

**PUBLIC BODIES (PERFORMANCE AND
ACCOUNTABILITY) AMENDMENT BILL 2014**

SAMOA

Explanatory Memorandum

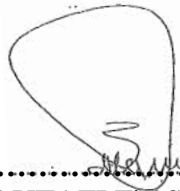
Introduction

The Bill seeks to amend the Public Bodies (Performance and Accountability) Act 2001 to give effect to the newly established Ministry of Public Enterprises. It consequentially amends the Public Finance Management Act 2001 to move sections and Parts dealing with public bodies under that Act to the Public Bodies (Performance and Accountability) Act 2001.

Clauses:

- Clause 1:** - provides the short title and the retrospective commencement of the Act from 25 April 2014, which is the date of appointment of the Minister for Public Enterprises.
- Clause 2:** - amends section 2 of the principal Act to include some new definitions.
- Clause 3:** - inserts new section 22A to the Principal Act setting out requirements by public bodies when requesting for grants, etc., from the Government.
- Clause 4:** - amends section 23 of the Principal Act obligating the chairpersons of boards of public bodies to advise the shareholding Ministers and the responsible Minister of anything that is substantially affecting the financial position of public bodies.
- Clause 5:** - inserts new sections 23A and 23B to provide for records and bank accounts of a Public body.

- Clause 6:** - amends section 26 of the principal Act empowering the Financial Secretary or the Chief Executive Officer to review, investigate or inspect records of public bodies if they fail to implement their corporate plans or there are irregularities in managing their monies or properties.
- Clause 7:** - inserts new section 27A of the principal Act to deal with reporting of a suspected offence.
- Clause 8:** - inserts new Part VIIA to deal with loans, procurements and contracts, which is currently Part XIII of the Public Finance Management Act 2001 (to be repealed in clause 9).
- Clause 9:** - provides for consequential amendments to the Public Finance Management Act 2001.
- Clause 10:** - provides for general amendments to the Principal Act and other enabling Acts set out in the schedule to amend references as the result of the appointment of the Minister for Public Enterprises and establishment of the Ministry of Public Enterprises.
- Schedule:** - amendments to the Principal Act and other Acts.



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(Hon LAUTAFI Fio Selafi Purcell)

MINISTER OF PUBLIC ENTERPRISES

**PUBLIC BODIES (PERFORMANCE AND
ACCOUNTABILITY) AMENDMENT BILL 2014**

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Arrangement of Provisions

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| <ol style="list-style-type: none"> 1. Short title and commencement 2. Section 2 amended 3. New section 22A inserted 4. Section 23 amended 5. New sections 23A and 23B inserted 6. Section 26 amended | <ol style="list-style-type: none"> 7. New section 27A inserted 8. New Part VIIA inserted 9. Consequential amendments to the Public Finance Management Act 2001 10. General amendments <p style="text-align: center;">Schedule</p> |
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2014, No.

A BILL INTITUTED

AN ACT to amend the Public Bodies (Performance and Accountability) Act 2001 (“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 Public Bodies (Performance and Accountability) Amendment Act 2014.

(2) This Act is taken to have commenced on 25 April 2014 and as such has retrospective effect.

2. Section 2 amended - For section 2 of the principal Act:

- (a) for the definitions of “responsible Minister” and “public body”, substitute:

““responsible Minister” means the Minister for Public Enterprises;

“public body” means an organisation (whether called a state-owned enterprise or otherwise under any other enactment) that is:

- (a) listed in Schedule 1; or
- (b) deemed a public body if the Government -
 - (i) has more than 50% of membership on the board of directors of the corporation; or
 - (ii) controls more than 50% of the voting power on the board of directors of the corporation; or
 - (iii) holds more than 50% of the issued share capital of the corporation either directly or through other public bodies (excluding any part of it that carries no right to participate beyond a specific amount in a distribution of either profits or capital); and
- (c) includes a subsidiary of a public body; but
- (d) does not include the Central Bank of Samoa.”;

- (b) insert the following definitions in their correct alphabetical positions:

““chief executive” means the person appointed as the chief executive (however called) of a public body, and includes a person appointed as the acting chief executive of a public body;

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

“Financial Secretary” has the same meaning in section 2 of the Public Finance Management Act 2001;
 “Ministry” means the Ministry for Public Enterprises;”.

3. New section 22A inserted - After section 22 of the Principal Act, insert:

“22A. Budget and appropriation-(1) This section applies when a public body requests the Government for a grant, subsidy, guarantee or other similar assistance.

(2) The Chief Executive Officer and the Financial Secretary may, within a time specified by them, require the chief executive to submit its corporate plan for the following financial year, as its justification for the request to be considered for preparing its estimates.

