpose of regulating activities within the watershed.

(2) A watershed management plan may provide for any land to be protected land and to be closed for the purpose of protecting the water resource in the watershed area.

(3) The provisions of the Taking of Land Act 1964 shall apply to any protected lands under subsection (2).

30. Offence to breach a management plan - A person who –

- (a) does any act in breach of any restriction of a watershed management plan that is in force; or
 - (b) disturbs any soil or vegetation contrary to any Order made under section 29(2) or the conditions applying to any permission under section 29(3) -
- commits an offence, and is liable upon conviction to a fine not exceeding 20 penalty units.

31. Responsibilities of officers, etc-(1) Authorised officers and all officers of government agencies having roles relating to the management of water resources shall take such acts and exercise such powers as are necessary to ensure that the requirements of a watershed management plan are observed.

(2) The customary bodies in a village within or adjacent to a protected watershed the subject of a watershed management plan shall use their best endeavours to ensure that the requirement of the plan are observed by the residents of that village.

(3) When an offence is committed in a protected watershed or in respect of any water in or from a protected watershed, an information for the prosecution of that offence shall be promptly laid by an officer designated by the Chief Executive Officer.

32. Powers of Government agencies etc-(1) For the purposes of implementing a watershed management plan, government agencies may carry out work on any land in a protected watershed for the purpose of soil conservation, or for protection of the water catchments area.

(2) The Chief Executive Officer, for the purposes of implementing a watershed management plan, may from time to time close a road on or through government land to public access, either temporarily or permanently, by the erection of a gate or by any other suitable means.

(3) A road shall not be closed under this section if to do so would deny any reasonable access to the beneficial owners of any customary land, freehold land, or current leases over government land.

PART IX COMMUNITY INVOLVEMENT IN WATER MANAGEMENT

33. Village and community by-laws-(1) The Ministry may consult with village and community representatives, and prepare and promulgate by-laws not inconsistent with this Act for the conservation and management of water resource in particular areas and which involve local communities in conservation and management measures, including requirements or restrictions relating to –

- (a) the taking of any water from a particular water source;
- (b) sanitation practices and facilities to protect a water source;
- (c) the use of detergents, pesticides and other substances which may adversely affect a water source;
- (d) the grazing of cattle and the keeping of other animals which may impact on a water source;

- (e) the use of lands near a water source for purposes of recreation;
 - (f) the removal and disposal of wastes from areas near a water source;
 - (g) activities which adversely affect river banks, river beds or any other feature of a water source; and
 - (h) any other activity or practice which may adversely affect a water source in the area to which the by-law shall apply.
- (2) Every by-law made under this section shall -
- (a) be signed by the Chief Executive Officer;
 - (b) be published in the Savali; and
 - (c) shall come into force on the date of publication in the Savali, or on a day fixed in the by-law.
- (3) Every by-law made under this section may be altered or revoked in the same manner in which they may be made under this section.
- (4) Every draft by-law affecting or applying to the conservation and management of water resources shall be provided to the Pulenuu of adjacent villages during the period of consultation leading to the preparation of the by-law.
- (5) A final copy of every draft by-law shall be provided to the Pulenuu of adjacent villages at least seven (7) clear days before it is published in the Savali.
- (6) By-laws may provide that any matter is to be determined, applied, dispensed with, prohibited or regulated by the Chief Executive Officer, any such power may be exercised from time to time, and either generally or for any classes of cases, or in any particular case.
- (7) No by-law made under this section shall bind the Government.
- (8) All by-laws must impose only reasonable restrictions and requirements and must be consistent with this Act, the Samoa Water Resource Management Plan and all approved policies and schemes applying to the water resource.

34. Other community based programs and initiatives-(1) The Ministry may devise, approve, implement or participate in programs relating to water conservation and the promotion of proper water management practices in Samoa.

(2) For the purposes of this section, the Ministry may act in combination or association with any other person or body, whether incorporated or not, and whether in Samoa or elsewhere, for any purpose associated with water conservation and water resource management.

(3) The Minister may convene and conduct a National Water Forum from time to time to involve village and community representatives in the effective management of the water resource and to report on the current state of the water resource.

