



SAMOA

PUBLIC SERVICE ACT 2004

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THE PUBLIC SERVICE ACT 2004

2004

No. 14

AN ACT to modernise the legislative framework for the Samoa Public Service. *[2nd September 2004]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART I
PRELIMINARY**

1. Short title and commencement-(1) This Act may be cited as the Public Service Act 2004.

(2) This Act commences on a date nominated by the Prime Minister.

(3) Notice of commencement of this Act must be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Objects - The objects of this Act are to establish a public service:

- (a) That provides high quality advice to the Government; and

- (b) That delivers services to the people of Samoa honestly, fairly, effectively and efficiently; and
 - (c) In which decisions are made on their merits and without discriminations,
- in accordance with the values of the public service and the principles of employment set out in sections 17 and 18.

3. Interpretation - In this Act, unless the context otherwise requires:

- “appointment” means the employment of a person as an officer;
- “assessor” means an assessor appointed under section 64 to assist the Board;
- “Board” means the Public Service Board of Appeal established under Article 89 of the Constitution;
- “Chief Executive Officer” or “CEO” means the Head of Department of a Ministry and includes the head of a Constitutional authority;
- “Circular” means the Public Service Official Circular referred to in section 71;
- “Code of Conduct” means the rules set out in section 19;
- “Commission” means the Public Service Commission constituted under Article 84 of the Constitution;
- “Constitutional authority” means an office comprising the employees carrying out duties for:
 - (a) The Attorney General;
 - (b) The Controller and Chief Auditor; or
 - (c) The Public Service Commission;
- “contract employee” means an employee employed in a contract position under section 30 or 31;
- “contract position” means a position determined to be a contract position under section 29;
- “court” includes the Court of Appeal, the Supreme Court and the District Court;
- “employee” means a person employed in a Ministry but does not include a CEO;

- “gaining Ministry” in relation to the transfer of an officer means the Ministry which is receiving an officer from the losing Ministry;
- “Government” means the Government of the Independent State of Samoa;
- “head of a Constitutional authority” means:
- (a) The Attorney-General;
 - (b) The Controller and Chief Auditor; or
 - (c) The Secretary of the Commission;
- “losing Ministry” in relation to the transfer of an officer means the Ministry which is transferring an officer to the gaining Ministry;
- “Ministry” means a Ministry specified in the Schedule to the Ministerial and Departmental Arrangements Act 2003 (other than the Ministry of Police, Prison and Fire Service) and includes a Constitutional authority;
- “officer” means an employee who is not:
- (a) A contract employee; or
 - (b) A temporary employee;
- “probationer” means an officer who is on probation;
- “promotion” means the movement (other than the temporary movement) of an officer from one position in the public service to another position, where the second position has a higher maximum salary than the first position;
- “public service” means the public service constituted by section 20;
- “relevant CEO” in relation to an employee or a position, means the CEO of the Ministry in which the employee works, or the CEO of the Ministry in which the position is located;
- “Remuneration Tribunal” means the tribunal established by section 4 of the Remuneration Tribunal Act 2003;
- “Responsible Minister” in relation to a Ministry means the Minister for the time being responsible for that Ministry;
- “temporary employee” means an employee employed under section 41 and includes a casual worker;

“transfer” means the movement (other than the temporary movement) of an officer from one position in the public service to another position, where the second position has the same maximum salary as the first position.

4. Employer powers exercised on behalf of the Government – All employer powers exercised by the Commission or by a CEO under this Act are exercised on behalf of the Government.

PART II THE PUBLIC SERVICE COMMISSION

5. General functions of the Commission – In addition to any other functions conferred on the Commission by this Act or any other law, the Commission is responsible for:

- (a) Planning for the human resource needs of the public service;
- (b) Developing and promoting policies for the efficient and effective management of the people employed under this Act;
- (c) Monitoring and evaluating the human resource management practices of Ministries; and
- (d) Providing advice and assistance on human resource management matters in the public service to Ministries on request.

6. Commission’s powers of inquiry-(1) Where:

- (a) The Prime Minister requests the Commission to inquire into a matter relating to the administration of the public service; or
- (b) The Commission considers that a CEO (other than the Attorney-General or the Controller and Chief Auditor) may have breached the Code of Conduct; or

(c) The Commission considers it is necessary for the performance of its functions under this Act, the Commission may carry out an inquiry.

