

MEDIA COUNCIL BILL 2014

SAMOA

Explanatory Memorandum

Introduction

The Bill establishes the Media Council and the Journalists Association of Samoa (JAWS) to provide for the development, application and enforcement of a code of practice relating to the news media, and to promote professional journalism, and for related purposes.

Clauses:

PART 1 PRELIMINARY

- Clause 1:** - states that when enacted, this Act will be called the Media Council Act 2014, and will commence on the date of assent by the Head of State.
- Clause 2:** - provides for the definition of terms used within the Bill.
- Clause 3:** - states that this Act binds the Government.
- Clause 4:** - provides for the purpose of the Bill, which is to promote professionalism and integrity in news media. This clause further states that the Bill must be applied, implemented and enforced in a manner which fully respects Samoan tradition, culture and community values.
- Clause 5:** - provides that the Bill operates in addition to other laws, such as any requirement or code of practice applying under the Broadcasting Act 2010. This clause further states that the Bill prevails over any other enactment should any inconsistency

arises, and that nothing in the Bill affects the Film Control Act 1978 or the powers of the Film Control Board provided for under that Act.

**PART 2
MEDIA COUNCIL**

- Clause 6:** - establishes and provides for the composition of the Media Council, appointment of representatives, and appointment of Deputy Chairperson. This clause further provides for the powers of the Executive Committee in relation to the appointment of the members of the Council.
- Clause 7:** - provides for terms of office and remuneration of members of the Council.
- Clause 8:** - provides that any member of the Council must disclose any interests in any matter to be considered by the Council. Any person who contravenes this clause may be terminated by the Council and will not be eligible for re-appointment.
- Clause 9:** - provides that all determination and documents of the Council are required to be in writing, and must be signed by any person or persons acting under general or specific directions of the Council.
- Clause 10:** - empowers the Executive Committee to appoint committees to discharge the Council's functions, and in making the appointment, the Committee may delegate powers of the Council to the committees.

**PART 3
ADMINISTRATION AND FINANCE**

- Clause 11:** - provides for the staff of the Council and obligates the Association to

ensure that the Council is adequately resourced.

- Clause 12:** - provides for the funds of the Association, including money appropriated by the Government.

PART 4 CODE OF PRACTICE

- Clause 13:** - provides that the Association may develop, approve, apply and enforce the Code of Practice that may cover matters relevant to broadcasting, publishing, reporting or presenting items through the media.

- Clause 14:** - provides for the application of the Act and the Code of Practice to all members of the media.

- Clause 15:** - empowers the Association to issue directives to supplement or clarify any issue relating to the Code of Practice.

PART 5 COMPLAINT PROCEDURES

Division 1 - Making of Complaints

- Clause 16:** - provides for definition of terms used for Part 5.

- Clause 17:** - provides for those who may make a complaint for breach of the Code of Practice.

- Clause 18:** - provides for the process of dealing with the complaints by the members of the media who is subject of the complaint.

- Clause 19:** - provides for complaints to be referred to the Council.

- Clause 20:** - provides for the requirements for making complaints.

Division 2 - Complaints Procedure

- Clause 21:** - provides for the dealing with complaints by the Council, including

appointment of a committee to investigate a complaint received. It also provides for the procedures for the Council when determining a complaint.

- Clause 22:** - provides for the notification and the processing of complaints.
- Clause 23:** - requires the Council to encourage and assist in conciliation between the complainant and respondent unless the Chairperson considers that conciliation would be unproductive.
- Clause 24:** - sets out the grounds for dismissing complaints.
- Clause 25:** - provides for determinations of complaints by the Council without hearing.
- Clause 26:** - provides for the hearing of complaints, including the rights of the respondent to be heard.

Division 3 - Decisions and Orders

- Clause 27:** - provides for the decision of the Council to be in writing and provided to the complainant and the respondent and to be made available to the public.
- Clause 28:** - provides for the orders that the Council may make if a respondent is found to have breached the Code of Practice.
- Clause 29:** - provides that there is no right of appeal from a decision of the Council, but does not affect the power of the Supreme Court to judicial review a decision of the Council.

**PART 6
JOURNALISTS ASSOCIATION OF SAMOA**

Division 1 - Association

- Clause 30:** - establishes the Journalist Association of Samoa.

