



Tonga

**ANTI-CORRUPTION COMMISSIONER  
(AMENDMENT) BILL 2016**





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## **ANTI-CORRUPTION COMMISSIONER (AMENDMENT) BILL 2016**

### **A BILL FOR AN ACT TO AMEND THE ANTI-CORRUPTION COMMISSIONER ACT 2007**

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

#### **1 Short Title and Interpretation**

- (1) This Act may be cited as the Anti-Corruption Commissioner (Amendment) Act 2016.
- (2) In this Act, the Anti-Corruption Commissioner Act 2007, shall be referred to as the “Principal Act”.

#### **2 Section 2 amended**

Section 2 of the Principal Act is amended by inserting the following word and its definition in the appropriate place –

“**Speaker**” means the Speaker of the Legislative Assembly;”.

**3 Section 4 amended**

Section 4(3) of the Principal Act is amended by inserting after the word “Commissioner” the words “and its staff”.

**4 Section 5 amended**

Section 5 of the Principal Act is amended –

- (a) by deleting sub-sections (1) and (2) and replacing them with the following –  
“(1) The Commissioner shall be appointed after due recruitment process by the Speaker with the consent of the Legislative Assembly.”.
- (b) in sub-section (3), by deleting –
  - (i) the word “Cabinet” and replacing it with “the Legislative Assembly” and
  - (ii) the words “George Tupou V” and replacing it with “Tupou VI”.

**5 Section 21 amended**

Section 21(1) of the Principal Act is amended by inserting after the word “apply” the words “to the court”.

**6 Section 33 replaced**

The Principal Act is amended by deleting section 33 and replacing it with the following –

**“33 Review by Supreme Court**

A witness who has not been released by the Commissioner or released on conditions may apply to the Supreme Court for a review of the decision or the terms of the conditions.”.

**7 Section 42 amended**

Section 42 of the Principal Act is amended by deleting the words “Police Commander” wherever they appear and replace them with “Commissioner of Tonga Police”.

**8 Section 54 amended**

Section 54(1) of the Principal Act is amended by deleting the words “Prime Minister for tabling in Privy Council and the Legislative Assembly” and replacing it with the words “Speaker for tabling in the Legislative Assembly”.

**9 Section 74 amended**

Section 74(4) of the Principal Act is amended by inserting after the words “sufficient authority” the words “for Police”.

**10 Section 78 amended**

Section 78(3) of the Principal Act is amended by deleting the words “Police Commander” and replacing it with “Commissioner of Tonga Police”.

**11 Section 80 amended**

Section 80 of the Principal Act is repealed and replaced by the following -

**“80 Appointment of Staff**

- (1) The Commissioner may appoint a Director of Corruption Investigation and a Director of Leadership Code and Prevention and such other persons as may be necessary to enable the Commissioner to exercise his functions.
- (2) The Commissioner may employ such persons as are necessary for the performance of the Commissioner’s functions, duties and powers under such terms and conditions of employment that the Commissioner may determine.
- (3) The remuneration and other monetary benefits of the Commissioner’s staff shall be fixed by the Commissioner after recommendations from the Remuneration Authority.”.

**12 Section 85 amended**

Section 85(b) of the Principal Act is amended, by deleting the words “prescribing the manner” and replace them with the words “comply with any prescribed manner”.

**13 Schedule 1 amended**

Schedule 1 of the Principal Act is amended –

- (a) in clause 1(1), by deleting the words “qualified to be appointed as a Judge of the Supreme Court.” and replace them with the following –  
“ -
  - (a) a person of integrity, resolution and high standing in the community;
  - (b) a person with extensive experience in law, government administration and governance; and
  - (c) a person having been admitted to practice law in Tonga or a Commonwealth country.”;

- (b) in clause 2, by deleting the words “His Majesty’s Cabinet” and replace them with the words “the Speaker”;
- (c) by deleting clause 3 and replacing it with the following –

**“3 Commissioner to hold no other office**

The Commissioner shall not be capable of being a member of the Legislative Assembly, and shall not, without the approval of the Speaker in each particular case, hold any office for profit, other than his office as the Commissioner, or engage in any occupation for reward outside the duties of his office.”.