PART X POWERS TO MONITOR AND ENFORCE

35. Appointment of authorised officers-(1) Notwithstanding the provisions of any other Act, the Chief Executive Officer may appoint any officer or employee of the Ministry to:-

- (a) be an authorised officer for the purposes of this Act or any regulation made under it; and
 - (b) perform the function of any authorised officer, inspector, analyst, by-laws officer or other officer necessary to perform any functions related to the conservation and management of Samoa's water resources.
- (2) An officer or employee appointed under subsection (1) shall have the right to exercise any power:-
- (a) given to an officer under any Act identified by the Chief Executive Officer in the notice of appointment applying to the officer; and
 - (b) any power stated in section 36.

36. Powers of authorised officers-(1) In addition to powers conferred by this or any other law, authorised officers shall have power, on producing (if so required) evidence of appointment under this Act, to enter or access at any time any land, water

source, premises, vessel, ship, aircraft, vehicle or other conveyance for the purpose of:-

- (a) monitoring the impact on the water resource of any activity, matter or thing;
- (b) investigating the commission of any offence or the breach of any lawful obligation under a law relating to the conservation and management of the water resource;
- (c) serving and enforcing any notice under section 10 (1) (h) requiring that an activity cease or that a structure be removed;
- (d) otherwise enforcing this Act and any regulations made under this Act –

PROVIDED THAT no authorised officer shall enter a dwelling-house unless authorised to do so by a warrant issued by a Judge, who shall not grant the warrant unless satisfied that the officer has reasonable grounds for requiring entry to the premises.

(2) In the exercise of the powers conferred by subsection (1), an authorised officer may:-

- (a) conduct such investigations and examinations as are necessary to monitor the effects of any activity, matter or thing, or to determine whether any offence or breach of a lawful obligation has been committed;
- (b) install, operate and maintain hydrological and related equipment and instruments, and water measuring sites and gauging stations, in all water sources and on all government land, and on private lands with the consent of the owner of the land;
- (c) erect public notice boards and information or warning signs at any water source and on any government land, and on private land with the consent of the owner of the land;
- (d) take samples for the purpose of analysis and testing;
- (e) take photographs or measurements;
- (f) require any person apparently associated with an activity under investigation to state his or her full name, occupation and usual place of residence;

- (g) require the production of any document relevant to the activity, matter or thing under investigation, including any licence or permit required by law;
 - (h) require from any person any assistance that is relevant to the investigation or monitoring activity; and
 - (i) seize any item used in the commission of an offence against this Act or any law relating to the conservation and management of the water resource.
- (3) Any person who:-
- (a) hinders or obstructs an authorised officer in the performance of his or her duties, or the exercise of a power, under this Act or any other law related to the conservation and management of the water resource;
 - (b) induces or incites any other person to hinder or obstruct an authorised officer;
 - (c) by words or conduct falsely represents that he or she is an authorised officer, or otherwise impersonates an authorised officer;
 - (d) fails to comply with a requirement made by an authorised officer under subsection (2) (d), (e) or (f);
 - (e) provides false or misleading information to an authorised officer when required under subsection (2) to provide information;
 - (f) removes, tampers with or damages any equipment, notice board or sign installed or erected pursuant to subsection (2); or
 - (g) removes, tampers with or damages any equipment being used for the purpose of gathering or recording any information or data concerning the water resource installed or operated by any person in accordance with an obligation to provide information to the Ministry under this Act –
- commits an offence, and shall be liable upon conviction to a fine not exceeding 20 penalty units if the person is an

individual, or to a fine of 40 penalty units if the offence is committed by a corporation, or to a term of imprisonment not exceeding three (3) months, or both.

37. Precautionary Notice-(1) Where an authorised officer suspects that any activity of a licence or permit holder under this Act, or of any person undertaking activities which affect the water resource, may –

(a) be in breach of –

(i) any requirement applying under this Act or regulations made under this Act; or

(ii) any environmental or development control affecting the activity and related to the water resource;

(b) be adversely impacting upon water resources in any way; or

(c) cause disaffection amongst land owners or any village or community being affected by a water taking operation or activity –

the officer may issue a notice requiring that any person apparently in control of or associated with the activity, matter or thing comply with any requirement specified in subsection (2).