(2) In carrying out an inquiry under this section the Commission has the same powers to summon witnesses and to receive evidence as if it were a Commission of Inquiry under the Commissions of Inquiry Act 1964.

(3) For the purpose of carrying out an inquiry under this section, the Commission may appoint a member of the Commission or another person to conduct an investigation and make a report to the Commission.

(4) A person appointed under subsection (3) has the powers of the Commission set out in subsection (2).

7. Member of Commission appointed from the public service-(1) This section applies to a person who:

- (a) Was appointed to be a member of the Commission; and
- (b) Immediately before that appointment was employed in the public service; and
- (c) Ceased to be a member of the Commission (not having been removed from office under Article 85(2) of the Constitution).

(2) A person to whom this section applies is entitled to be re-employed in the public service:

- (a) On terms and conditions no less favourable than those that applied to the person in the position in the public service the person held at the time of their appointment to the Commission; and
- (b) At the salary increment which, in the opinion of the Commission, the person would have attained had they remained employed in that position.

(3) Where a person is re-employed under this section, their term of office as a member of the Commission is deemed for the purposes of seniority, superannuation, retirement and leave to be service in the public service.

8. Instructions to employees and to CEOs-(1) The Commission may issue written instructions to CEOs and employees for the purpose of the effective administration of this Act and the regulations, and to give effect to Commission policies.

(2) CEOs and employees are bound by any instructions made under this section that are expressed to apply to them.

(3) Instructions made under this section are subject to this Act and the regulations.

9. Public service determinations-(1) The Commission may, by means of a public service determination, determine terms and conditions of employment of employees.

(2) A public service determination takes effect on the date of effect specified in the determination, which may be a date earlier than the making of the determination.

(3) Where no date of effect is specified in a public service determination, the determination takes effect on the day on which it was made.

(4) The Commission may revoke or amend a public service determination.

10. Commission may delegate powers-(1) The Commission may, by instrument in writing, delegate to any person any of its powers under this Act, or under the regulations or determinations made under this Act.

(2) The Commission may impose conditions on a delegation it has made under subsection (1).

(3) Where a delegation made under subsection (1) has been made subject to conditions, the person exercising the delegation must comply with those conditions.

PART III CHIEF EXECUTIVE OFFICERS

11. Interpretation – In this Part, except where a provision expressly provides otherwise, a reference to a CEO includes:

(a) The Secretary of the Public Service Commission; but does not include:

- (i) the Attorney-General; or
- (ii) the Controller and Chief Auditor.

12. Appointment of a CEO-(1) Subject to subsection (2), the Head of State may on the advice of Cabinet, in writing, appoint a person to be a CEO for a period of up to three years.

(2) Cabinet shall before advising the Head of State of an appointment to be made under subsection (1) consult the Commission concerning the appointment.

(3) The salary and allowances of a CEO are to be determined in writing by Cabinet, having regard to the advice of the Remuneration Tribunal.

(4) The remaining terms and conditions of appointment of a CEO are to be set out in a contract made between the Commission and the CEO.

(5) Subject to the provisions of this Act, the contract has effect according to its terms.

(6) The regulations may prescribe some or all of the terms of the contract.

13. Termination of appointment of a CEO – The Head of State, acting on the advice of Cabinet after Cabinet has consulted the Commission may, subject to any procedural requirements set out in the contract between the CEO and the Commission, in writing, terminate the appointment of a CEO on the ground of:

- (a) Misbehaviour;
- (b) Poor performance;
- (c) Redundancy; or
- (d) Physical or mental incapacity.

14. Commission deemed to be decision-maker in relation to certain CEOs – In any proceedings calling into question the Head of State's exercise of or failure to exercise powers under sections 12 or 13, the Commission is deemed to have exercised or failed to exercise those powers as the case may be.

15. General responsibilities of a CEO-(1) A CEO is responsible, under the Responsible Minister, for the effective and efficient management of their respective Ministry.

(2) As soon as practicable but not later than three months after the end of each financial year, a CEO must provide a report to the Responsible Minister on the operations of the CEO's Ministry for that year.

(3) The CEO must provide a copy of the report to the Commission at the same time as they provide the report to the Responsible Minister.