- Clause 31:** - provides for the functions and powers of Association.
- Clause 32:** - provides for the membership of the Association.
- Clause 33:** - provides for the entitlements of the members of the Association.
- Clause 34:** - provides for those who can be accredited by the Association, including their entitlements, to be determined by the Executive Committee.
- Clause 35:** - provides for the rules that apply to annual general meetings of the Association.

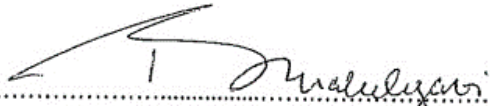
Division 2 - Executive Committee

- Clause 36:** - establishes the Executive Committee, and the terms of office of the members.
- Clause 37:** - provides for the powers and functions of the Executive Committee.

**PART 7
MISCELLANEOUS**

- Clause 38:** - states that if the Council is unable to carry out its functions effectively, an interim Council may be appointed by the Head of State, acting on the advice of the Cabinet, to carry out the functions of the Council.
- Clause 39:** - empowers the Head of State, acting on the advice of the Cabinet, to make regulations for the purpose of giving effect to this Act.
- Clause 40:** - protects a person who carries out a function, power or duty under this Act from personal liability for carrying out the function, power or duty in good faith.

- Clause 41:** - provides for consequential amendment.
- Clause 42:** - provides for transitional and saving provisions.



(Hon TUILAEPA Fatialofa Lupesoliai Aiono
Neioti Sailele Malielegaoi)

**PRIME MINISTER AND MINISTER FOR
THE MINISTRY OF THE PRIME
MINISTER AND CABINET**

MEDIA COUNCIL BILL 2014

SAMOA

Arrangement of Provisions

- | | |
|--|--|
| <p style="text-align: center;">PART 1
PRELIMINARY</p> <p>1. Short title and commencement</p> <p>2. Interpretation</p> <p>3. Act binds Government</p> <p>4. Purpose</p> <p>5. Act in addition to other laws</p> | <p>15. Directives</p> |
| <p style="text-align: center;">PART 2
MEDIA COUNCIL</p> <p>6. Media Council</p> <p>7. Term of office and remuneration</p> <p>8. Disclosure of interest</p> <p>9. Requirements for determinations and documents of the Council</p> <p>10. Committees</p> | <p style="text-align: center;">PART 5
COMPLAINT
PROCEDURES</p> <p style="text-align: center;"><i>Division 1 - Making
of Complaints</i></p> <p>16. Definition</p> <p>17. Who may make a complaint</p> <p>18. Complaints may be first considered by the member of the media</p> <p>19. Referral to Council</p> <p>20. Form of complaint</p> <p style="text-align: center;"><i>Division 2 - Complaints
Procedure</i></p> <p>21. Consideration of complaints by the Council</p> <p>22. Notification and processing of complaints</p> <p>23. Conciliation</p> <p>24. Dismissal of complaints</p> <p>25. Determination of complaint without hearing</p> <p>26. Hearing of complaints</p> <p style="text-align: center;"><i>Division 3 - Decisions
and Orders</i></p> <p>27. Decisions of the Council</p> <p>28. Orders of the Council</p> |
| <p style="text-align: center;">PART 3
ADMINISTRATION
AND FINANCE</p> <p>11. Staff of the Council</p> <p>12. Funding of the Association</p> | |
| <p style="text-align: center;">PART 4
CODE OF PRACTICE</p> <p>13. Code of Practice</p> <p>14. Application of the Act and the Code of Practice</p> | |

29. No right of appeal without affecting judicial review

Division 2 - Executive Committee

**PART 6
JOURNALISTS
ASSOCIATION OF SAMOA**

Division 1 - Association

30. Establishment
31. Functions and powers
32. Membership
33. Entitlements of members
34. Accreditation
35. Annual general meetings

36. Establishment
37. Functions and powers

**PART 7
MISCELLANEOUS**

38. Interim Council
39. Protection from personal liability
40. Regulations
41. Consequential amendment
42. Transition and saving

2014, No.

A BILL INTITULED

AN ACT to establish the Media Council and the Journalists Association of Samoa (JAWS), to provide for the development, application and enforcement of a code of practice relating to the news media, and to promote and enhance professional journalism, and for related purposes.

