



SAMOA

APPRENTICESHIP ACT 2014

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2014, No. 10

AN ACT to provide for the technical-vocational education and training of apprentices in order to integrate them into the work force and create skilled employees and for related purposes.

[Assent and commencement date: 7 April 2014]

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 Apprenticeship Act 2014.

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

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

“apprentice” means a person who is employed under a contract of apprenticeship under this Act;

“apprenticeable trade” means a trade declared under section 12 to be a trade to which this Act applies and includes any industry;

“Council” means the Samoa Apprenticeship Council established under section 4;

“contract” means a contract of apprenticeship entered into under this Act;

“Chief Executive Officer” means the Chief Executive Officer of the Ministry of Commerce, Industry and Labour and includes his or her delegate;

“employer” means an employer who is involved in apprenticeship in any way;

“Minister” means the Minister of Commerce, Industry and Labour;

“post school education and training” has the same meaning under the Samoa Qualifications Authority Act 2010;

“repealed Act” means the Apprenticeship Act 1972;

“Samoa Apprenticeship Register” means the register established under section 25;

“Samoa Apprenticeship Certificate” means a certificate awarded under section 40;

“training provider” means a registered provider as defined under the Samoa Qualifications Authority Act 2010.

3. Act binds Government – This Act binds the Government.

PART 2 SAMOA APPRENTICESHIP COUNCIL

4. Establishment of the Council – (1) The Samoa Apprenticeship Council is established.

(2) The Council consists of:

- (a) the Chief Executive Officer of the Ministry of Commerce, Industry and Labour who is the Chairperson;
- (b) the Chief Executive Officer of the Samoa Qualifications Authority who is the Deputy Chairperson;
- (c) the Chairperson of the Public Service Commission;
- (d) the President of the Chamber of Commerce;
- (e) one member to represent training providers;
- (f) one member to represent employers from the apprenticeable trades; and
- (g) one member who is a person who holds a Samoa Apprenticeship Certificate to represent employees from the apprenticeship trades.

(3) The Minister appoints members listed under subsection (2)(e), (f) and (g) on the advice of the Council and, unless their appointments are terminated, the members:

- (a) hold office for a term of 3 years, and are eligible for re-appointment subject to section 6(c); or
- (b) continue to be members of the Council if they are not replaced.

(4) The Ministry shall provide secretariat support if needed by the Council.

5. Co-opted members of the Council – (1) The Council may, where it considers necessary, co-opt representatives of interested parties as members of the Council.

(2) A person co-opted under subsection (1) may only take part in the discussions of the Council and shall not vote on any matter before the Council.

(3) A co-opted member is not a member of the Council and does not have a right to vote on a matter before the Council.

6. Vacancies – Members of the Council appointed under section 4(3) vacate their office as a member:

- (a) by providing a letter of resignation to the Chairperson of the Council; or
- (b) where the member is permanently incapable of performing his or her duties; or
- (c) if terminated by the Chairperson, on the basis of such member being absent from 3 consecutive meetings of the Council without reasonable cause.

7. Meetings of the Council – (1) The Council shall meet at least 4 times in a calendar year and may meet any time and in any place as determined by the Chairperson.

(2) The Chairperson presides at all meetings of the Council when present.

(3) Subject to subsection (5), where the Chairperson is not present at a meeting of the Council the Deputy Chairperson presides at that meeting.

(4) Where neither the Chairperson nor the Deputy Chairperson is present at a meeting of the Council, the members present shall elect one of the members of the Council to act as Chairperson for the purpose of that meeting.

(5) Despite that an alternate member of Council, being an alternate for the Chairperson or Deputy Chairperson, is present for a meeting, the members present may elect one other member of the Council to act as Chairperson for the purpose of that meeting.

(6) The member presiding has a deliberative vote and, in the event of an equality of votes on a matter, has also a casting vote.

(7) The Council shall keep minutes of its proceedings.

(8) At a meeting of the Council, 4 members form a quorum.

(9) Subject to this Act, the Council may regulate its own proceedings.

(10) Additional meetings may be convened by the Chairperson if necessary, or if specially convened on a request in writing signed by at least 3 members of the Council.

(11) If any member of the Council is temporarily incapacitated from attending any meeting of the Council, he or she may authorise another person to act as the member's alternate.

(12) The Secretary is appointed by the Chairperson to take minutes of the meeting and shall, prior to the commencement of a Council meeting, attend to the preparation of all necessary documentation for the purposes of the meeting.

8. Fees and allowances of the Council – Members of the Council and any person appointed by the Chairperson to be the Secretary to the Council, except those appointed under section 4(2)(a), (b) and (c) shall be paid such fees and allowances as may be determined by Cabinet.