(3) A public body to which this section applies shall, no later than three (3) months before the end of the Government’s financial year, submit to the Chief Executive Officer and the Financial Secretary estimates of its receipts, expenditures and cash flows for the following Government’s financial year, in a form approved by the Financial Secretary.

(4) If money is appropriated by Parliament for the purposes of a public body, the money is payable at any time and in any amounts determined by the Financial Secretary.”.

4. Section 23 amended - In section 23 of the Principal Act:

- (a) before the word “A” insert “(1)”; and
- (b) after “Schedule 6” insert:

“(2) The chairperson of a Board shall, by notice, immediately advise the Shareholding Ministers and the Responsible Minister upon becoming aware of any information or event, which may materially affect the financial position of the public body.

- (3) The notice shall:
 - (a) be in writing;
 - (b) specify the nature of the information or event;

- (c) quantify when practicable the possible and likely effects of the information or event on the public body; and
- (d) specify what steps have been taken, or are being taken or proposed, to rectify any adverse effects.

(4) If the chairperson of a Board is the Minister or the Responsible Minister, the Board shall, by ordinary resolution, appoint another director to advise under subsection (2).”.

5. New sections 23A and 23B inserted - After section 23 of the Principal Act, insert:

“23A. Records and accounts - A public body shall:

- (a) keep proper accounts and records of its transactions and financial position -
 - (i) in such a way so as to facilitate the preparation of financial statements and enable the statements to be conveniently and properly audited as required in Schedule 6; and
 - (ii) pursuant to generally accepted accounting principles and practice and other requirements under any other relevant enactment; and
 - (iii) for a period of seven (7) years after completion of the transactions to which they relate; and
- (b) maintain adequate control over its assets, or assets in its custody, and over the incurring of liabilities by it; and
- (c) do any other thing necessary to ensure that all payments out of its money are correctly made and properly authorised.

23B. Bank accounts - A public body shall:

- (a) maintain at least one (1) bank account; and
- (b) subject to section 28(E)(2), pay all its moneys into a bank account maintained under paragraph (a).”.

6. Section 26 amended - In section 26 of the principal Act after subsection (1), insert:

“(1A) Despite subsection (1), the Financial Secretary or the Chief Executive Officer may carry out a performance review or initiate an investigation into, or inspection of, the records of a public body, if the Financial Secretary or the Chief Executive Officer considers it appropriate or has reason to believe:

- (a) that a public body has or may have failed to implement the corporate plan as submitted under section 22; or
- (b) that there may have been an irregularity in the management of money or property in the ownership or custody of the public body.”.

7. New section 27A inserted - After section 27 of the Principal Act, insert:

“**27A. Reporting of suspected offence**-(1) This section applies to a person who has knowledge of any circumstances which may cause the person to consider that a public body has or may have failed to implement the corporate plan as submitted under section 22 or that there has been an irregularity in the management of money or property in the ownership or custody of a public body.

- (2) A person to whom this section applies shall:
 - (a) in writing, report those circumstances to the Financial Secretary and either shareholding Ministers; and
 - (b) send a copy of the report to the Chief Executive Officer.

(3) A person who in good faith alleges a breach of the Act under subsection (1) is immune from civil suit and shall not be penalised in any way (whether the allegation is proved or not) because of the person's actions in reporting the matter.”.

8. New Part VIIA inserted - After section 28 of the principal Act, insert:

**“PART VIIA
LOANS, ETC., PROCUREMENT
AND CONTRACTS**

28A. Loans by the State - The Government may, on behalf of the State, lend money to a public body, under section 86 of the Public Finance Management Act 2001.

28B. On-lending by the State-(1) Subject to the terms of the relevant loan agreement entered into by the State under section 79 of the Public Finance Management Act 2001, the State may on-lend to a public body for the purposes specified in the relative loan agreement, any amount of money on any terms and conditions, specified in the subsidiary loan agreement.

(2) A subsidiary loan agreement made under this section must be presented by the Minister to the Legislative Assembly pursuant to its Standing Orders by delivering it to the Clerk of the Assembly.

(3) For purposes of this section, “subsidiary loan agreement” has the same meaning as in section 74 of the Public Finance Management Act 2001.

28C. Private borrowing and overdrafts-(1) A public body:

- (a) may borrow money for its purposes, on terms agreed to between the public body and a lender; and
- (b) shall repay the money under the terms of the borrowing.

(2) A public body may borrow for its purposes, by overdraft, within the limits approved by its Board.

(3) The State or Government is not liable, in any way, for any borrowing made under this section.