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

**PART 1
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Media Council Act 2014.

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

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

“Association” means the Journalist Association of Samoa (JAWS) established under section 30;

- “Chairperson” means the person appointed as such under section 6(1)(a);
- “Code of Practice” means the Code of Practice approved under section 13;
- “Council” means the Media Council established under section 6;
- “Executive Committee” means the Executive Committee of the Association established under section 36;
- “investigation committee” means an investigation committee appointed under section 21(2);
- “lawyer” means a person admitted to the Supreme Court as a barrister and solicitor under the Law Practitioners Act 1976;
- “member of the media” means a person engaged in the practice of collecting, writing, editing and presenting news or news articles in magazines, newspapers, radio or television broadcasts, over the internet or any other manner;
- “person” includes any media related organisation, company or agency;
- “publication” means the dissemination to the public of any written, digital, audio or video material, and includes any material disseminated through the internet.

3. Act binds Government - This Act binds the Government.

4. Purpose-(1) The purpose of this Act is to promote professional journalism and integrity in the news media, while observing the fundamental rights under Part II of the Constitution.

(2) This Act must be applied, implemented and enforced in a manner which fully respects and acknowledges Samoan tradition, culture and community values.

5. Act in addition to other laws-(1) This Act is in addition to and not in derogation of:

- (a) any requirement or code of practice applying under the Broadcasting Act 2010; or
- (b) any requirement for registration, the identification of publishers and printers, and any other regulatory requirement applying

under the Newspapers and Printers Act 1992/1993.

(2) Any law which relates to the publication and broadcast of news must be read, construed and applied pursuant to this Act and the Code of Practice.

(3) This Act prevails if there is any inconsistency between this Act and any other enactment.

(4) Nothing in this Act affects the Film Control Act 1978 or the powers of the Film Control Board under that Act.

PART 2 MEDIA COUNCIL

6. Media Council-(1) The Media Council is established consisting of the following members who are to be appointed by the Executive Committee:

- (a) a lawyer who has at least five (5) years experience as a lawyer or as a judge and has no direct interest in the Association, as Chairperson;
- (b) five (5) media representatives;
- (c) five (5) community representatives.

(2) The representatives under subsection (1)(b) and (c) are to be appointed as follows:

- (a) for media representatives, from a list of 20 members of the media, nominated by the Association; and
- (b) for community representatives, from a list of 20 members of the community, nominated by the Association.

(3) The appointment of members must:

- (a) provide a fair representation based upon gender, employment, educational background and community interests; and
- (b) ensure that no gender has less than three (3) members of the total membership of the Council.

(4) The Deputy Chairperson is to be appointed from amongst the members in subsection (1)(b) or (c).

(5) A member of the Executive Committee must not be appointed to the Council.

(6) A person who makes a nomination under this section must sign a supporting character reference for the intended nominee.

(7) The Executive Committee:

- (a) has authority to determine and apply any necessary processes and requirements to enable nominations and appointments to be made in accordance with this section; and
- (b) when acting under this section, must act independently, free of any political pressure, and without regard to any political interest.

7. Term of office and remuneration - A member of the Council:

- (a) holds office for three (3) years; and
- (b) is eligible for re-appointment; and
- (c) is entitled to remuneration and allowances as are fixed by the Executive Committee; and
- (d) on expiry of the term of appointment, continues in office until re-appointed or a successor is appointed.

8. Disclosure of interest-(1) A member who, otherwise than in his or her capacity as a member, is directly or indirectly interested in any matter under consideration by the Council, must as soon as possible after the relevant facts have come to his or her notice, disclose the nature of the interest to the Council.

(2) A disclosure under this section must be recorded in the minutes of the meeting of the Council, and the member must not take part after the disclosure in any deliberation or decisions relating to that matter, but is to be counted as present for the purpose of forming a quorum of the Council for any such deliberation or decision.

(3) The Executive Committee may terminate the appointment of a member of the Council if a member:

- (a) acts contrary to the provisions of this Act; or
- (b) uses information obtained through the Council for personal gain (or the gain of any other person); or
- (c) acts in a manner that brings the Association or the Council into disrepute.

(4) A person terminated under subsection (3) is not eligible for re-appointment as a member of the Council.

(5) During any meeting of the Council, and whenever they are acting on behalf of the Council on its business, members:

- (a) are expected to act in the Council's interest and in the interest of professional journalism; and
- (b) must avoid acting as a delegate of any business interest, and avoid and resist receiving or accepting directions from any business interest in respect of duties to be performed under this Act.

9. Requirements for determinations and documents of the Council - All determinations of the Council, and any other document requiring due execution on behalf of the Council, must be:

- (a) in writing; and
- (b) signed by any person or persons acting under a general or specific direction of the Council.