- (d) in clause 5, by deleting sub-clause (1) and replacing it with the following –  
“(1) The Commissioner shall be paid such remuneration and any other monetary benefits as provided under a contract of employment between the Commissioner and the Speaker after recommendations by the Remuneration Authority.”; and
- (e) by deleting clause 6 and replacing it with the following -

**“6 Vacancy in office**

- (1) The office of the Commissioner becomes vacant if the following events occur –
  - (a) dies;
  - (b) completes a term of office and is not re-appointed;
  - (c) resigns the office in writing addressed to the Speaker.
- (2) The Commissioner may be removed from office by simple resolution of the Legislative Assembly due to the following reasons-
  - (a) declared bankrupt by a Court or a receiver appointed by a Court;
  - (b) adjudged to have neglected his duty or committed misconduct after due investigation; or
  - (c) has been certified by a medical officer to have a disability that is likely to impact on his ability to fulfil his obligations.”.

## **14 Transitional**

The current holder of the Ombudsman position under the Ombudsman Act 2001 shall be deemed to have been appointed as the Commissioner under this Act until a new Commissioner is appointed.

Passed by the Legislative Assembly this        day of        2016.

### EXPLANATORY NOTE

(These notes do not form part of the Bill and is intended only to explain its purpose and effect)

- (1) This Bill proposes to amend the Anti-Corruption Commissioner Act 2007 (the Act) to –
  - (a) to avoid any duplication of powers with existing authorities, for example –
    - (i) Police (criminal investigations);
    - (ii) Attorney General’s Office (criminal prosecutions);
    - (iii) Judiciary (court cases);
    - (iv) Public Service Commission (disciplinary actions);
    - (v) Ombudsman (complains against maladministration);
  - (b) to specify the eligibility of a person that may be appointed as Commissioner;
  - (c) provide grounds as to how the Commissioner may be removed from office or when the office of the Commissioner is declared vacant;
  - (d) to make provisions which are identical to the Commissioner for Public Relations Act which will enable the Commissioner for Public Relations Office and the Anti-Corruption Office to be merged;
  - (e) make changes to the Act to be aligned with constitutional and legislative reforms carried out since the Act was enacted in 2007; and
  - (f) to generally tidy up certain provisions.
- (2) Clause 2 of the Bill inserts the word “Speaker” and it’s definition into section 2 of the Act.
- (3) Clause 3 of the Bill will amend section 4 of the Act so that the Public Services Act does not apply to the staff as well as the Commissioner.
- (4) Clause 4 of the Bill will amend the appointment process for the Commissioner in that the Speaker will make that appointment after a recruitment process. Further to amendment from King George Tupou V to King Tupou VI.
- (5) Clause 5 of the Bill will amend section 21 of the Act so as to clarify that an application for an injunction is to be made to the court.
- (6) Clause 6 of the Bill will replace section 33 of the Act so as to clarify that an application may be made the Supreme Court to review an order of the Commissioner not to release a witness or the conditions of release.
- (7) Clause 7 of the Bill will amend section 42 of the Act by updating the reference to the Police Commander to Commissioner of Tonga Police.

- (8) Clause 8 of the Bill will amend section 54 of the Act to comply with legislative reform which changes the tabling of the annual report from the Privy Council to Legislative Assembly.
- (9) Clause 9 of the Bill will amend section 74 of the Act to clarify that a person in contempt of the Commissioner may be detained by Police in a prison or elsewhere pending the matter being brought before the Supreme Court.
- (10) Clause 10 of the Bill will amend section 78 of the Act by updating the reference to the Police Commander to Commissioner of Tonga Police.
- (11) Clause 11 of the Bill will amend section 80 of the Act to enable the Commissioner, to employ his own staff according to terms and conditions he determines. The Commissioner's staff remuneration shall be determined as recommended by the Remuneration Authority.
- (12) Clause 12 of the Bill will amend section 85 to make the provision tidier.
- (13) Clause 13 of the Bill will amend Schedule 1 of the Act. In clause 1(1) to provide specific qualifications that the Commissioner shall hold before he is eligible for the position. Clause 2 provides that the Speaker may appoint a person to act as Commissioner. In clause 5(1) to provide the method in which a Commissioner shall be remunerated. In clause 6 to provide the grounds in which the Commissioner's office becomes vacant and how the Commissioner may be removed from office.
- (14) Clause 14 of the Bill clarifies that the Ombudsman shall be deemed to have been appointed as the Commissioner until a substantive Commissioner has been appointed under the Act.

**Hon. Siaosi Sovaleni**  
**Deputy Prime Minister**