28D. Investment and moneys of public body-(1) Money of a public body may be applied only in payment or discharge of expenses, obligations and liabilities of the public body arising under this Act, the Public Finance Management Act 2001, its empowering Act or any other enactment.

(2) Moneys of a public body that are not immediately required may be invested:

- (a) in any securities of, or guaranteed by, the State;
or
- (b) in any manner in which a trustee may, under any law, invest trust moneys; or
- (c) on deposit with a bank; or
- (d) in an account established under section 59(2) of the Public Finance Management Act 2001; or
- (e) in any other manner approved by the Minister of Finance.

(3) The Financial Secretary may, by Treasury Instructions, issue investment guidelines and reporting requirements.

(4) Details of investments in public bodies in which the Government owns a shareholding must be disclosed in the financial statements under section 107 of the Public Finance Management Act 2001.

28E. Contracts for works, supplies and services-(1) A public body entering into a contract for the acquisition, disposal or management of goods, services and construction works must comply with its empowering Act or rules approved by its Board.

(2) Despite subsection (1), the Financial Secretary may, by Treasury Instructions or direction, issue procurement guidelines, subjecting a public body to Part XII of the Public Finance Management Act 2001.

(3) Despite subsection (1), a public body shall comply with any procurement guideline issued under subsection (2) instead of any procurement guideline under its empowering Act or rules approved by its Board.”.

9. Consequential amendments to the Public Finance Management Act 2001 - For the Public Finance Management Act 2001:

(a) in section 2, for the definitions of “chief executive” and “public body” substitute:

““chief executive” has the meaning in the Public Bodies (Performance and Accountability) Act 2001;

“public body” has the meaning in section 2 of the Public Bodies (Performance and Accountability) Act 2001;”;

(b) Part XIII is repealed; and

(c) Schedule 4 is repealed.

10. General amendments - General amendments to the principal Act and other enabling Acts are set out in the Schedule.

Schedule
(*section 9*)

Part A - Principal Act

Section of the Principal Act	Delete/Amend	Substitute/Insert
Long Title (paragraph (d))	After “Shareholding Ministers”	Insert: “and the Ministry of Public Enterprises”
5(1)	Delete “at a time and in such form of registration as determined by the Minister of Finance”	

5(3)	For “shareholding Ministers on the advice of the Financial Secretary”	Substitute “responsible Minister on the advice of the Chief Executive Officer”
6(5)	Delete “public bodies under the Minister’s portfolio”	Substitute “all public bodies”
7(5) and (6)	Delete “Minister of Finance”	Substitute “Shareholding Ministers”
10	Delete “Minister of Finance”	Substitute “Shareholding Ministers”
22(1)	Delete “Financial Secretary”	Substitute “Chief Executive Officer”
22(5)	Subsection (5) is repealed	
23	For section heading	Substitute “Reports, Financial Statements and Financial activities”
24(1), (2), (5) and (8)(c)	Delete “Financial Secretary”	Substitute “Chief Executive Officer”
26(1)(a) and (3) and (4) and section heading	Delete “Financial Secretary”	Substitute “Chief Executive Officer”
26(1)	Delete “Minister of Finance”	Substitute “Shareholding Minister”
27(2)	Delete “such rates no greater than those set by the Minister of Finance”	Substitute “prescribed by regulations”.
28 (1) and section heading	After “Financial secretary”	Insert “and the Chief Executive Officer”
	After “shall”	Insert “where necessary”
30	After “Financial secretary”	Insert “Chief Executive officer,”
31(1) and section heading	After “Auditor General”	Insert “the Chief Executive officer”
31(2)	After “Auditor General”	Insert “, the Chief Executive Officer”

Schedule 1		
Schedule 1 Part A	After “5. Electric Power Corporation” After “12. Public Trust Office” Re-number accordingly after inserting the above.	Insert “6. Gambling Control Authority” Insert “Samoa International Finance Authority”
Schedule 2		
2.3	Delete “Minister of Finance”	Substitute “Shareholding Ministers”
Schedule 3		
3.1.1(h)	Delete “Treasury”	Substitute “Ministry”
3.2.2	Delete “Treasury”	Substitute “the Ministry”
3.4.3	Delete “Treasury”	Substitute “the Ministry”
Schedule 6		
6.	After “shall”	Insert “prepare and”
6.1	Delete “Treasury”	Substitute “the Ministry”
6.2	Delete “An annual report and audited accounts to Treasury no later than 4 months after the end of the public body’s financial year”	Substitute: “An annual report on the operations of the public body and a budget performance for that financial year together with audited financial statements to the Shareholding Ministers and Ministry within 4 months after the end of the public body’s financial year.”
6.2	After 6.2	Insert: “6.2A If the Financial Secretary requires from the Chief Executive Officer or a public body any information relating to any of the documents submitted under clause 6.2, the Chief Executive Officer or that public body must comply.”