10. Committees-(1) The Executive Committee may:

- (a) appoint any advisory, regulatory and technical committees as it determines, to discharge the Council's functions; and
- (b) determine the functions of the committees; and
- (c) delegate to the committees any powers of the Council, as are necessary for the committees to perform their functions.

(2) Members of committees appointed under subsection (1):

- (a) must include a lawyer with demonstrated skills and experience in dispute resolution; and
- (b) may include members, officers of the Council and any other persons as the Council considers appropriate for the committees to perform their functions.

(3) Members of committees appointed under subsection (1) are entitled to fees, allowances and reimbursement of expenses as determined by the Executive.

(4) A committee may determine its own procedures, subject to this Act and any directions by the Executive.

**PART 3
ADMINISTRATION AND FINANCE**

11. Staff of the Council-(1) The Association must ensure that the Council is adequately resourced in the period prior to and after the establishment of the Council.

- (2) When it is able to do so, the Council may:
- (a) employ staff as it considers necessary, on terms and conditions that the Council determines; and
 - (b) arrange for the secondment of any person to the Council in accordance with the law.

12. Funding of the Association-(1) The funds of the Association consist of the following:

- (a) monies appropriated by the Government;
 - (b) revenues from fees, charges and penalties levied and imposed under this Act;
 - (c) any donation to the Association;
 - (d) other revenues generated, collected or obtained by the Association.
- (2) The Association may:
- (a) approve annual membership fees for members of the Association; and
 - (b) impose fees and charges for any service, seminar, test or other requirement or activity imposed or undertaken as part of the functions of the Association.

(3) No conditions may be placed on the monies appropriated under subsection (1)(a), other than the requirements placed by the Chief Executive Officer of the Ministry of Finance relating to its expenditure, accounting and reporting.

(4) Any audit report in relation to the funds of the Association, in respect of any donation under subsection (1)(c) must show the amount and the source of donation.

**PART 4
CODE OF PRACTICE**

13. Code of Practice-(1) The Association:

- (a) may develop, approve, apply and enforce the Code of Practice; and

- (b) may amend the Code of Practice; and
 - (c) must review the approved Code at least every two (2) years.
- (2) The Code of Practice may deal with the following:
- (a) the broadcasting, publication or reporting of any news or current affairs, or any commentary in relation to those matters;
 - (b) the broadcasting or publication of any advertisement;
 - (c) any other matter relevant to broadcasting, publishing, reporting or presenting items through the media.

14. Application of the Act and the Code of Practice - The Act and the Code of Practice apply to all members of the media.

15. Directives-(1) The Association may issue any directive to supplement or clarify any aspect of the Code of Practice.

- (2) All directives issued under this section:
- (a) are taken to form part of the Code of Practice; and
 - (b) apply as provided for in section 14; and
 - (c) are enforceable pursuant to Part 5.

PART 5 COMPLAINT PROCEDURES

Division 1 - Making of Complaints

16. Definition - In this Part:

- “complaint” means an objection or grievance in relation to an alleged breach of the Code of Practice;
- “complainant” means a person who makes a complaint;
- “investigation committee” means a committee appointed under section 21(2) to investigate complaints;
- “investigation report” means a report prepared by the Council or the investigation committee on its investigation under this Part;
- “respondent” means a person subject to the Code of Practice under section 14 to whom the complaint is directed by a complainant.

17. Who may make a complaint-(1) A complaint may be made by:

- (a) any person referred to in the broadcast, report or publication which is alleged to have breached the Code of Practice; or
- (b) any other person directly affected by the alleged breach; or
- (c) subject to subsection (2), any other person.

(2) A third party may make a complaint about a matter which does not directly relate to that person, or is of any personal interest relevant to that person, if:

- (a) consent is obtained in any case where the Council requires the consent of any person directly affected by the alleged breach of the Code of Practice before investigating the complaint; or
- (b) the Council considers it necessary and appropriate in the circumstances.

(3) The Council or the Executive Committee may on its own initiative initiate a complaint which may include:

- (a) when a member of the media is charged with an offence involving dishonesty; or
- (b) when a court makes any adverse finding on the conduct of a member of the media.

18. Complaints may be first considered by the member of the media-(1) A complaint may be referred to the member of the media for consideration before it can be referred to Council.

(2) A complainant must, within 10 working days of publication, reporting or broadcasting of the material, send the complaint for an alleged breach of the Code of Practice to the member of the media to consider and address the breach.

