



Tonga

**GOOD GOVERNANCE COMMISSION
BILL 2012**



GOOD GOVERNANCE COMMISSION BILL 2012

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Tonga

GOOD GOVERNANCE COMMISSION BILL 2012

A BILL FOR AN ACT TO ESTABLISH A STATUTORY COMMISSION TO ACT AS THE UMBRELLA BODY FOR THE BETTER ORGANIZATION, SUPERVISION AND OPERATION OF SEPARATE BODIES PERFORMING FUNCTIONS ASSIGNED TO THEM BY STATUTE OR BY THE GOVERNMENT RELATED TO GOOD GOVERNANCE, AND FOR RELATED PURPOSES

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Good Governance Commission Act 2012.

2 Interpretation

In this Act —

“**Commission**” means the Good Governance Commission established under this Act;

“**Good Governance Agency**” means a body that is organized, supervised and directed by the Commission and specified in Schedule 1;

“**Minister**” means the Minister of Justice.

PART 2 - THE COMMISSION

3 Establishment of Commission

- (1) There is hereby established a Commission to be known as the Good Governance Commission.
- (2) The Commission is deemed to be a body corporate with the capacity, rights and duties of a body corporate.

4 Members of Commission

- (1) The Commission shall consist of —
 - (a) the Attorney General who shall be Chairman;
 - (b) the Director of the Commission;
 - (c) a legally qualified person nominated by the Judicial Appointments and Discipline Panel; and
 - (d) one other Commissioner nominated by the Minister.
- (2) The members referred to in subsection (1)(a) and (b) and *ex officio* nominees in full time government employment shall be appointed by the Minister to be members of the Commission for the term they hold that office and all other Commissioners nominated under section 4(1)(c) and (d) shall be appointed by the Minister with the consent of Cabinet for a period not exceeding three years.
- (3) The Minister may, with the consent of Cabinet, remove a member of the Commission appointed under section 4(1)(c) or (d) from Office for good cause and appoint a successor, likewise nominated, for the balance of the term.
- (4) A Commissioner appointed under section 4(1)(c) or (d) may resign by giving the Minister one month’s written notice.
- (5) The Chairman, Commissioners and any person appointed under section 15 shall not be subject to the Public Service Act 2002 by virtue of such appointment alone.

5 Employment terms and Remuneration

Members of the Commission other than the Director shall be employed on a part-time basis; *ex officio* members in full time government employment shall not be paid any additional remuneration but other members shall be paid such remuneration or allowances, or both, as may be determined by the Minister with the consent of Cabinet.

6 Chairman of the Commission

The Chairman shall be the head of the Commission and shall be responsible for the efficient and effective operation of the Commission.

7 Meetings

- (1) The quorum of the Commission shall be 3 members, one of whom shall be the Chairman.
- (2) The Chairman shall —
 - (a) call and attend regular meetings of the Commission;
 - (b) have a casting vote in the event of equality;
 - (c) preside over the meetings of the Commission; and
 - (d) co-opt any person from the public or specialist to any meeting of the Commission if he considers it necessary.
- (3) Subject to this Act, the Commission shall determine its own procedure.

8 Delegation

The Commission may delegate to a member, officer or committee of the Commission the exercise of any of its functions but such delegation shall not prevent the exercise of the function by the Commission.

9 Director of the Commission

- (1) The Director shall be appointed by the Commission and shall be legally qualified and employed full-time.
- (2) For the purposes of the appointment of the Director, the Commission shall comprise the Chairman and other appointed Commissioners.
- (3) The Director shall be appointed for a term of 3 years under a contract of employment with the Commission which may specify the terms of employment and remuneration (to be agreed by the Minister) and provide

for duties to be performed, performance criteria and the termination of that contract.

- (4) The Director shall be answerable to the Chairman and the Commission for the performance of those tasks assigned to him which may include –
 - (a) any statutory position to which he is appointed; and
 - (b) tasks assigned to him by the Commission.
- (5) The Director may be appointed to be the principal officer, however called, of any one or more Good Governance Agency, in addition to his role as Director of the Commission.

