



Tonga

**COMMISSIONER FOR PUBLIC  
RELATIONS (AMENDMENT) BILL 2016**





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## COMMISSIONER FOR PUBLIC RELATIONS (AMENDMENT) BILL 2016

### A BILL FOR AN ACT TO AMEND THE COMMISSIONER FOR PUBLIC RELATIONS ACT 2001

**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 Commissioner for Public Relations (Amendment) Act 2016.
- (2) In this Act, the Commissioner for Public Relations Act 2001, as amended, shall be referred to as the “Principal Act”.

#### **2 Change from Commissioner for Public Relations Act to Ombudsman Act**

Section 1(1) of the Principal Act is amended by deleting the words “Commissioner for Public Relations Act” and replacing them with the words “Ombudsman Act”.

**3 Change from Commissioner for Public Relations to Ombudsman**

The Principal Act is amended by deleting in every place where it occurs, the words “Commissioner for Public Relations” and “Commissioner” and replacing them with the word “Ombudsman”.

**4 Section 2 amended**

Section 2 of the Principal Act is amended –

- (a) by inserting the following word and its definition in the appropriate place –  
““**Speaker**” means the Speaker of the Legislative Assembly;”; and
- (b) by deleting the word “statutory body” and its definition.

**5 Section 3 replaced**

Section 3 of the Principal Act is repealed and replaced with the following –

**“3 Ombudsman**

- (1) The Ombudsman shall be appointed after due recruitment process by the Speaker with the consent of the Legislative Assembly.
- (2) In the event of the absence or incapacity of the Ombudsman or if the office of Ombudsman is vacant, the Speaker with the consent of the Legislative Assembly, shall appoint a person to temporarily perform the duties of the Ombudsman.
- (3) A person is not eligible to be appointed as Ombudsman or to act in that capacity unless the person is a person –
  - (a) of integrity, resolution and high standing in the community;
  - (b) with extensive experience in law, government administration and governance; and
  - (c) having been admitted to practice as a law practitioner in Tonga or in a Commonwealth country.”.

**6 Section 4 amended**

Section 4 of the Principal Act is amended by deleting the word “Cabinet” and replacing it with the words “Speaker with the consent of the Legislative Assembly”.

**7 Section 5 amended**

Section 5(3) of the Principal Act is amended by deleting the words “His Majesty in Council” and replacing it with “the Speaker”.

## **8 Section 6 amended**

Section 6 of the Principal Act is repealed and replaced with the following –

### **“6 Vacancy in office and removal**

- (1) The office of the Ombudsman becomes vacant if the holder –
  - (a) dies;
  - (b) completes a term of office and is not re-appointed; or
  - (c) resigns.
- (2) The Ombudsman shall be removed from office by simple resolution of the Legislative Assembly if the person holding the Ombudsman is -
  - (a) declared bankrupt by a Court;
  - (b) adjudged to have neglected his duty or committed misconduct after due investigation;
  - (c) certified by a medical officer to have a disability that is likely to impact on his ability to fulfil his obligations.”.

## **9 Section 8 amended**

Section 8 of the Principal Act is amended by deleting subsection (1) and replaced with the following –

- “(1) There shall be paid to the Ombudsman out of public money, a salary and allowances as provided under a contract of employment between the Ombudsman and the Speaker, as recommended by the Remuneration Authority.”.

## **10 Section 9 amended**

Section 9 of the Principal Act is amended –

- (a) by deleting the word “Cabinet” and replacing it with the words “the Legislative Assembly”; and
- (b) by deleting the words “Taufa’ahau Tupou IV” wherever they appear and replacing them with the words “Tupou VI”.

## **11 Section 10 amended**

Section 10 of the Principal Act is repealed and replaced with the following–

### **“10 Staff**

- (1) The Ombudsman may employ such persons as are necessary for the performance of the Ombudsman functions, duties and powers

under such terms and conditions of employment that the Ombudsman may determine.

- (2) The remuneration and other monetary benefits of the Ombudsman's staff shall be fixed by the Ombudsman as recommended by the Remuneration Authority."