(3) If after 10 days, the complainant has not received any response from the member of the media, the complainant must re-send the complaint within 20 working days from the expiry of the 10 working days under subsection (1), including a copy of the complaint sent under subsection (1).

19. Referral to Council - A complainant may refer a complaint to the Council if:

- (a) a complaint was directed to the respondent at first instance and the complaint was not addressed satisfactorily by the respondent within five (5) working days of the complaint being made; or
- (b) the complainant proves to the satisfaction of the Council that submitting a complaint to the respondent would be unlikely to have any effect, or would cause undue hardship for the complainant.

20. Form of complaint-(1) A complaint referred to the Council must comply with the following requirements:

- (a) be written in English or Samoan;
- (b) contain particulars of -
 - (i) the full name, address and other contacts of the complainant;
 - (ii) the identity of the respondent;
 - (iii) the alleged conduct complained of;
- (c) be made within 20 working days of the offending material first being published, reported or broadcast;
- (d) contain a declaration that the complainant -
 - (i) is seeking to resolve the matter through the Council rather than pursuing legal proceedings; and
 - (ii) will not use any information gathered during the investigation of the complaint by, or on behalf of the Council in any future legal proceedings.

(2) The Council may extend the time in subsection (1)(c) if the complainant establishes that the complainant was not aware of the publication or broadcast at the time it was made, which prevented the making of the complaint within time in subsection (1)(c).

(3) The Council must assist in filing a complaint if a complainant is unable to comply with the requirements under subsection (1) as a result of the complainant's inability to submit a written complaint in Samoan or English.

Division 2 - Complaints Procedure

21. Consideration of complaints by the Council-(1)

When the Council receives a complaint, the Council:

- (a) must assess the complaint;
- (b) may hear and determine the complaint to ascertain whether the Code of Practice has been breached;
- (c) may refer the complaint to an investigation committee appointed under subsection (2) before it determines the complaint; and
- (d) must determine a complaint under section 25 within 20 working days from receiving it.

(2) The Council may appoint an investigation committee consisting of one (1) or two (2) members from the list of nominees for media representatives and members of the community, if necessary:

- (a) to investigate a complaint received under subsection (1); or
- (b) to carry out any other inquiries necessary for the purpose of this Part.

(3) A member of the Executive Committee or the Council must not be appointed as a member of an investigation committee.

(4) An investigation committee must provide a report to the Council on its findings before a determination is made under section 25.

(5) The following procedures apply at a meeting of the Council when determining complaints:

- (a) the Chairperson or (if the Chairperson is absent) a member elected by the members present presides;
- (b) six (6) members constitute a quorum;
- (c) the Chairperson has a deliberative vote and casting vote;
- (d) a question is to be determined by a majority of votes.

(6) If the Chairperson is absent, the Council may invite a lawyer, whether or not a member of the Council or Association, with similar qualification as the Chairperson to advise the Council on any legal issues but does not have the voting rights of a Council member.

(7) If a member of the Council has a conflict of interest in the complaint to be dealt with by the Council, the Council must appoint a temporary replacement for that Council member from the list of nominees for media representatives or members of the community, as applicable for that complaint.

(8) If the number of Council members who have a conflict of interest in the complaint to be dealt with by the Council result in a lack of quorum, the Executive Committee must appoint temporary replacements of those Council members sufficient to establish quorum from the list of nominees for media representatives and members of the community to handle that complaint.

22. Notification and processing of complaints-(1) The Council must:

- (a) give an explanation to the complainant as soon as practicable after a complaint is referred to the Council, of the procedures by which the complaint will be investigated, considered and determined; and
- (b) advise the respondent as soon as practicable after a complaint has been received; and
- (c) give the complainant a copy of the advice to the respondent; and
- (d) provide the respondent's response to the complainant as soon as practicable after it is submitted to the Council.

(2) The respondent must provide a written response to the complaint within five (5) working days.

(3) The Chairperson may extend the time in subsection (2) if it is in the interest of justice.

23. Conciliation-(1) The Council must encourage and assist in conciliation between the complainant and respondent unless the Chairperson considers that attempts at conciliation would be unproductive or counterproductive, or otherwise inappropriate for any reason.

(2) The Chairperson may determine any process to be applied to the conciliation of any complaint.