(2) A notice issued under subsection (1) may require all or any of the following -

(a) that information be provided in relation to the operation or activity to satisfy the Assistant Chief Executive Officer – Water Resource of the Ministry that no such breach, adverse impact, risk of disaffection or threat to the water resource is occurring, or likely to occur;

(b) that alternative operating techniques or activities be considered and employed to avoid the breach or decrease the adverse impact, risk of disaffection or threat to the water resource;

(c) that improvements or alterations be made in relation to the operation or activity to the satisfaction of the Assistant Chief Executive Officer – Water Resources of the Ministry, to avoid the breach or

decrease the adverse impact, risk of disaffection or threat to the resource; and

- (d) any other requirement, as determined by the Assistant Chief Executive Officer – Water Resources of the Ministry, to ensure due compliance with any requirement, avoid the adverse impact, disaffection or threat of damage to the water resource.

(3) Any person served with a notice under this section shall ensure that the requirements stated in the notice are complied with within the time stipulated, and shall satisfy the Assistant Chief Executive Officer – Water Resources of the Ministry, prior to the expiration of that time, that the activity, matter or thing is not adversely affecting the water resource.

38. Notice to cease an activity-(1) A Notice may be issued under this section whether or not a Precautionary Notice has been served under section 37.

(2) Where, after receiving advice from the Chief Executive Officer, the Minister is of the opinion that there is occurring, or may occur, an act or activity which involves a breach of any requirement or an immediate risk of disaffection or threat to the water resource as provided for in section 37 (1), the Minister may issue a Notice under this section.

(3) A Notice issued under this section shall -

- (a) be directed to the licence or permit holder, or any person believed to be carrying out the operation or activity, or apparently has some control over it;
- (b) specify any act or activity which warrants the issue of the notice; and
- (c) require that the act or activity cease, or not be done, until the Minister is satisfied that the breach, the risk of disaffection or threat to the resource no longer exists.

(4) A Notice may be served under this section notwithstanding that any approval, licence or permit has been granted in relation to the operation or activity.

(5) The Minister and the Government shall not be liable in respect of any loss or damage arising from, or in any way connected with, the issuing of a Notice under this section.

39. Offences and penalties related to notices-(1) Any person who, having been served with a Notice issued pursuant to section 37, fails to comply with a requirement stated in the Notice commits an offence, and shall be liable upon conviction to a fine not exceeding 100 penalty units, or to imprisonment for a term not exceeding one (1) year, or both.

(2) Any person who -

- (a) having been served with a Notice issued under section 38, fails to comply with any of its terms;
 - (b) having been served with a Notice issued under section 38, causes or permits any other person to act in breach of its requirements; or
 - (c) knowingly acts in breach of the requirements of a Notice given under section 38, whether or not that person has been served with the Notice -
- commits an offence and shall be liable upon conviction to a fine not exceeding 100 penalty units, or to a term of imprisonment not exceeding six (6) months, or both.

(3) In addition to any other penalty imposed under this section, a court may order that any person convicted of an offence pay compensation for any resulting loss or damage to the Government, or to any other person affected by the offence.

40. Prosecution of offences-(1) The Chief Executive Officer and any authorised officer may commence and conduct any prosecution in relation to any offence committed against this Act or any other law relating to the conservation and protection of the water resource.

(2) With the approval of the Attorney General, the Chief Executive Officer may authorise that any prosecution under this Act be conducted by a duly qualified lawyer.

(3) Where a corporation is guilty of any offence under this Act, or any Regulation made under it, any officer, director or agent of the corporation who authorised, assented to or participated in the commission of the offence, or who by his or

her neglect or omission contributed to the commission of the offence, shall be a party to the offence and may be found guilty in relation to its commission, and shall be liable to penalty provided for in relation to it.

41. Requirement to provide information, data etc-(1) All holders of licences and permits granted under this Act, and all persons conducting any operation, business or activity which involves use of the water resource, or which causes any adverse impact on the water resource must –

- (a) keep all such records and data in relation to the water resource which the Chief Executive Officers requires from time to time to be recorded and kept;
- (b) provide all information, statistics and copies of records relating to any such operation or activity that is required to be provided by the Chief Executive Officer from time to time; and
- (c) file any returns required by the Chief Executive Officer giving accurate information concerning any water resource related matter required to be provided in the returns.

(2) When providing any information or filing any return under subsection (1) the provider of the information or return may indicate that certain information is of a confidential nature, if it is information that should not be available to commercial competitors of that person.

(3) If the Chief Executive Officer is satisfied that the nature of the information justifies it being kept confidential, the information may only be provided to government officials performing official duties in relation to Samoa's water resource.

(4) No person to whom the information has been provided under subsection (2) may disclose it to any person who is not authorised by the Chief Executive Officer to receive the information, and it may not be used for any commercial purpose within Samoa, except with the written consent of the person providing the information or return.