(4) As soon as practicable but not later than three months after the end of each financial year, a CEO must provide a report to the Commission on human resource management in their Ministry.

16. CEO may delegate powers-(1) A CEO may, by instrument in writing, delegate to an employee any of the CEO's powers under this Act, or under the regulations or determinations made under this Act.

(2) A CEO may impose conditions on a delegation they have made under subsection (1).

(3) Where a delegation made under subsection (1) has been made subject to conditions, the employee exercising the delegation must comply with those conditions.

PART IV VALUES, PRINCIPLES AND CODE OF CONDUCT

17. Values of the Public Service-(1) Subject to the Constitution and the rule of law, the Commission, every CEO and every employee must uphold the following values in their work:

- (a) Honesty - acting honestly, being truthful and abiding by the laws of Samoa;
- (b) Impartiality – providing impartial advice, acting without fear or favour, and making decisions on their merits;
- (c) Service – serving the people well, through faithful service to the Government;

- (d) Respect – treating the people, the Government and colleagues with courtesy and respect;
- (e) Transparency – taking actions and making decisions in an open way;
- (f) Accountability – being able to explain the reason for actions taken, and taking responsibility for those actions; and
- (g) Efficiency and effectiveness – achieving good results for Samoa in an economical way.

18. Principles of employment-(1) It is the duty of each member of the Commission and each CEO to act as a good employer in the performance of their functions under this Act.

(2) As a good employer, the Commission and each CEO shall, subject to the Constitution and the rule of law, carry out employer functions under this Act according to the following principles:

- (a) Appointments and promotions must be made on the basis of merit;
- (b) Decisions on employment matters must be made fairly and properly;
- (c) Employees must have access to a simple and fair grievance system;
- (d) Employees must have reasonable access to training and development opportunities;
- (e) Employees must receive reasonable remuneration and reasonable terms and conditions of employment;
- (f) Eligible persons must have a reasonable opportunity to apply for employment in the public service;
- (g) There must be equal employment opportunity in the public service;
- (h) Employees must be provided with a safe environment to work in; and
- (i) There must be only as many employees working in the public service as are necessary for the public service to function efficiently and effectively.

19. Code of Conduct – Every employee and every CEO shall:

- (a) Be honest and impartial;
- (b) Work carefully and diligently;
- (c) Treat everyone with respect and courtesy and without coercion or harassment;
- (d) Comply with all laws that apply to them;
- (e) Comply with all lawful and reasonable directions given to them by persons who have authority to give those directions;
- (f) Disclose, and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment;
- (g) Use Government resources properly;
- (h) Use official information only for official purposes;
- (i) Act with integrity and not misuse their status or authority to seek or obtain a benefit for themselves or any other person or body;
- (j) Uphold the values of the public service set out in section 17;
- (k) Comply with any other conduct requirements set out in the regulations; and
- (l) Uphold the good reputation of the public service.

PART V THE PUBLIC SERVICE

Employment in the public service

20. The public service - The public service is constituted by:

- (a) CEOs (other than the Attorney-General and the Controller and Chief Auditor);
- (b) Contract employees;
- (c) Officers; and
- (d) Temporary employees.

21. Employment only under Public Service Act – Employees employed to perform duties in Ministries must be employed under the authority of this Act and not otherwise.

Establishment, classifications and salaries

22. Approved staffing structure-(1) The Commission must, after consulting with the CEO of the Ministry of Finance and with the CEO of each Ministry, determine an approved staffing structure for each Ministry.

(2) The approved staffing structure must specify:

- (a) The total number of positions; or
- (b) The number of positions of each classification and grading,

in which contract employees, officers and temporary employees may be employed to carry out the functions of the Ministry.

(3) A CEO must not employ a greater number of employees than is provided for in the approved staffing structure.

23. Salaries and allowances-(1) Employees are to be paid salaries and allowances at the rates determine from time to time by the Commission.

(2) The salaries and allowances of employees are to be paid out of the Treasury Fund or another Fund provided by law and are to be a first charge on the Fund from which they are paid.