24. Dismissal of complaints - The Council may dismiss a complaint if any of the following apply:

- (a) the Council considers the complaint to be frivolous or vexatious, misconceived, lacking in substance or the complaint has not been made in good faith;
- (b) the complaint falls outside the Council's authority relevant to the standard of professional journalism;
- (c) on the face of the complaint, it does not disclose any breach of the Code of Practice;
- (d) it has been made outside the required time limit, and there are no special grounds for extending the time for making the complaint;
- (e) the complainant fails to comply with section 20;
- (f) the complaint is withdrawn or settled by the complainant;
- (g) the Council is satisfied that its investigation report does not provide any evidence to support a breach of the Code of Practice.

25. Determination of complaint without hearing-(1)

The Council may, if it considers necessary, determine a complaint without a formal hearing based on:

- (a) the complaint made and any additional information provided by the complainant in support of it;
 - (b) the response given by the respondent;
 - (c) any information gathered in the initial investigation of the matter undertaken on behalf of the Council, including reports prepared by an investigation committee; and
 - (d) any further information provided to the Council.
- (2) The Council must give the complainant and respondent a further opportunity to respond to any matter or information provided to the Council under subsection (1).

26. Hearing of complaints-(1) The Council may hear a complaint if a party makes an application to the Council to be heard in relation to making or defending the complaint.

(2) The complainant and the respondent are required to attend a hearing by the Council with or without legal representation.

(3) Hearings of the Council are open to the public, unless, in the opinion of the Council, the public hearing would prejudice the interests of justice.

- (4) The Council may in writing require the respondent:
- (a) to give, in writing or personally, within a stated reasonable time a full explanation of the matter being investigated; or
 - (b) to appear at a stated reasonable time and place; or
 - (c) to produce within a stated reasonable time any document in the respondent's custody, possession or control relevant to the complaint; or
 - (d) to respond to the complaint, and provide any answers to questions asked by the Council by any means, and any information or documents required by the Council.

Division 3 - Decisions and Orders

27. Decisions of the Council - The Council must:

- (a) prepare a written decision as soon as practicable after the Council has made a determination or when a hearing has concluded; and
- (b) provide the decision to the complainant and respondent; and
- (c) make the decision available to the public.

28. Orders of the Council-(1) If a respondent to a complaint is found to have breached the Code of Practice, the Council may order the respondent to do any or all of the following:

- (a) to publish or broadcast with due prominence a reply, correction or apology;
- (b) to undertake training or education in a particular area of relevance to the breach which has been found to have been committed;
- (c) to subject the respondent's practice to periodic inspection by a specified person for a specified period;
- (d) to do or carry out any other action or pay any prescribed penalty not exceeding 50 penalty units.

(2) If a respondent fails or refuses to comply with an order under subsection (1) within the time specified in the decision, the respondent is taken to have breached the Code of Practice and is removed as a member of the media or the Association by operation of this subsection until the order is complied with.

(3) If no time has been specified for the respondent to comply with any penalty imposed under subsection (1), the respondent must comply with it within 20 working days of the penalty being imposed.

(4) The Council may apply to the Court for an order of the Court to compel the respondent to comply with an order made under subsection (1).

29. No right of appeal without affecting judicial review-(1) There is no right of appeal from a decision of the Council.

(2) Subsection (1) does not affect the inherent power of judicial review of the Supreme Court.

PART 6 JOURNALISTS ASSOCIATION OF SAMOA

Division 1 - Association

30. Establishment-(1) The Journalists Association of Samoa is established as a body corporate with perpetual succession and a common seal, and may:

- (a) enter into contracts; and
- (b) sue and be sued; and
- (c) acquire, hold and dispose of property; and
- (d) carry out any other act that a body corporate may do.

(2) All members of the Association are bound by and subject to its rules and procedures.

31. Functions and powers-(1) The functions of the Association are:

- (a) to promote professional journalism, and public awareness about the media, by all available means, including -

(i) organising and advertising seminars for reporters and editors at regular intervals, on topics relating to media and journalistic skills, practices or ethics;

(ii) disseminating information about journalistic training and workshops offered in Samoa and overseas;

(iii) arranging notification of potential learning opportunities to journalism students, such as, exposure to a complaints hearings and encouraging attendance;

(iv) requiring members of media to attend a minimum number of accredited or approved training courses each year, based on a points system established by the Executive Committee;

(v) organising training, seminars and other initiatives for journalists found to have breached the Code of Practice;

(vi) encouraging and supporting in-house training of journalists and establishing internal mechanisms for effective self-regulation, including monitoring and mentoring arrangements;