9. Functions of the Council – (1) The functions of the Council are as follows:

- (a) to recommend to the Minister the trades or branches of industry to be designated as apprenticeable trades under this Act;
- (b) to hear objections to the proposed designation of any trade, or branch of trade, as an apprenticeable trade, and to report those matters to the Minister;
- (c) to exercise a general supervision over the theoretical and practical training of apprentices;
- (d) to ascertain the character and scope of the practical training given to apprentices;
- (e) to monitor the progress of apprentices including workplace assessments conducted by employers and progress of both the apprentice and employer in their apprenticeship arrangement;
- (f) to issue grade or progress certificates to apprentices or other trades persons who have attained required standards of proficiency;
- (g) to advise the Minister in such matters affecting apprenticeship in Samoa as it thinks fit or as referred to it by the Minister;
- (h) to award certain certificates to apprentices upon the successful completion of training programmes;
- (i) to assess and award scholarships to apprentices;
- (j) to issue guidelines in accordance with the provisions of this Act;

- (k) to promote the apprenticeship programme to prospective apprentices and employers;
- (l) to resolve complaints from apprentices or employers relating to the apprenticeship arrangement;
- (m) to ensure that the apprenticeship programme and apprentices receiving training under the programme meet Samoa's National Competency Standards; and
- (n) to exercise any of the powers conferred, or to discharge any of the duties imposed upon it by this Act, and to inquire into any matters relating to apprenticeship in trades.

(2) The Council must consult with relevant trade organisations, agencies, or associations when carrying out its functions under section 9(1)(f) and (h).

10. Powers of the Council—(1) The Council has the power that is necessary to carry out its functions under this Act.

(2) The Council has powers and protections applying to a Commission of Inquiry under the Commissions of Inquiry Act 1964.

(3) Subject to subsection (4) a person who, after being summoned or ordered to appear before the Council or to produce any books, papers, writings, or documents to the Council and:

- (a) fails to appear according to the requirements of such a summons; or
- (b) refuses to be sworn or to give evidence or to make answer to such questions as may be put to the person by any member of the Council relating to the subject of the inquiry; or
- (c) fails to produce any such books, papers, writings, or documents,—

commits an offence, and is liable upon conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(4) Nothing in subsection (3) is taken to override a person's rights as set out under Articles 9 and 10 of the Constitution.

(5) In exercising its powers under this section, the Council shall seek the assistance of the Attorney General to provide assistance to the Council as counsel assisting.

11. Inspection powers of Chief Executive Officer—(1) Subject to subsection (3), the Chief Executive Officer may with or without notice:

- (a) enter at a reasonable time upon premises on which apprentices are or are proposed to be employed;
 - (b) interview an apprentice, whether within or outside the hearing of any other person;
 - (c) interview an employer;
 - (d) examine books or documents relating to the wages and conditions of employment of an apprentice and take copies or extracts from any such book or document;
 - (e) require an employer or apprentice to answer questions put to him or her concerning the wages and conditions of employment of apprentices; and
 - (f) institute proceedings for offences against this Act.
- (2) No person shall, without lawful excuse:
- (a) hinder or obstruct the Chief Executive Officer in the execution of his or her powers and functions under this Act; or
 - (b) subject to subsection (3), refuse or fail to answer questions put to the person under subsection (1)(b) and (c).

(3) Nothing in subsection (1) is taken to override a person's rights as set out under Articles 9 and 10 of the Constitution.

(4) The Chief Executive Officer may delegate to any person, in writing, any of his or her powers conferred under this section.

(5) A delegation under subsection (3) may be revoked, renewed or varied at any time by the Chief Executive Officer.

12. Declaration of apprenticeable trade—(1) Subject to subsection (2), the Minister may by Order, declare a trade as an apprenticeable trade under this Act.

(2) An Order may not be made unless the Minister has first received a recommendation by the Council for it to be made.

(3) In making a recommendation, the Council must consider whether the trade:

- (a) is one which is in demand by employers and potential apprentices;
- (b) is one in which training providers situated within Samoa are able to provide training programmes; and

(c) has been investigated and approved by a panel of trade advisors.

(4) An Order made under subsection (1) shall be published in the Savali and one other newspaper circulating in Samoa.

(5) An Order may be revoked by the Minister upon the advice of the Council and such revocation shall be published in the Savali and one other newspaper circulating in Samoa.

(6) An apprenticeable trade under the repealed Act is regarded an apprenticeable trade for the purpose of this Act, until it is revoked as such under this section.

(7) Despite subsections (4) and (5), an Order published or revoked is not invalid if it is not published in one other newspaper circulating in Samoa.

PART 3 GUIDELINES

13. Power to make guidelines –(1) The Council has the power to issue guidelines which are to be made in accordance with this Part.

(2) Guidelines must not be inconsistent with the provisions of this Act or any regulations.

(3) Any guidelines issued by the Council come into effect upon a date nominated by the Council.

(4) Guidelines issued remain in force until revoked or otherwise amended by the Council.