24. Classes, gradings and salary scales-(1) The Commission must, by means of a public service determination:

- (a) Determine occupational classes for the employment of employees in the public service;
- (b) Divide each occupational class into grades on the basis of the job classification system determined by the Commission; and
- (c) Determine the minimum salary, the maximum salary and the annual incremental steps to apply to each grade.

(2) The Commission may, by means of a public service determination, determine minimum educational or other

qualifications that are required for employment in a particular occupational class.

25. Review of classification and grading determination-

(1) Where an officer in a Ministry is affected by a determination made by the Commission for the purposes of section 24, the CEO of that Ministry may, within the period of two months from the making of the determination, apply to the Commission for a review of the determination.

(2) An officer may apply to the Commission for a review of the grading of the position the officer occupies, provided the officer has made no application for review of the grading of that position in the preceding year.

(3) Where the Commission receives an application for review under subsection (1) it must:

- (a) Consult with the relevant CEO before carrying out the review; and
- (b) Conduct the review; and
- (c) Advise the CEO in writing of its decision.

(4) Where the Commission receives an application for review under subsection (2) it must:

- (a) Consult with the officer and the relevant CEO; and
- (b) Conduct the review; and
- (c) Advise the officer and CEO in writing of its decision.

26. Change of grading of position-(1) The Commission may change the grading of a position.

(2) Where the Commission changes the grading of a position which is held by an officer, the position shall become vacant if the Commission so determines.

(3) Notwithstanding subsection (2), the officer shall continue to have the grading they held before the re-grading of the position.

(4) Where a position becomes vacant under subsection (2) the CEO:

- (a) Must take all reasonable steps to transfer the officer to a position within the Ministry; or
- (b) If the CEO is unable to transfer the officer to a position within the Ministry within a reasonable

period, the CEO must advise the Commission that the officer is surplus to the requirements of the Ministry.

27. Salary on commencement-(1) Where a CEO appoints or promotes a person to a position, the CEO must assign to that person the occupational class and the grading of that position.

(2) Where a CEO engages a person as a temporary employee the CEO must assign the temporary employee an occupational class and grading within that class.

(3) Subject to this Act, an employee is entitled to be paid salary and allowances according to the grading assigned to them.

(4) Subject to subsection (5) and unless the Commission determines otherwise, an officer's salary on appointment or on promotion is the minimum salary applicable to the grading assigned to the officer.

(5) Subject to this Act, where an officer is promoted or transferred they are entitled to a salary not less than the salary they were entitled to in the substantive position they held at the time of such promotion or transfer.

28. Salary increments – Where the relevant CEO is satisfied that an employee has met the requirements set out for the purpose in the regulations, the employee is entitled to an annual increment of salary within the scale of salaries applicable to the employee's position.

Contract employees

29. Contract positions-(1) The Commission may, after consulting with the relevant CEO:

(a) Determine that an existing position in a Ministry is to be a contract position; or

(b) Establish a new contract position in a Ministry.

(2) Where a contract position is vacant, the Commission may fill the position according to the process set out in section 31.

30. Contract position held by an officer-(1) Where an existing position in a Ministry is determined to be a contract position and that position is held by an officer, the following provisions apply.

(2) The Commission must give the officer notice in writing of the Commission's determination.

(3) The notice must state that the change in status of the position will take effect four weeks after the date of the notice.

(4) The officer is deemed to have retired from their employment four weeks after the date of the notice, and the Commission must pay the officer the entitlements that would be due to the officer because of their retirement.

(5) The Commission must offer the officer a contract of employment as a contract employee in the position not less than two weeks after the date of the notice.

(6) Where the officer signs the contract of employment before the end of the four week period from the date of the notice the officer becomes a contract employee with effect from the date of retirement.

(7) Where the officer does not sign the contract before the end of the four week period from the date of the notice the offer lapses at the end of the four week period.

31. Employment of contract employees-(1) The Commission may, after consulting with the relevant CEO, offer a person a contract of employment in a contract position in a Ministry.

(2) Where the Commission wishes to employ a person in a contract position, it must:

(a) Advertise the position in the Circular; and

(b) Offer a contract of employment in the position to the person who, in the opinion of the Commission, has the most merit of all the applicants for the position.

(3) The contract of employment of every contract employee must be in writing and must be signed by the Commission on behalf of the Government and by the contract employee.

(4) Subject to this Act, the contract of employment of a contract employee has effect according to its terms.

