

# BROADCASTING AMENDMENT BILL 2015

## SAMOA

### Explanatory Memorandum

#### **Introduction**

The Broadcasting Amendment Bill 2015 (“Bill”) aims to improve the framework for administration of the broadcasting sector. This is reflected in the Bill by recognising that not all provisions applying to the telecommunications sector apply to broadcasting, given the difference in services provided or characteristics for each sector. The following are the main amendments to be made to the Broadcasting Act 2010 (“the Act”):

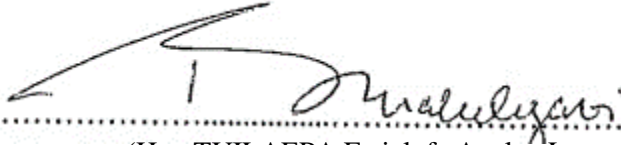
- (1) Clarifying the extent of services that qualify as broadcasting (rather than telecommunication services in general);
- (2) Removing ex ante references that are not relevant to the broadcasting sector; and
- (3) Removing Part III of the Act which establishes a separate Broadcasting Tribunal and replacing with the Tribunal under the Telecommunications Act 2005 (“Telecommunications Act”);
- (4) Extension of objectives under the Act; and
- (5) Clearly merging the responsibilities of the Regulator under the Telecommunications Act and the Act.

#### **Clauses:**

- Clause 1:** - states that, when enacted, the Bill will be called the Broadcasting Amendment Act 2015, and will commence on the date of assent by the Head of State.
- Clause 2:** - amends section 2 of the Act with provisions for the new definition of “broadcasting service” and the inclusion of new definition “Broadcasting Tribunal”.
- Clause 3:** - amends section 3 by removing objectives related to services beyond ‘broadcasting’. New paragraphs inserted to extend the objectives of the Act to encourage preservation of cultural diversity and establish measures for control of broadcasting content to protect the public.

- Clause 4:** - new provision to clarify that the Regulator and Office of the Regulator under the Telecommunications Act is also the Broadcasting Regulator and the Office for Broadcasting, respectively.
- Clause 5:** - amends section 5 of the Act on the appointment of the Regulator.
- Clause 6:** - repeals section 8(15) of the Act since the Office of the Broadcasting Regulator is the same as the Office for the Telecommunications Regulator.
- Clause 7:** - repeals provisions for a Broadcasting Tribunal under Part III of the Act.
- Clause 8:** - amends section 10(1) of the Act to omit reference to section 11.
- Clause 9:** - amends section 29 of the Act by removing reference to procedural proposals by the Ministry, repealing subsection (4) on access policies relevant to services beyond the broadcasting sector and inserting an obligation on the Ministry to consult with the Regulator as well as other interested parties when preparing a broadcasting policy.
- Clause 10:** - repeals subsections related to anti-competition practices that do not apply in the broadcasting sector and amends the Act to clarify that where a conflict arises between provisions of the Act and other relevant legislation the Act prevails except in cases where the conflict is with the Telecommunications Act.
- Clause 11:** - repeals sections 32 and 33 of the Act about dominant service providers and abuse of dominance.
- Clause 12:** - substitutes section 35 of the Act to provide for determination of practices that are anti-competitive only.
- Clause 13:** - amends section 36 of the Act to remove references to ‘dominance’ and ‘dominant position’.
- Clause 14:** - amends section 37(2) of the Act in relation to transferring control of a license.
- Clause 15:** - amends section 40(2) of the Act to omit reference to section 11.

**Clause 16:** - makes consequential amendments to the Act to remove “dominant” wherever occurring, “universal access policy” and meaning from interpretation and to repeal section 30(1)(a) of the Act.



(Hon TUILAEPFA Fatialofa Auelua Lupesoliai  
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**ACTING MINISTER OF COMMUNICATIONS  
AND INFORMATION TECHNOLOGY**

## **BROADCASTING AMENDMENT BILL 2015**

### **SAMOA**

#### Arrangement of Provisions

1. Short title and commencement
2. Interpretation
3. Objectives of this Act
4. Insertion of new provision
5. Appointment of Regulator
6. Office of the Broadcasting Regulator
7. Part III on Broadcasting Tribunal
8. Appeal of orders of the Regulator to the Broadcasting Tribunal
9. Broadcasting policies
10. Functions and duties of the Regulator regarding competition
11. Repeal of sections
12. Determination of abuse of dominance and anti-competitive practices
13. Remedies for abuse of dominance and anti-competitive practices
14. Transfers of control of service providers
15. Appeal against surcharge
16. Consequential amendments

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**2015, No.**

#### **A BILL INTITULED**

**AN ACT to amend the Broadcasting Act 2010 (“the Principal Act”).**

**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 Broadcasting Amendment Act 2015.

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

**2. Interpretation** - In section 2 of the Principal Act:

(a) for the definition of “broadcasting service” substitute:

““broadcasting service” means a service that delivers television programs or radio programs to a person having equipment appropriate for receiving that service, whether the delivery uses the radio frequency spectrum, cable, optical fibre, satellite or any other means of a combination of those means, but does not include:

- (a) a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images); or
- (b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service;” and

(b) insert in alphabetical order:

““Broadcasting Tribunal” means the Telecommunications Tribunal established under the Telecommunications Act 2005;”.