(5) The Chief Executive Officer must ensure public consultations are conducted on guidelines issued under this section as the Council considers appropriate in the circumstances before they are to have any force and effect.

(6) Any guideline not made in accordance with this Part has no legal effect.

(7) The Chief Executive Officer shall ensure that:

- (a) guidelines issued are forwarded to the Clerk of the Legislative Assembly for his or her records; and
- (b) copies of such guidelines are kept at his or her Office; and
- (c) such guidelines are published on the Ministry's official internet website.

(8) A person who acts in contravention of, or fails to comply with, any guideline issued under this section commits an offence and is liable upon conviction to a fine not exceeding 10 penalty units.

(9) A prosecution under this section does not affect or prejudice any civil claim, action or proceeding arising out of the same occurrence.

14. Matters for which guidelines may be made – The Council may make guidelines for the following:

- (a) the lodgement, variation and withdrawal of applications;
- (b) requirements for medical examination of apprentices;
- (c) the wages, hours of work, allowances and conditions of service of apprentices;
- (d) the fixing and assessment of standards of competence of an apprentice, at different stages of his or her apprenticeship, in relation to a particular trade;
- (e) the technical and practical training that shall be provided for and undertaken by apprentices including any training plans;
- (f) the supervision of apprentices by their employers;
- (g) the proportion of apprentices to skilled and qualified tradespersons who may be employed by employers in specified trades;
- (h) the facilities to be provided for apprentices for the purpose of their being trained by their employers;
- (i) the criteria and process for further trades to be added by recommendation to the Minister to be declared as apprenticeable trades pursuant to section 12; and
- (j) the keeping of progress cards and records.

PART 4

TRADE PANELS AND SUBCOMMITTEES

15. Panels of Trade Advisors – (1) The Council may appoint persons to be members of a Panel of Trade Advisors in respect of an apprenticeable trade.

(2) A Panel of Trade Advisors in respect of an apprenticeable trade shall advise the Council on such matters relating to apprenticeship in that trade as are referred to it by the Council.

(3) Members of the Panel of Trade Advisors shall be paid such fees and allowances as may be determined by Cabinet.

16. Sub-committees – (1) The Council may appoint sub-committees, as it regards necessary, for dealing with any specific trade or matter concerning apprenticeship.

(2) Members of sub-committees shall be paid such fees and allowances as determined by Cabinet.

PART 5 ADMISSION TO APPRENTICESHIP

17. Application for approval to employ apprentices – (1) An employer who wishes to employ a person as an apprentice must submit an application to the Council for its approval.

(2) An application must be in a form approved by the Council.

(3) Subject to subsection (4), the Council may grant or refuse to grant approval to employ an apprentice.

(4) The Council shall not grant an approval under this section unless:

(a) the Council is satisfied that the employer has reasonable facilities for the proper training of apprentices proposed to be employed; and

(b) the proposed apprentice consents to the application.

(5) An employer whose application has been refused may appeal to the Minister.

(6) Where the Minister receives an appeal under subsection (5), the Minister shall review the decision of the Council and may:

(a) confirm the refusal; or

(b) override the refusal and grant the application.

(7) Under subsection (6)(b), the Minister may impose such terms and conditions on the grant of the application as the Minister considers appropriate.

(8) Upon the Minister determining an appeal under subsection (6), the Minister shall cause to be served on the person appealing a written notice advising of the Minister's decision.

(9) An employer commits an offence who:

(a) in support of an application under subsection (1), makes a false declaration; or

(b) without approval under subsection (1), employs a person as an apprentice.

18. Admission to apprenticeship – (1) A person shall not be admitted to the apprenticeship course unless:

(a) he or she has attained the age of 18 years; and

(b) has—

- (i) completed at least 1 year of vocational training with a training provider; or
- (ii) completed year 12 and have at least 1 year of relevant work experience in the apprenticeable trade in which he or she wishes to engage in under the contract of apprenticeship.

(2) The Council may admit an apprentice to another year other than the first year of apprenticeship where the Council is satisfied that an apprentice has sufficient theoretical and practical knowledge to warrant such admission.

19. Medical examination of apprentices – The Council may require a person who wishes to be employed as an apprentice to obtain a medical certificate from a medical practitioner approved by the Council and the employer.

PART 6 CONDUCT OF APPRENTICESHIP

20. General obligations of employers—(1) An employer must:

- (a) enable the apprentice to receive the workplace training component of the apprenticeship, in particular by providing all necessary facilities and opportunities to acquire the competencies of the apprenticeable trade concerned, by the best means in the employer's power; and
- (b) enable the apprentice to obtain an appropriate qualification for the apprenticeable trade, in particular by—
 - (i) releasing the apprentice or trainee as required for attendance at the relevant training provider; and
 - (ii) liaising with the relevant training provider in relation to the apprentice's or trainee's attendance and participation in the training provided by the relevant training provider.