(5) The Code of Conduct applies to a contract employee.

(6) A contract employee has no right to lodge an appeal to the Board of Appeal under section 49.

(7) A contract employee has no right to lodge a grievance under section 55.

32. Suspected breach of Code of Conduct etc. by contract employees-(1) Where the relevant CEO:

(a) Becomes aware that a contract employee has been charged with having committed an offence (other than an offence under the Road Traffic Ordinance 1960 which is not punishable by imprisonment); or

(b) Suspects that a contract employee may have breached the Code of Conduct,

the CEO must provide a report on the matter to the Commission.

(2) Sections 45, 46 and 47 and the associated regulations apply to a contract employee subject to the Commission performing the functions of the relevant CEO under the applied sections and regulations.

33. Managing the work performance of contract employees-(1) Where the relevant CEO considers that a contract employee is not performing their duties at the standard expected of a contract employee of that classification, the CEO must provide a report on the matter to the Commission.

(2) Section 48 applies in relation to the work performance of a contract employee, subject to the modification that the Commission is to perform the functions of the relevant CEO under that section.

Appointment, transfer and promotion of officers

34. Advertising vacancies-(1) Subject to this section, a CEO may advertise:

(a) In the Circular; or

(b) In the Circular and in other media,

a vacancy in a position in the approved structure of the CEO's Ministry.

(2) A CEO must not advertise a vacancy in a position unless the Commission has advised the CEO that it has reviewed and approved the classification and grading of the position.

(3) A CEO must not advertise a vacancy in a position unless the CEO is satisfied that:

- (a) There is a need for the duties of the position to be performed; and
- (b) There are funds available to pay for the employment of a person in the position.

35. CEO's power of appointment, promotion and transfer-(1) A CEO may, in writing:

- (a) Appoint a person; or
- (b) Promote an officer,

to an advertised position in the CEO's Ministry where the CEO is satisfied that the person or the officer has the most merit of all the applicants who have applied for appointment or promotion to the position, as the case may require.

(2) A CEO must not:

- (a) Appoint a person to a position; or
- (b) Promote an officer to a position,

unless that position has been advertised in the Circular.

(3) A CEO may at any time, in writing, transfer an officer employed in the CEO's Ministry to a vacant position in that Ministry, whether or not the position has been advertised in the Circular and whether or not there has been a merit selection.

(4) The relevant CEO may, after consulting with the officer and with the approval of the Commission, in writing, transfer an officer from one island of Samoa to another where the CEO considers it is necessary in the interests of the CEO's Ministry.

(5) A transfer under subsection (4) does not require the approval of the Commission where the officer transferred requested the CEO in writing to make the transfer.

35A. Commission's power of appointment-(1)

Notwithstanding section 35, the Commission may in any case fill a vacancy without having to advertise the position where the Commission is of the opinion that the vacancy should be filled.

(2) An appointment under subsection (1) is subject to terms and conditions set out in the regulations or in public service determinations made under section 9.

36. Assessment of merit – For the purposes of this Act, the merit of a person in relation to a position must be assessed on the basis of:

- (a) The skills and abilities;
- (b) Educational qualifications;
- (c) Experience and past work performance; and
- (d) Personal attributes,

of that person that are relevant to the selection criteria for the position.

37. Commission may transfer officers between Ministries – The Commission may, with the approval of the CEO of the losing Ministry and the CEO of the gaining Ministry, in writing, transfer an officer from one Ministry to another.

38. Commission may move employees between Ministries where functions are moved – Where the Prime Minister has decided that a function that has been performed by one Ministry is to be performed by a different Ministry, the Commission may, without anyone's approval, in writing:

- (a) Move a contract employee;
- (b) Transfer an officer; or
- (c) Move a temporary employee,

from one Ministry to another to give effect to that decision.

39. Minimum and maximum age for appointment – A CEO must not appoint a person as an officer:

- (a) If the person has not yet reached the age of 16 years;
or
- (b) If the person has already reached the age of 55 years.

40. Officers are appointed on probation-(1) A person who is appointed as an officer is on probation for an initial period of six months.

(2) The relevant CEO may, in writing, at any time during the initial period of probation, extend the probation by a period of up to three months.

(3) The relevant CEO may, in writing, at any time, confirm or terminate the appointment of a probationer.