6.3	Delete "Treasury"	Substitute "The Ministry"
6.4	Delete "Treasury"	Substitute "the Ministry"
6.5	Delete "Treasury"	Substitute "the Ministry"
6.6	Delete "Treasury"	Substitute "the Ministry"
6.7.1	After "Parliament"	Insert "immediately if it is in session, and if not, at the commencement of the next following session."
6.7.2	Delete: "Where the annual report and the audited accounts required by subclause 6.7.1 to be laid before Parliament have not been so laid within 5 weeks of the responsible Minister's receiving them, the Minister shall cause for these to be published not later than 5 weeks after that day."	Substitute: "Once the annual report and audited accounts required under clause 6.7.1 are laid before Parliament, the responsible Minister shall publish the same."
6.7.2	After item 6.7.2	Insert : "6.7.3 When a public body's annual report is reproduced for publication or for other purposes, the financial statements and the report of the Chief Auditor General must be included in the reproduction. 6.7.4 The Ministry may develop a format to be used by public bodies for quarterly and annual accounts."

Part B - Other Acts

Act	Section	Delete/Amend	Substitute/Insert
<i>Accident Compensation Act 1989</i>	8 and 71	After “Minister”	Insert “for Public Enterprises”
	50(3)	Delete “Responsible Minister”	Substitute “Minister for Public Enterprises”
<i>Airport Authority Act 2012</i>	6(3), 30(1) and (2), 33(2) and (3), 45(3) and (4)	After “Minister”	Insert “for Public Enterprises”
	47(1) and (2)	Delete “Of Finance”	Substitute “for Public Enterprises”
	47(2)(f)	After “Minister”	Insert “for Public Enterprises”
<i>Development Bank of Samoa Act 2010</i>	7, 26(3) and (4), 28(1), 29(2)(h)	After “Minister”	Insert “for Public Enterprises”
	29(2) and (5)	Delete “of Finance”	Substitute “for Public Enterprises”
	29(1)	Delete “Finance”	Substitute “Public Enterprises”
<i>Electric Power Corporation Act 1980</i>	18	After “Minister”	Insert “for Public Enterprises”
	25(1)(a)	Delete “of Works, Transport and Infrastructure”	Substitute “for Public Enterprises”
	25(4)	After “Minister”	Insert “for Public Enterprises”
<i>Housing Corporation Act 2010</i>	7, 22(2), 40(3) and (4),	After “Minister”	Insert “for Public Enterprises”

<i>Land Transport Authority Act 2007</i>	5(1)(b), (c) and (2), 6, 7(1), (2), (3) and (5), 24(2), 25(1) and (2)	After “Minister”	Insert “for Public Enterprises”
	20(2)	Delete “of Finance”	Substitute “for Public Enterprises”
	23(1)	Delete “Minister”	Substitute “Shareholding Ministers (as defined in the Public Bodies (Performance and Accountability) Act 2001)”
<i>National Health Service Act 2014</i>	17(4) and (5)	After “Minister”	Insert “for Public Enterprises”
<i>National University of Samoa Act 2006</i>	33(5)	After “Minister”	Insert “for Public Enterprises”
<i>National Kidney Foundation of Samoa Act 2005</i>	9(3), (3)(b) and (8)	After “Minister”	Insert “for Public Enterprises”
<i>National Provident Fund Act 1972</i>	18 Section Heading	Delete “Minister”	Substitute “Shareholding Ministers”
<i>Public Trust Office Act 1975</i>	20(1)	Delete “for finance”	Substitute “for Public Enterprises”
	20(2)	Delete “of Finance”	Substitute “for Public Enterprises”
	23 and section heading	Delete all references to “of Finance”	Substitute “for Public Enterprises”

<i>Samoa Qualifications Authority Act 2010</i>	28(3) and (7)	After “Minister”	Insert “for Public Enterprises”
<i>Scientific Research Organisation of Samoa Act 2008</i>	2 for definition of “Minister”	Delete “the Minister responsible for the administration of this Act”	Substitute “the Minister for Public Enterprises”
	17(3)(b)	Delete “of Finance”	Substitute “for Public Enterprises”
<i>Samoa Water Authority Act 2003</i>	19(2) and (4) and 20(4) and (5)	After “Minister”	Insert “for Public Enterprises”
<i>Unit Trust of Samoa Loans Act 2013</i>	3(2) and (4)	After “Minister”	Insert “for Public Enterprises”