(2) The employer of an apprentice must discharge his or her obligations under the apprenticeship contract as an employer of the apprentice.

21. General obligations of apprentices—(1) An apprentice must make all reasonable efforts to:

- (a) acquire the competencies of the apprenticeable trade in which he or she is an apprentice; and
- (b) obtain an appropriate qualification for that apprenticeable trade.

(2) An apprentice must discharge his or her obligations under the apprenticeship contract and faithfully serve the employer as an employee.

22. Duties of employers to notify—(1) An employer must notify the Chief Executive Officer, in relation to each apprentice that he or she employs, of the following matters within 14 days after the matter arises:

- (a) any injury to the apprentice that adversely affects the apprentice's ability to continue or complete the apprenticeship;
- (b) any failure by the apprentice to make satisfactory progress in learning the competencies of the relevant vocation;
- (c) any change in the training provider attended by the apprentice;
- (d) any failure by the apprentice to participate in, or make satisfactory progress in, the training provided by the relevant training provider;
- (e) any termination of employment of the apprentice by the employer.

(2) An employer must also notify the Chief Executive Officer of the following matters within 14 days after the matter arises: (a) any change in the name under which the employer carries on business or in the address from which the employer carries on business:

- (b) any change in the nature of the employer's business that adversely affects the employer's ability to comply with his or her obligations under this Act.

23. Records to be kept by employers – (1) An employer shall, in respect of each apprentice he or she employs, keep records as determined by the Council.

(2) All records shall be kept in a manner determined in writing by the Chief Executive Officer.

24. Employers to provide information to the Council annually – (1) Subject to subsection (2), an employer shall provide information to the Council relating to an apprentice where the Council so directs by giving notice in writing.

(2) The powers under subsection (1) may be exercised only where the obtaining of the information is necessary for the purposes of the performance of the functions of the Council.

(3) An employer shall submit all information relating to the employment of an apprentice in the previous year to the Council, no later than the 1st day of March of every year.

(4) A person who obtains any information for the Council under this section shall take every reasonable step to ensure that such information is kept confidential and used only for the purposes of performing the functions of the Council.

(5) A person who contravenes this section commits an offence.

25. Samoa Apprenticeship Register – (1) The Chief Executive Officer must keep, the Samoa Apprenticeship Register for the purposes of this Act.

(2) The Samoa Apprenticeship Register is to contain:

- (a) the names and addresses of all apprentices and employers in an apprenticeship established under this Act;
- (b) the date on which the apprenticeship was approved;
- (c) the apprenticeable trade for which the apprenticeship is established;
- (d) the appropriate qualification that may be awarded to the apprentice in relation to the apprenticeship;
- (e) the term of the apprenticeship;
- (f) the date of commencement of the apprenticeship;
- (g) the name of the training provider associated with the apprenticeship;
- (h) each date on which the apprenticeship has been transferred, suspended, cancelled or varied; and
- (i) the date on which the apprenticeship was completed and the Samoa Apprenticeship Certificate awarded.

(3) The Register must be maintained by the Chief Executive Officer in a form determined by the Council.

PART 7

CONTRACTS OF APPRENTICESHIP

26. Contracts of apprenticeship – (1) A person who wishes to be employed as an apprentice by an employer shall enter into a contract of apprenticeship with that employer.

(2) A contract:

- (a) entered into other than in accordance with this Act is invalid; and
- (b) shall be in the form set out in the Schedule.

(3) The Schedule may be amended by the Council in a resolution of the Council and such amendment shall be published in the Savali with a copy to be forwarded to the Clerk of the Legislative Assembly for his or her records.

27. Extent to which contract is binding – (1) Subject to the Infants Ordinance 1961, an apprentice who is a party to a contract is bound throughout the term of the contract.

(2) A parent or guardian of an apprentice who is a party to a contract on behalf of the apprentice is bound until the apprentice is 21 years old in which case the apprentice becomes the sole party to such apprenticeship contract.

28. Contracts to be filed for registration – (1) A contract must, within 1 month from the date of the making of the contract, be filed by the employer with the Chief Executive Officer for registration.

(2) A contract filed under subsection (1) must be:

- (a) in 3 original versions; and
- (b) accompanied by a medical certificate certifying that the apprentice is medically fit if the Council requires it.

29. Contracts register and registration of contracts – (1) Subject to subsection (2), the Chief Executive Officer must, on receipt of the documents required under section 28, register and deal with the contract as required under guidelines.

(2) The Chief Executive Officer must not register any documents unless the Chief Executive Officer is satisfied that the documents are in proper form.

(3) The Chief Executive Officer must keep, a Contract Register for the purposes of this Act.

(4) The Contract Register shall contain the following:

- (a) the names of all apprentices and employers in each apprenticeable trade;
- (b) a record of all registered contracts;
- (c) a record of all assignments, transfers and termination of contracts.

(5) A contract has no force until registered under this section.