**3. Objectives of this Act** - Section 3 of the Principal Act is amended as follows:

- (a) repeal paragraphs (b) and (h); and
- (b) after paragraph (o) insert:

“(p) encourage and preserve cultural diversity; and  
(q) establish measures for the control of broadcasting content to protect vulnerable sectors of the public such as children and to reflect community standards.”.

**4. Insertion of new provision** - After section 4 of the Principal Act under Part II, insert:

**“4A. The Regulator and Office of the Regulator** - The Regulator under the Telecommunications Act 2005 shall be *ex officio* the Broadcasting Regulator and the Office of the Regulator established under the Telecommunications Act 2005 shall function as the Office of the Broadcasting Regulator in accordance with the Telecommunications Act 2005 unless and until separately appointed and administered according to this Part.”.

**5. Appointment of Regulator** - Section 5 of the Principal Act is amended as follows:

(a) for subsections (1), (2) and (3) substitute:

“(1) The Head of State, acting on the advice of Cabinet, may appoint a person as Regulator for a term of up to three (3) years, who shall have and exercise the responsibilities, functions and powers conferred by this Act and any applicable law.

(2) The appointment of a Regulator may be renewed by the Head of State, acting on the advice of Cabinet.

(3) Cabinet may appoint a suitable regulatory body within or outside Samoa to act as Regulator for the purposes of this Act on such terms and for such period as Cabinet approves, and if the arrangement is no longer required or considered to be unsatisfactory in meeting the objectives of this Act, Cabinet may revoke such appointment.”;

(b) subsections (4), (7)(a) and (10) are repealed;

(c) in subsections (8) and (9), for “subsection (4)”, substitute “subsection (3)”.

**6. Office of the Broadcasting Regulator** - In section 8, subsection (15) of the Principal Act is repealed.

**7. Part III on Broadcasting Tribunal** - Part III of the Principal Act is repealed.

**8. Appeal of orders of the Regulator to the Broadcasting Tribunal** - In section 10(1) of the Principal Act omit “established under section 11”.

**9. Broadcasting policies**-(1) Section 29 of the Principal Act is amended as follows:

- (a) in subsection (1), for “The Ministry shall propose, and the” substitute “The”;
- (b) subsection (4) of the Principal Act is repealed;
- (c) in subsection (9), after “consult with” insert “the Regulator and other”.

**10. Functions and duties of the Regulator regarding competition** - Section 31 of the Principal Act is amended as follows:

- (a) in subsection (1), paragraphs (c), (d) and (e) are repealed;
- (b) for subsection (2), substitute:

“(2) Wherever a conflict arises between the provisions of this Act and the provisions of any other legislation regulating competition in broadcasting markets in Samoa, the provisions of this Part shall prevail except in relation to the Telecommunications Act 2005 in which case the latter shall prevail.”.

**11. Repeal of sections** - Sections 32 and 33 of the Principal Act are repealed.

**12. Determination of abuse of dominance and anti-competitive practices** - For section 35 of the Principal Act, substitute:

**“35. Determination of service provider’s anti-competitive practices** - The Regulator may, on application by any person, or on the Regulator’s own initiative, determine:

- (a) whether or not the actions or activities of a service provider amount to an anti-competitive practice within the meaning of section 34; or
- (b) that an action or activity of a service provider under sections 34 is authorized and does not contravene this Act, on the grounds that such activities are in the public interest and otherwise consistent with the objectives set out in section 3.”.

**13. Remedies for abuse of dominance and anti-competitive practices** - Section 36 of the Principal Act is amended as follows:

- (a) in the section title, omit “abuse of dominance and”;
- (b) omit, “an abuse of the service provider’s dominant position or”.

**14. Transfers of control of service providers** - In section 37, subsection (2) of the Principal Act substitute:

“(2) No transfer of control of an individual licensee shall be effected without the prior approval of the Regulator if as a result of the transfer, a person, alone or with affiliates, would control service providers whose gross revenues in a specific broadcasting market constitutes 40% or more of the total gross revenues of all service providers in that market.”.

**15. Appeal against surcharge** - In section 40(2) of the Principal Act omit “established under section 11”.

**16. Consequential amendments**-(1) In the Principal Act, omit “dominant” wherever occurring.

(2) In section 2 of the Principal Act omit “universal access policy” and meaning from interpretation.

(3) Section 30(1)(a) of the Principal Act is repealed.

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