(5) If the Chief Executive Officer is not satisfied that the nature of the information justifies it being kept confidential –

- (a) the person providing the information or return shall be advised of the Chief Executive Officer's decision;
- (b) reasons for the decision shall be provided upon request from the person providing the information or return, or a person authorised by that person;
- (c) the Chief Executive Officer shall consult with the person if requested; and
- (d) the decision may be reviewed by the Minister.

PART XI MISCELLANEOUS PROVISIONS

42. General offences - Any person who -

- (a) discharges any pollutant into the water resource of Samoa;
- (b) causes, suffers or permits any pollutant to be discharged into the water resource of Samoa;
- (c) does any act which is inconsistent with any provision of an approved management plan applying to a water source protection zone -

commits an offence and shall upon conviction be liable to a fine not exceeding 250 penalty units if the offence is committed by an individual person or persons, or 500 penalty units if the offence is committed by a company, and to imprisonment for a term not exceeding one (1) year, or to both such a fine and imprisonment.

43. Fees – The Minister may by Order set fees for any purpose associated with this Act including –

- (a) application fees;
- (b) licence fees;
- (c) abstraction fees based on the duration of the licence or the quantity of water taken (or both); and

- (d) special fees and levies to address salinity and other adverse environmental effects, or to discourage or penalise water wastage.

44. Protection of persons performing duties under this Act - Any person who lawfully exercises any power or performs any function under the authority of this Act shall not be liable for any loss or damage, or be subject to any criminal prosecution, in relation to the reasonable exercise of that power or the performance of that function.

45. Regulations-(1) The Head of State, acting on the advice of Cabinet, is empowered to make Regulations for the effective implementation of this Act and the protection, conservation and proper management of the water resource in Samoa.

(2) Without limiting the generality of subsection (1), regulations may be made which -

- (a) provide for additional functions and powers of the Samoa Water Resources Board;
- (b) facilitate the exercise of any power of the Minister under this Act;
- (c) prescribe the classes of licences and permits and the rights conferred by each class;
- (d) provide for the preparation, endorsement, implementation and enforcement of the Water Resource Management Plan, and the involvement of the community in aspects of the planning process;
- (e) declare areas adjacent to water sources to be water reserves or easements, and provide for the powers and restrictions which may be applied to water reserves;
- (f) provide for all aspects of irrigation schemes, including any rights and obligations of irrigators under such schemes, and any controls and restrictions on the use of water for irrigation purposes;

- (g) drought response measures, including the imposition of schemes –
 - (i) of water restrictions throughout Samoa or in zones or areas; and
 - (ii) for the prioritisation of the use of water during times of low rainfall or water availability;
 - (h) facilitate the making, application and enforcement of by-laws made under section 20;
 - (i) facilitate the formulation or implementation of any program relating to water conservation or water resource management under section 21, or the participation by government or the community in any such program; and
 - (j) provide for the powers and functions of Independent Water Schemes and for the registration and regulation of Independent Water Schemes.
- (3) The regulations made under this section may prescribe offences and impose penalties being fines not exceeding 100 penalty units or imprisonment for a period not exceeding one (1) year, or both such fine and imprisonment.

46. Emergency Regulations-(1) Where a situation arises that in the opinion of the Minister poses a threat or risk to the water resource that requires the immediate making of Regulations in order to protect any part of the water resource of Samoa, the Minister may make Emergency Regulations in accordance with this section.

- (2) A Regulation made under this section –
 - (a) shall be consistent with section 44;
 - (b) shall take effect immediately upon its making by the Minister;
 - (c) shall be referred to the Cabinet for ratification as soon as is practicable; and
 - (d) shall continue to have full force and effect unless ratification by Cabinet is declined.

47. Savings provisions – All watershed areas and watershed management plans approved under the Watershed Protection and Management Regulations 1992, and current as at the commencement of this Act, are saved and shall be deemed to have been declared and made under the provisions of this Act.

48. Repeals and consequential amendments-(1) The Water Act 1965 is repealed.

(2) Section 35 of the Lands, Survey and Environment Act 1989 is amended by deleting the words “water rights” wherever they appear.

(3) The Watershed Protection and Management Regulations 1992 are repealed.

**The Water Resources Management Act 2008 is administered by
the Ministry of Natural Resources and Environment**