(6) A party to a contract which the Chief Executive Officer refuses to register under subsection (2) may appeal to the Minister.

(7) Where the Minister receives an appeal under subsection (6), the Minister shall review the decision of the Council and may:

- (a) confirm the refusal; or
- (b) override the refusal and grant the application.

(8) Under paragraph (b) of subsection (7) the Minister may impose such terms and conditions on the grant of the application as the Minister considers appropriate.

(9) Upon the Minister determining an appeal under subsection (7), the Minister shall cause to be served on the person appealing a written notice advising the Minister's decision.

30. Issue of copies of contracts – (1) The Chief Executive Officer must issue to an apprentice and his or her employer, each, a registered copy of a contract.

(2) A duplicate copy of a contract may only be issued as the Chief Executive Officer considers appropriate in the circumstances.

31. Tenure of contract – A contract entered into and registered in accordance with this Act:

- (a) is binding on the relevant employer and the apprentice;
and
- (b) is enforceable only in relation to the matters stated in it;
and
- (c) unless a lesser period is specified in it, is for the period agreed to between such employer and apprentice.

32. Probation period – Despite section 31, or any provision in the contract to the contrary, an apprentice is, for the first 6 months of the contract, employed on probation.

33. Extension of contracts – (1) Subject to subsection (2), the Council may authorize that the period of a contract be extended for period determined by the Council if the Council is satisfied that it is necessary in the circumstances.

(2) An extension under subsection (1):

(a) for a working day where an apprentice attended a required training for the purpose of subsection (3) shall not be more than that working day, or be more than the equivalence of that working day; and

(b) not be more than 180 days in total. (3) In this section, “working day” means a day in which a training programme, determined by the Council for an apprenticeable trade, is given that the apprentice is required to attend.

34. Reduction of period of contracts – The Council may authorise the reduction of the period of a contract if it is satisfied that:

(a) a person has previously undertaken technical training which relates directly to the apprenticeable trade in which that person wants to be apprenticed; and

(b) that training has the approval of the Council for that apprenticeable trade.

35. Transfer of contracts – (1) Subject to subsection (2), the rights and obligations of an employer under a contract may be transferred to another employer, with the consent of the apprentice and the approval of the Council.

(2) An approval under subsection (1) shall not be granted if the Council has reasonable grounds to believe that the transfer is not in the best interests of the apprentice.

(3) In order for a transfer of a contract to become effective the following apply:

(a) the former employer and future employer and the apprentice must endorse it in writing and signed it; and

(b) the Chief Executive Officer must within 1 month from the signing of the contract register the written endorsement of the transfer.

36. Termination of contracts – (1) A contract may be terminated;

- (a) by either party at any time within the period of probation referred to under section 32; or
- (b) by mutual agreement in writing between the employer and the apprentice; or (c) on request by a party to the contract, by the Council, if the Council is satisfied that it is necessary to terminate such contract.

(2) For a contract terminated under section 36(1)(a) or (b) the employer must notify the Chief Executive Officer within 7 days from the date of termination.

(3) The Council shall not terminate a contract under section 36(1)(c), unless both parties to the contract are given the opportunity to appear and be heard before the Council.

(4) The Chief Executive Officer shall record the termination on the file copy of each contract terminated under this section.

(5) A party to a contract whose contract is terminated by the Council under subsection (1)(c) may appeal to the:

- (a) District Court, if it is on a question of law under Part 9;
or
- (b) Minister, if the matter appealed is not on a question of law.

(6) A termination of contract does not affect any right of action accrued before the termination and that action may be continued as if the contract is enforceable.

37. Apprentice to reimburse employer for fees paid – (1) If a contract is terminated as a result of a breach incurred by the apprentice, the apprentice must repay to the employer all the fees expended by the employer as a result of entering into the contract.

(2) In this section, “fees” includes all the fees paid by the employer to a training provider responsible for providing the educational requirements under the apprenticeship contract.

38. Apprentices to be apprenticed with one employer – (1) An apprentice shall not, while a contract is in force, enter into another contract with another employer.

(2) A person shall not:

- (a) induce or attempt to induce an apprentice to terminate his or her contract with his or her employer; or
- (b) employ an apprentice whom he or she knows is under a contract with another employer.

(3) A person who contravenes this section commits an offence.

39. Wages of apprentices – (1) An apprentice shall be paid such rates as determined by the Council which:

- (a) must specify the minimum hourly rates for each year of apprenticeship; and
- (b) may provide different minimum hourly rates of pay for different classes of apprentices or apprenticeable trades,–

and in so doing the Council may apply such methods of differentiation as it considers appropriate.

(2) All determinations made under this section shall be published by the Council in the Savali newspaper.

PART 8

APPRENTICESHIP CERTIFICATES

40. Samoa Apprenticeship Certificate – (1) The Council may, in an approved form, issue a Samoa Apprenticeship Certificate to a person who has completed his or her apprenticeship, and has been awarded a qualification from a training provider approved by the Council and has met national competency standards approved by the Council.