(vii) raising public awareness about the role of the media and the standards to which it must adhere, and developing a marketing and outreach plan for that purpose;

(viii) publication of advertisements approved by the Executive Committee about the role of the Association;

(ix) publishing any applicable codes, guidelines and decisions of the Council, and information about complaints procedures on an official Council website, and by other appropriate means;

(x) collecting data to assess how the Council is functioning, and to show trends in making and resolving complaints;

- (xi) producing an Annual Report, and quarterly reports, which may include information, such as, guidelines for journalists and complainants regarding the complaints process and information about courses and training available to reporters;
 - (b) to approve, organise and present annual media awards;
 - (c) to take any other action which promotes professional journalism;
 - (d) to foster and develop regional and international linkages, including -
 - (i) to ensure that cooperative relations are developed and maintained with media related groups and networks around the Pacific region, and to collaborate in regional forums and programmes for media professionals and organisations; and
 - (ii) to establish and foster mentoring relationships with overseas counterpart agencies and related organisations to share information and expertise, and for any other purpose relating to the functions of the Association; and
 - (iii) to represent Samoa on regional and international media related forums, agencies, associations, organisations and programmes;
 - (e) to promote cooperation among local journalists and others working in the media, information and public relations sectors;
 - (f) to develop and maintain freedom of information and expression;
 - (g) to carry out any other functions and powers under this Act or any other enactment.
- (2) The Association has all the powers necessary to carry out its functions.

32. Membership-(1) The following persons are eligible to be members of the Association:

- (a) journalists and editors who work permanently in Samoa;
- (b) media organisations, companies and agencies incorporated or based in Samoa.

(2) A journalist or editor who is employed by a member agency, company or organisation becomes a member of the Association by virtue of the membership of the agency, company or organisation.

(3) Nothing in subsection (2) prevents a journalist or an editor from becoming an individual member of the Association.

(4) The Association may make rules for membership, including admission of other persons as members, associate members or affiliates of the Association.

(5) In this section, “associate members” means a category of members of the Association who do not have voting rights.

(6) Members of the media include members of the Association.

33. Entitlements of members-(1) Only members of the Association are entitled:

- (a) to nominate members of the Council under section 6(1)(b); or
- (b) to receive media awards which are reserved by the Association for members of the Association.

(2) Nothing in this section prevents the Executive Committee from acknowledging a contribution to professional journalism in Samoa by a non-member person.

34. Accreditation-(1) The Association may approve other classes of accreditation to the Association which are open to individuals, organisations, companies and agencies that do not otherwise qualify for members, such as overseas individuals or regional and international persons and bodies that have a genuine interest in the affairs of the Association and the promotion of professional journalism in Samoa.

(2) The Executive Committee may determine the entitlements of individuals, organisations, companies or agencies accredited to the Association under subsection (1).

35. Annual general meetings-(1) The following rules apply at an annual general meeting of the Association:

(a) an annual general meeting of the Association must be held -

(i) once a year on a date as the Association or the Executive Committee decides;

(ii) whenever required to do so in writing by at least six (6) members of the Association;

(b) forty percent of members form a quorum (but the Executive Committee may determine and apply the provisions for resolutions of the Executive Committee to be obtained by circular resolution or any other appropriate means);

(c) a meeting is to be chaired (“presiding member”) -

(i) by the President; or

(ii) by the Vice President (if the President is absent); or

(iii) by a member of the Executive Committee elected by the Executive Committee to preside at that meeting (if both the President and the Vice President are absent);

(d) any questions arising at a meeting are to be decided by the votes of the majority of members who are present;

(e) the presiding member has a deliberative vote, and a casting vote.

(2) If there is no quorum at an annual general meeting, a further meeting must be called and that further meeting may proceed with the members present even if there is no quorum as required under subsection (1)(b).

(3) The Association may determine its own procedures, subject to this Act.

Division 2 - Executive Committee

36. Establishment-(1) The Executive Committee of the Association is established consisting of the following members:

(a) President;

- (b) Vice-President;
- (c) Secretary;
- (d) Assistant Secretary; and
- (e) Treasurer.

(2) The members of the Executive Committee are elected at an annual general meeting of the Association from among members of the Association.