## 12 Section 11 amended

Sections 11(8) of the Principal Act is amended by deleting the words "His Majesty in Council" and replacing them with "Cabinet".

## 13 New section 13A inserted

The Principal Act is amended by inserting immediately after section 13, the following new section 13A –

### "13A Preliminary inquiries

- (1) The Ombudsman may make preliminary inquiries for the purpose of deciding whether an investigation should be carried out under this Act in relation to a complaint against a Department or organisation's recommendation, action or omission.
- (2) If a complaint has been made under section 11 of this Act, the Ombudsman may, by way of a preliminary inquiry with respect to the complaint, require the complainant or other witnesses to provide further written particulars of the complaint within the time specified by the Ombudsman."

## 14 Section 17 amended

Section 17 of the Principal Act is amended –

- (a) in subsection (1), by inserting after the word "functions" the words "except for the purpose of giving effect to this Act"; and
- (b) by repealing subsection (3), and replacing it with the following –
  - "(3) Notwithstanding subsections (1) and (2), the Ombudsman may disclose such matters as in his opinion ought to be disclosed -
    - (a) for the purposes of an investigation;
    - (b) to the appropriate Government authority, where he is of the opinion that there is criminal or corrupt conduct; or
    - (c) in order to establish grounds for the Ombudsman's conclusions and recommendations."



**15 Section 18 amended**

Section 18(4) of the Principal Act is amended by deleting –

- (a) the words “Prime Minister” and replacing them with the word “Speaker; and
- (b) the words “Privy Council” and replacing them with the words “Legislative Assembly”.

**16 Section 25 amended**

Section 25 of the Principal Act is amended by deleting the words “Prime Minister” wherever it occurs and replacing them with the word “Speaker”.

**17 Sections 29 amended**

Sections 29 of the Principal Act is amended by deleting the words “His Majesty in Council” and replacing them with the word “Cabinet”.

**18 New Section 30 inserted**

The Principal Act is amended by inserting immediately after section 29, the following new section 30 –

**“30 Reports**

The Ombudsman may from time to time, in the public interest, or in the interest of any person, Department or organisation, publish reports or other information relating to the exercise of his functions or to any particular case or cases investigated by him, whether or not the matters to be dealt with have been the subject of a report tabled in the Legislative Assembly under this Act.”

**19 New section 31 inserted**

The Principal Act is amended by inserting immediately after section 30, the following new section 31 –

**“31 Transitional**

- (1) Any investigation, action, enquiry, proceeding or the like in progress by the Commissioner for Public Relations before the commencement of the Commissioner for Public Relations (Amendment) 2016 Act shall continue in the name of the Ombudsman.
- (2) The person holding the role of Commissioner for Public Relation before the commencement of the Commissioner for Public Relations (Amendment) Act 2016, shall be deemed to have been

appointed under section 3 of this Act as the Ombudsman, until the end of his term of appointment, unless terminated earlier.”.

## 20 Schedule replaced

The Principal Act is amended by repealing the Schedule and replacing it with the following –

### “SCHEDULE (Section 2)

#### ORGANISATIONS TO WHICH THIS ACT APPLIES

- (i) Tonga Communications Corporation;
- (ii) Tonga Post and Fast Print Limited;
- (iii) Tonga Export Quality Management Limited;
- (iv) Friendly Islands Shipping Agency;
- (v) Tonga Development Bank;
- (vi) Waste Authority Limited;
- (vii) Tonga Broadcasting Commission;
- (viii) Tonga Water Board;
- (ix) Tonga Market Corporation Limited;
- (x) Tonga Assets Managers & Associates Limited;
- (xi) Tonga Power Limited;
- (xii) Ports Authority Tonga;
- (xiii) Tonga Airports Limited;
- (xiv) Tonga Cable Limited;
- (xv) Retirement Fund Board;
- (xvi) Tonga Tourism Authority;
- (xvii) A Community Water Supply Committee under the Public Health Act or Regulations under that Act; and
- (xviii) Remuneration Authority.”.