(2) If the Council decides not to issue a certificate to a person, that person may appeal to the Minister.

(3) If the Minister receives an appeal under subsection (2), the Minister shall review the decision of the Council and may:

- (a) confirm the refusal; or
- (b) override the refusal and grant the application.

(4) Under subsection (3)(b) the Minister may impose such terms and conditions on the grant of the application as the Minister considers appropriate.

(5) Upon the Minister determining an appeal under subsection (4), the Minister shall cause to be served on the person appealing a written notice advising of the Minister's decision.

41. Other certificates – (1) The Council may issue any other certificate as the Council determines necessary.

(2) A certificate under subsection (1) may be issued in an approved form, manner or for any matter the Council determines appropriate in the circumstances.

42. Duplicate certificates – An original version of a certificate issued under sections 40 and 41 may be issued to such persons, in such manner, for such reasons and upon payment of such fees, as prescribed.

43. Offences relating to unauthorized use or dealing with a certificate – (1) A person commits an offence if the person:

- (a) uses a certificate to which he or she is not entitled; or
- (b) alters, defaces or makes a model, likeness or facsimile of a certificate with intent to deceive or defraud; or
- (c) being entitled to a certificate, with intent to deceive or defraud—
 - (i) gives the certificate to another person; or
 - (ii) allows another person to use the certificate; or
- (d) fails, without reasonable cause, to produce or surrender a certificate when requested to do so by the Chief Executive Officer or a person authorised by the Chief Executive Officer.

(2) In this section, “certificate” means a certificate issued under section 40 or 41 or an original version of the certificate issued under section 42.

PART 9 APPEALS

44. Appeals – (1) A person may appeal to the District Court against:

- (a) the decision of the Minister not to grant an approval for employing an apprentice under section 17; (b) the decision of the Minister not to register a contract under section 29;
- (c) the decision of the Minister not to award a certificate under section 40(3)(a); or
- (d) the decision by the Council to terminate a contract under section 36.

(2) An appeal is to be made under the rules of the District Court and must be lodged within 6 months of the decision being made.

45. Abandoned appeals – An appeal that is lodged outside of 6 months of the decision being made is taken as abandoned.

PART 10
OFFENCES AND PENALTIES

46. Employer not to reduce wages, etc. – (1) An employer must not, directly or indirectly, reduce the wages to which an apprentice or a person to whom Part 8 relates is entitled under his or her contract or under any other law.

(2) An employer who contravenes subsection (1), commits an offence.

(3) In this section, “wages” includes salary or other benefits owing to the apprentice.

47. Offences – (1) An employer who demands, accepts, or agrees to accept any consideration, premium, gift or allowance in connection with the employment or contracting by him or her of any probationer, apprentice or prospective apprentice in an apprenticeable trade commits an offence.

(2) A person commits an offence who:

(a) directly or indirectly, under any pretence or device, employs or authorises or permits an apprentice to be employed at lower wages than the wages to which the apprentice is entitled under this Act; or

(b) employs an apprentice on conditions which are not consistent with this Act.

(3) A person who employs any person as an apprentice or authorises or permits any person to be so employed in an apprenticeable trade without the consent of the Council commits an offence.

(4) An employer or apprentice who fails to comply with any of the terms or conditions of the apprentice’s contract commits an offence.

(5) A person who contravenes this Act, or fails to comply with an order of the Council made under this Act, commits an offence.

48. Penalties – (1) A person who commits an offence under this Act is liable on conviction to a penalty not exceeding 20 penalty units.

(2) Despite subsection (1), a person convicted of a continuing offence, is liable to a further fine not exceeding 4 penalty units for each day during which the offence continues.

(3) A person who incites, aids or abets a breach of this Act commits an offence and is liable on conviction to a fine not exceeding 20 penalty units.

PART 11 MISCELLANEOUS

49. Death of partner not to terminate apprenticeship – (1) If an apprentice is employed by business partners, his or her contract does not terminate on the dissolution of the partnership or by the death or retirement from the partnership of a partner.

(2) In the case of the death or retirement from the partnership, the contract is taken to be assigned to the surviving or continuing partner.

(3) If, in the case of a dissolution of a partnership, there is disagreement as to who is to take over the contract, the Council decides the matter and its decision is binding.

50. Winding up or material change in shareholding of Company – (1) If an apprentice is employed by a Company and the company is wound up for any reason or its shareholding changes in a material manner, the Council may, upon the written request of the apprentice, transfer the apprentice to another employer under section 35.

(2) A decision to transfer an apprentice may be upon such conditions as the Council determines.

51. repealed.

52. Council to approve forms – The Council may approve, amend, or replace the form for any application, certificate, notice or any other document required under this Act.