(3) A member of the Executive:

- (a) holds office until the next annual general meeting following the one at which the officer is elected to office (unless that member sooner vacates office), and is eligible for re-appointment; and
- (b) continues in office until a successor comes into office, unless the member sooner vacates office;
- (c) may resign from the office in writing to the Secretary;
- (d) may be removed from office by the Association by resolution at a general meeting on the grounds of -
 - (i) neglect of duty;
 - (ii) mental disability or impairment;
- (e) must immediately vacate the office if the member is charged with a serious offence; and
- (f) must not be a part of a process or a decision of the Executive Committee if the member has a conflict of interest.

37. Functions and powers-(1) The Executive Committee has the following functions:

- (a) to act as the executive body of the Association and to carry out the functions, duties and powers of the Association under this Act, without affecting any functions, duties and powers of the Council;
- (b) to be responsible for the administration, control and management of the affairs of the Association, and of its funds and other assets, under this Act;
- (c) to implement the provisions of this Act;
- (d) to perform other functions conferred on it by this Act or any other enactment.

- (2) The Executive Committee has the following powers:
 - (a) to appoint a Media Council pursuant to section 6 to administer and manage the complaints procedure under Part 5;
 - (b) to appoint any committee and to delegate to that committee any of their powers (including the power to revoke the delegation);
 - (c) to carry out other powers that are necessary or reasonably expedient for the exercise and performance of its functions and duties, including any powers as may be conferred on it by this Act or any other enactment.
- (3) Three (3) members of the Executive constitute a quorum for its meeting.
- (4) Nothing in this section prevents the Executive Committee from appointing to the committee any person who is not a member of the Association if:
 - (a) it is appropriate to have lay representation on it; or
 - (b) the Executive Committee considers the person can contribute to the effective performance of the role and duties of the committee.
- (5) The Executive Committee may determine its own procedures, subject to this Act.

PART 7 MISCELLANEOUS

38. Interim Council-(1) If the Council is unable to effectively carry out its functions under this Act or there is no Council, the Head of State, acting on the advice of Cabinet, may appoint an Interim Council to carry out the functions of the Council until the appointment of a new Council pursuant to section 6.

- (2) The following applies to the Interim Council:
 - (a) if there is no Code of Practice, the Interim Council may approve a Code of Practice for the purposes of this Act, until a Code of Practice is approved by the Association;
 - (b) any unresolved complaints before the Interim Council shall be referred back to the Council once a new Council is appointed.

39. Protection from personal liability - A person who carries out a function, duty or power under this Act is not personally liable for carrying out, in good faith, the function, duty or power.

40. Regulations - The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purpose of this Act, in particular to make regulations:

- (a) to prescribe matters to be included in the Code of Practice;
- (b) to prescribe any procedure or right relevant to the making of complaints;
- (c) to prescribe any requirement or procedure relating to the hearing and determination of any complaint;
- (d) to make further provision in relation to the powers of the Council, in relation to breaches of the Code of Practice, and the penalties and requirements that may be imposed in relation to such breaches.

41. Consequential amendment - For section 10 of the Newspapers and Printers Act 1992/1993 substitute:

“10. Protection of journalist’s sources-(1) A journalist is not compellable in a civil or criminal proceeding to answer any question or produce any document that would disclose the identity of the informant.

(2) Subsection (1) does not apply if a court is satisfied that the public interest in the disclosure of evidence of the identity of the informant outweighs:

- (a) any likely adverse effect of the disclosure on the informant or any other person; and
- (b) the public interest in the communication of facts and opinion to the public by the news media and, accordingly also, in the ability of the news media to access sources of facts.

(3) In this section:

“informant” means a person who gives information to a journalist in the normal course of the journalist’s work in the expectation that the information may be published in the news media;

“news media” means news media for the dissemination to the public or a section of the public of news and observations on news;

“public interest in the disclosure of evidence” includes, in a criminal proceeding, the defendant’s right to present an effective defence.”.

42. Transition and saving - At the commencement of this Act:

- (a) persons who, immediately before the commencement of this Act, were members of the Executive Committee and members of the Association incorporated under the Incorporated Societies Ordinance 1952 (“incorporated Association”) continue until the first Annual General Meeting to be convened under this Act;
- (b) any reference to the incorporated Association in any document or enactment is taken to be reference to the Association established under this Act;
- (c) the incorporated Association is taken to have been wound-up voluntarily under Incorporated Societies Ordinance 1952;
- (d) assets and liability of the incorporated Association vest in the Association established under this Act; and
- (e) any proceedings against incorporated Association continue against the Association established under this Act.