10 Officers

- (1) The Commission shall, in consultation with the Public Service Commission, appoint such officers, full-time or part-time, as may be required for the proper conduct of the business of the Commission.
- (2) Officers appointed under this section shall be subject to the Public Service Act 2002 and may be required to work for the Commission or for any Good Governance Agency as directed.

PART 3 – ROLE OF THE COMMISSION

11 Principal role of the Commission

- (1) The Commission shall, subject to this Act, —
 - (a) establish offices, and infrastructure for the Commission and any other Good Governance Agency specified in Schedule 1;
 - (b) organize, supervise and direct such bodies, consistent with their statutory provisions (if any), and for these purposes may issue directions to a Good Governance Agency;
 - (c) in consultation with each relevant Good Governance Agency, and if the Commission thinks appropriate, appoint and employ staff of all such bodies, and control them;
 - (d) ensure compliance with the separate Acts and governing instruments by which any such Good Governance Agency is established; and
 - (e) if the Commission considers appropriate, obtain and administer the budget for each such Good Governance Agency.

- (2) Subject to section 14, the Commission shall be independent from any influence or direction of the Government.

12 Good Governance Agencies

- (1) A Good Governance Agency shall be organized, supervised and directed by the Commission in such manner as the Commission decides in each particular case and consistent with the statutory provisions affecting such body.
- (2) For the purposes of subsection (1) and without prejudice to its generality, a Good Governance Agency shall comply with a direction by the Commission that it –
 - (a) occupy premises provided by the Commission;
 - (b) utilise the services of staff employed by the Commission to such extent and in such circumstances as the Commission directs;
 - (c) utilise the equipment and infrastructure of the Commission, including electrical equipment and vehicles;
 - (d) obtain the prior approval of the Commission before it enters into any employment contract; and
 - (e) audits its accounts in a specified manner.
- (3) A Good Governance Agency acting in compliance with a direction of the Commission made under this section or section 11(1)(d) is deemed not to be acting contrary to the separate Acts and governing instruments by which any such Good Governance Agency is established.

13 Funding of Commission

- (1) The funds available to the Commission shall be —
 - (a) moneys allocated by the Legislative Assembly for that purpose;
 - (b) moneys paid to or for it for general purposes, for a specific purpose, or for the remuneration and benefit of specialists; and
 - (c) fees and charges that it is authorised to levy.
- (2) Any moneys received by the Commission under this section shall be disclosed in its annual report under section 17.

14 Policy Directions of Government

- (1) The Commission shall, in the exercise of its functions, give effect to the policy of the Government in relation to those functions, as communicated to it in writing by the Minister: PROVIDED THAT such policy shall not

be at variance with any Act under which the relevant Good Governance Agency is established, nor with the independence of such body or the Commission.

- (2) A copy of every communication made under this section to the Commission in any year shall be included in the annual report of the Commission for that year laid before the Cabinet and Legislative Assembly under section 17.

15 Specialists

The Commission may, for the purpose of any aspect of its functions engage specialists on a temporary basis to —

- (a) consider any matter which should, in the opinion of the Commission, be referred to such person and to report thereon to the Commission; or
- (b) advise the Commission.

16 Protection of Commission, powers and procedures

- (1) Any persons appointed under this Act shall not be liable to any suit for any action done by them in carrying out their functions under this Act.
- (2) The power of the Commission to perform its functions is not impaired by reason of the absence or inability to act, of the Chairman, any Commissioner, or the Director.

17 Annual report

- (1) The Commission shall report to the Minister —
 - (a) on its activities for each financial year to the Minister by 30 September in the next year.
 - (b) every direction of the Minister under section 14.
- (2) The Minister shall table the report before Cabinet and the Legislative Assembly in its next ensuing session.

18 External audit

There shall be conducted by a competent external audit agency appointed by the Minister, an annual audit of the Commission, and the audit report prepared by the external audit agency together with the annual financial statements of the Commission shall be forwarded to the Minister no later than six months from the end of the financial year to which they relate and the Minister shall lay them

SCHEDULE 1

(Section 10)

GOOD GOVERNANCE AGENCIES

The following shall be Good Governance Agencies and subject to this Act —

- (a) the Anti Corruption Commission established by the Anti Corruption Commission Act 2008;
- (b) the Ombudsman established under the Ombudsman Act.