53. Annual reports – (1) The Council shall as soon as practicable after 31 December of any year, prepare and provide to the Minister a report on its activities under the operation of this Act.

(2) The Minister shall, as soon as practicable after receipt of the annual report from the Council, make copies of it to be tabled in Parliament.

54. Disclosure of information – (1) Subject to subsection (2), a member of the Council or an officer commits an offence if, except

for the purpose of the performance of his or her functions and duties under this Act, discloses to any person any information in relation to the financial affairs, plant or equipment or development plans, of a person, acquired in the performance of the functions and duties of the member or officer, as the case may be, under this Act.

(2) Subsection (1) does not apply to a disclosure of information made in criminal proceedings in accordance with this Act.

55. Repeal – The Apprenticeship Act 1972 is repealed.

56. Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations, prescribing all matters which by this Act are required, permitted, or necessary for giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made for the following purposes:

- (a) the establishment of a fund to provide prizes and scholarships for apprentices; or
- (b) the process for the Council to hear and determine disputes or complaints under this Act between apprentices and employers; or
- (c) prescribing fees and charges for applications, certificates, documents or any other matter required or provided for in this Act.

(3) The amount of a fee or charge prescribed in subsection (2)(c):

- (a) shall be proposed by the Council; and
- (b) is subject to the consideration and approval of the National Revenue Board under the Public Finance Management Act 2001.

57. Savings and transitional provisions – (1) The apprenticeship register maintained under the repealed Act immediately before the commencement of this Act shall on the commencement of this Act, be regarded as the Samoa Apprenticeship Register established under this Act.

(2) All references in law or any document or act of authority to the Apprenticeship Council shall be read as referring to the Council unless the context otherwise requires.

(3) Any authorisation, registration, appointment, approval, cancellation, suspension, condition, declaration, termination, permit, order, advice, direction or act of authority under or concerning the Apprenticeship Act 1972, so far as they are subsisting or in force at the time of the repeal of such Act, continues and has effect under the corresponding provisions of this Act.

(4) All actions, suits, legal proceedings that were filed or commenced under the repealed Act and are not complete at the commencement of this Act are regarded as:

- (a) filed or commenced under this Act at the commencement of this Act; or
- (b) legal as if the repealed Act was still in force in relation to such actions, suits or legal proceedings.

(5) Despite the provisions of this Act, all applications and other matters arising out of the provisions of Apprenticeship Act 1972 which are not determined or otherwise dealt with under that Act at the commencement of this Act shall be determined under the corresponding provisions of this Act with modifications, adaptations and alterations as the Minister may determine in writing.

(6) An advisory body or committee or panel of trade advisors existing at the commencement of this Act relating to the Apprenticeship Act 1972 is regarded as an advisory body or committee or panel of trade advisors established under the corresponding provisions of this Act.

(7) Despite the provisions of this Act, where this Act does not provide adequately for the transition from the Apprenticeship Act 1972, the Minister, may by notice published in Samoan and English in the Savali, make such provision as the Minister regards necessary.

Schedule

(Section 26)

SAMOA APPRENTICESHIP CONTRACT

(Three original copies of each contract must be signed: 1 copy to remain with the employer, 1 copy for the Apprentice and 1 copy must be kept by the Chief Executive Officer of the Ministry of Commerce, Industry and Labour.)

1. **Name and address of employer:**
..... ('the Employer')
2. **Name and address of Apprentice:**
..... ('the Apprentice')
3. **Parties to the contract** - This contract of service is entered into by the Employer and the Apprentice.
4. **Location of place of work:**
5. **Duration of contract** - Subject to Clause 6, this contract takes effect from the date of signing and will continue to take effect for a period of not less than years.
6. **Termination of contract:** This Contract may be terminated:
(a) by mutual consent in writing of both parties; or
(b) where the Apprenticeship Council of Samoa considers it necessary to terminate the Contract; or
(c) by either party, without notice, during the Probation period set out under clause 8.
7. **Wages or salary** - The Apprentice is to be paid \$..... per (hour, day, week or month) wage period.
8. **Probation** - The Apprentice is on probation for a period of 6 months, starting from the date of signing this contract.
9. **Hours of work** - the Apprentice is to work for the following hours:

.....

.....
(Hours of work do not include time for the Apprentice to attend classes at a tertiary institution approved by the Apprenticeship Council.)
10. **Holidays with pay** - The Apprentice is entitled to be paid for every public holiday.