Passed by the Legislative Assembly this            day of            2016.

**EXPLANATORY NOTES**

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

- (1) This Bill proposes to amend the Commissioner for Public Relations Act 2001 (the Act) to –
  - (a) change the “Commissioner for Public Relations Act” to “Ombudsman Act”;
  - (b) rename the “Commissioner for Public Relations” as the “Ombudsman”;
  - (c) to specify the eligibility of a person that may be appointed as Ombudsman;
  - (d) to enable the Ombudsman to make public reports (if in the public interest) of matters relating to its functions;
  - (e) up-date the Schedule with the list of organisations (other than Departments) to which the Act applies;
  - (f) enable the Ombudsman’s Office and the Anti-Corruption Office to be merged or enable the Ombudsman and Anti-Corruption Commissioner to hold both the position of Ombudsman and Anti-Corruption Commissioner; and
  - (g) generally tidy up certain provisions.
- (2) Clause 2 changes the name of the Act from “Commissioner for Public Relations Act” to “Ombudsman Act”.
- (3) Clause 3 changes all references the “Commissioner of Public Relations” to “Ombudsman” throughout the Act.
- (4) Clause 4 inserts the definition of Speaker into the Act.
- (5) Clause 5 replaces section 3 of the Act with regard to –
  - (a) the appointment of the Ombudsman to be made after due recruitment process by the Speaker with the consent of the Legislative Assembly. Further, this mirrors the appointment process to be used for the Anti-Corruption Commissioner;
  - (b) when an acting appointment may be made; and
  - (c) the eligibility of a person to be so appointed.

- (6) Clause 6 provides that the Ombudsman can only obtain approval from the Speaker of the Legislative Assembly, to enable him to hold any other office. This is consistent with the appointment powers. Currently permission is granted by Cabinet.
- (7) Clause 7 designates the Legislative Assembly as the authority to whom an Ombudsman's resignation should be made under section 5(3) of the Act.
- (8) Clause 8 provides for the removal process for the Ombudsman to be carried out by the Legislative Assembly. This mirrors the removal process in the Anti-Corruption Act and the Public Audit Act.
- (9) Clause 9 specifies in section 8(1) of the Act that the Ombudsman is to be remunerated in accordance with a contract of employment to be determined as recommended by the Remuneration Authority.
- (10) Clause 10 updates references to the King in the prescribed oath and affirmation under section 9 of the Act.
- (11) Clause 11 replaces section 10 of the Act with regard to –
  - (a) power to employ Ombudsman staff is with the Ombudsman;
  - (b) the Ombudsman determines the terms and conditions of Ombudsman staff employment as recommended by the Remuneration Authority.
- (12) Clause 12 empowers Cabinet in section 11 of the Act to amend the Schedule.
- (13) Clause 13 provides for the Ombudsman to hold preliminary inquiries to ascertain whether the Ombudsman has jurisdiction over the matter or to assist him in determining whether he should or should exercise his investigation powers.
- (14) Clause 14 specifies additional exceptions to the secrecy provisions under section 17 of the Act which allows for the divulging of information –
  - (a) for the purpose of giving effect to the Act; and
  - (b) by the Ombudsman to the appropriate government authority upon determining that the information received raises a reasonable suspicion of criminal or corrupt conduct.
- (15) Clause 15 specifies the Legislative Assembly as the authority to which a report is made if a Department fails to implement a recommendation of the Ombudsman under section 18(4) of the Act.

- (16) Clause 16 replaces the Prime Minister with the Speaker.
- (17) Clause 17 empowers Cabinet in section 29 to make regulations under the Act.
- (18) Clause 18 introduces a new section 30 of the Act to enable the Ombudsman to publish reports (if in the public interest) of matters relating to its functions.
- (19) Clause 19 is a transitional provision for actions to continue in the name of the Ombudsman when this Bill becomes law and the continuation of the current Commissioner under his current contract.
- (20) Clause 20 updates the list in the Schedule of organisations (other than government Departments) to which the Act applies.

**Hon. Siaso Sovaleni**

**Deputy Prime Minister**