Explanatory Notes

(This note does not form part of the Bill, and is intended only to explain its purpose and effect.)

The general purpose of this Act is to deal with the increasing number and complexity of legal-type bodies that are being set up to try to keep Tonga fair and efficient.

The basic idea of the Good Governance Commission Act is to provide an overall structure, plan and leadership to a number of government bodies that operate in the law enforcement and administration fields, to make sure they do work and that they share resources and cost as little as possible to run.

At this stage the Anti-Corruption Commission and Ombudsman will be included and later on as new bodies are set up (as they have been elsewhere and may be needed in Tonga, eg Freedom of Information, International Crime etc) they can be organized without extra cost and confusion as part of the umbrella body. Even existing bodies such as the Auditor General may also in time be organized under this Good Governance Commission. In each case all of the existing powers in the main Acts will remain, but they will be answerable to the Good Governance Commission for performance; and staff, resources and premises can be shared.

Section 2 defines certain of the terms used in the Act

Section 3 establishes the Good Governance Commission as a normal statutory body with separate legal status.

Section 4 sets out who are the members of the Commission – the Attorney General, The Director of the Commission, one person nominated by the Judicial Appointments panel and another Commissioner appointed by the Minister of Justice.

The section also says that members who hold office by virtue of them holding an existing office (eg the Attorney General) remain as Commissioners whilst they hold their primary office. Other members are appointed by (and removable by) the Minister with Cabinet approval for 3 years and they can resign giving 1 month's notice.

Subsection (5) says that Commissioners are not public servants (unless they are such already).

Section 5 says all Commissioners are part time except for the Director, and existing office-holders do not receive any extra salary but other Commissioners are to be paid amounts agreed by the Minister and Cabinet.

Section 6 says the Chairman shall be the head of the Commission and shall be responsible for the efficient and effective operation of the Commission.

Section 7 provides for meetings of the Commission and that the Commission decides its own procedure.

Section 8 says that the Commission can delegate its functions.

Section 9 deals with the Director of the Commission who is to be a lawyer and a full-time appointment. Subsection (2) says that the existing Commissioners can together choose the Director.

The Director is appointed for 3 years under a contract with remuneration agreed by the Minister (3); he (or she) is answerable to the Commission for tasks set (4) and may also be appointed to head other Good Governance Agencies (5) – for example the Director may also be the Anti-Corruption Commissioner.

Section 10 allows for the appointment of other officers, who will be public servants and may be required to work in different roles in agencies.

Section 11 sets out the main role of the Commission which is generally to independently organize, supervise and direct any of the Good Governance Agencies specified in the Schedule. This is to be done consistently with their statutory provisions (if any), and for these purposes the Commission may issue directions to a Good Governance Agency which must be obeyed.

This organization may include employing staff, ensuring compliance with the separate Acts and governing instruments by which any such Good Governance Agency is established, and, if the Commission considers appropriate, obtain and administer the budget for each such Good Governance Agency.

Section 12 applies directly to the Good Governance Agencies and says they are to be organized by the Commission and are to act in accordance with Directions from the Commission, and some of the possible directions are listed – relating to premises, staff, infrastructure, getting prior approval to employment contracts and obtaining audits.

Section 13 is about funding of the Commission all of which is to be reported.

Section 14 says that Government can give the Commission policy directions as long as these are lawful and are reported to Cabinet and the Legislative Assembly.

Under **section 15** the Commission may employ specialists, and **section 16** provides usual protections for the Commission from being sued for doing their job.

Section 17 provides for annual reports to Cabinet and the Legislative Assembly in its next session.

Section 18 says there are to be external audits and **section 19** allows Regulations to be made.

Section 20 provides that if a senior officer of an Agency ignores or refuses a direction from the Commission then he may be dismissed immediately, but subject to any claim he may have for compensation or money owing as a result.

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