11. **Overtime** - Should the Apprentice be requested to work overtime, he or she is to be paid for the overtime at \$..... for each hour of work.
12. **Annual leave** - After 12 months service, the Apprentice is entitled to a minimum of 10 days paid annual leave to be taken on the days as is mutually agreed to between the Employer and the Apprentice.
13. **Sick leave** - After 12 months of service the Apprentice is entitled to a minimum of 10 days sick leave, each year on production of a medical certificate by a medical practitioner no later than 3 days after contracting the illness.
14. **Duties of Apprentice** - The Apprentice shall:
 - (a) faithfully serve the Employer in order to be taught the trade in which he/she is an apprentice;
 - (b) accept all technical, trade and other instruction as set out under the Apprenticeship Act 2014;
 - (c) diligently obey the lawful commands of the Employer or the Employer's delegate;
 - (d) not be absent from the Employer's workplace unless -
 - (i) he/she has the permission of the Employer; or
 - (ii) he/she has to attend learning at an institution as approved by the Apprenticeship Council for training or examination in relation to his/her apprenticeship course;
 - (iii) it is for leave under this Contract or any that is approved by the Employer; and
 - (e) not commit nor be an accessory to any damage or injury to the Employer or the Employer's property.
15. **Duties of Employer** - The Employer shall:
 - (a) teach the Apprentice, or cause the Apprentice to be taught, the trade for which he/she is employing the Apprentice;
 - (b) provide facilities and the necessary tools of trade for the practical training of the Apprentice;
 - (c) give the Apprentice the opportunity to learn the trade and to receive technical, trade and other instruction as may be required under the Apprenticeship Act 2014;

- (d) pay the Apprentice the wages that are agreed to under this Contract, including any leave entitlements;
- (e) ensure that the Apprentice is able to attend his/her classes at the tertiary institution approved by the Apprenticeship Council;
- (f) to comply with all the provisions of the labour and employment laws of Samoa; and
- (g) to comply with all occupational, health and safety laws of Samoa.

16. Apprentice's Tuition Fees -

Option 1:

- (a) The Apprentice's Tuition Fees are to be paid in percentage form as follows:

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Employer Contribution: a minimum of %.

Employee Contribution: a minimum of %.

- (b) Where the Employer fails to make payment under sub clause (a), the Apprentice may sue the Employer for the Employer's portion of the tuition fees and such unpaid portion shall become a debt owing to the Apprentice.
- (c) Where the Apprentice fails to make payment under sub clause (a), the Employer may sue the Apprentice for the Apprentice's portion of the tuition fees and such unpaid portion shall become a debt owing to the Employer.

Option 2:

- (a) The Apprentice's Tuition Fees are to be paid by both parties in accordance with such percentage amount as may be approved in writing by the Apprenticeship Council from time to time.
- (b) Where the Employer fails to make payment under subclause (a), the Apprentice may sue the Employer for the Employer's portion of the tuition fees and such

unpaid portion shall become a debt owing to the Apprentice.

- (c) Where the Apprentice fails to make payment under subclause (a), the Employer may sue the Apprentice for the Apprentice's portion of the tuition fees and such unpaid portion shall become a debt owing to the Employer.

- 17. Apprentice to reimburse Employer upon early termination of Contract** - Where the Apprentice terminates this Contract before the agreed date of termination, the Apprentice shall pay to the Employer all monies spent by the Employer for the Apprentice's formal training and any fees the Employer has had to pay to the Apprenticeship Council for the purposes of entering into this Contract.
- 18. Apprenticeship Council Intervention** - Both parties agree and acknowledge that the Apprenticeship Council may intervene at any time during the period of the Contract for the following purposes:
- (a) where the Apprenticeship Council considers it necessary to transfer the Apprentice to another workplace and different employer;
 - (b) to mediate or resolve any dispute over the terms of this Contract between the Employer and the Apprentice; and
 - (c) to cancel this Contract if it is of the opinion that special reasons exist to cancel this Contract.
- 19. Assignment of Contract** - Both parties agree and acknowledge that an assignment of this Contract cannot be effected unless the Apprenticeship Council first approves it.

SIGNED: **SIGNED:**
(Apprentice) **(Employer)**

Date:

Date:

Witnessed by:

Full Name of the Witness:

Signature:

Date:

Where applicable (for Apprentices below 21 years) -

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This is consented to by:

Name of

Parent/Guardian:.....

Signature:

Date:

We/I, the above-named Parents/Guardians agree to abide by the terms of this Contract. We also agree and guarantee to reimburse any fees owing to the Employer as specified under clause 16, on behalf of the Apprentice, should the Apprentice terminate this Contract earlier than agreed.

REVISION NOTES 2014 – 2022

This is the official version of this Act as at 31 December 2022.

This Act has been revised by the Legislative Drafting Division 2014 – 2022 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008* and in doing so roman numerals used for Parts have been changed to decimal numbers.

The following amendments were made to this Act since its enactment:

By the *Fees and Charges (Miscellaneous Amendments) Act 2017, No. 13*:

Section 42 - replaced “the Council determines” with “prescribed”;

Section 51 - repealed

Section 56 - inserted new paragraph (c) and new subsection (3).



Su'a Hellene Wallwork
Attorney General of Samoa

*This Act is administered by
the Ministry of Commerce, Industry and Labour.*