(4) Subject to subsection (5), if a probationer's appointment has not been confirmed before the end of their period of probation (including any extension of that period) the probationer's appointment is deemed to have been confirmed at that time.

(5) The confirmation of the appointment of a probationer who has been charged with or convicted of any offence under the Act requires the approval in writing of the Commission.

Temporary employees

41. Temporary employees- The regulations may establish different categories of temporary employees and set out the relevant body responsible for the appointment and termination of employment of the different categories of temporary employees.

42. Employment conditions of temporary employees-(1) The Commission must determine the terms and conditions of employment of temporary employees.

(2) No action lies in any Court in relation to the termination of employment of a temporary employee.

(3) Despite any other law, no Court shall have jurisdiction to hear and determine any matter which arises from or concerns this section save for any matter concerning Part II of the Constitution (Fundamental Rights).

Upholding the Values and the Code of Conduct

43. Conviction for offence-(1) Where an employee is charged with having committed an offence (other than an offence under the Road Traffic Ordinance 1960 which is not punishable by imprisonment), the relevant CEO may:

- (a) Temporarily assign the employee to other duties within the Ministry; or
 - (b) Suspend the employee from duty.
- (2) Suspension under this section is without pay unless the Commission directs otherwise.

(3) If the employee is convicted of the offence, the relevant CEO may, after giving the employee an opportunity to be heard on the matter, impose on the employee any of the penalties set out in section 45.

(4) If the employee is acquitted of the charge the employee shall be reinstated without loss of any benefit or status and paid the salary they lost as a result of any suspension from duty.

44. Breach of the Code of Conduct-(1) Where a CEO believes that an officer may have breached the Code of Conduct, the CEO or the CEO's delegate must consider the matter and:

- (a) charge the officer in writing with a breach of the Code of Conduct; or
- (b) give the officer a warning; or
- (c) take no further action.”.

(2) Where an officer has been charged with a breach of the Code of Conduct, the relevant CEO must appoint an officer or a contract employee from a Ministry other than the Ministry in which the charged officer works, to investigate the charge and to make recommendations to the CEO.

(3) A person must not be appointed for the purpose of subsection (2) unless the Commission has certified that the person is qualified to carry out an inquiry.

(4) A person appointed for the purposes of subsection (2) may amend a charge made against an officer and must inform the officer of the amendment without delay.

(5) The procedure for investigating and determining the charge is set out in the regulations, but as a minimum, the procedure must provide that:

- (a) The charged officer is to be informed of the case against them;
 - (b) The charged officer has a right to be heard on the question of their guilt or innocence and on the question of any of any penalty to be imposed on them; and
 - (c) The person who investigates the charge and the person who decides on the guilt or innocence of the charged officer and decides on any penalty to be imposed on the officer must not be biased in the matter.
- (6) Despite the other provisions of this Act, where:
- (a) in the reasonable opinion of the Commission a CEO is unwilling or unable to exercise any of the functions or powers given to a CEO under this section and sections 43, 45, 46, 47 and 48; and
 - (b) the Commission is, after consulting with the relevant CEO, of the opinion that the CEO's unwillingness or inability under paragraph (a) will or is likely to adversely affect the performance and/or reputation of any Ministry or other part of the Government,
- the Commission may exercise any of the CEO's functions and powers under this section and sections 43, 45, 46, 47 and 48.

(7) Where the Commission acts under subsection (6), the Commission shall be taken for all purposes to be the CEO and the provisions of this section and sections 43, 45, 46, 47 and 48 shall apply, with such adaptations and alterations as required, to enable the Commission to exercise the CEO's functions and powers under this section and sections 43, 45, 46, 47 and 48.

44A. Investigation not required - Notwithstanding section 44, where a CEO:

- (a) is of the opinion that an officer has breached the Code of Conduct; and

(b) the officer has admitted to the CEO to that breach, the CEO may, without any further investigation, impose any of the penalties under section 45.

45. Penalties – Where:

(a) An officer admits the truth of a charge; or
(b) The relevant CEO, after considering the report of the person who carried out the inquiry and any submissions made by the officer, is satisfied that the charge is true,
the relevant CEO may, after taking into account the service record of the officer, impose on the officer one or more of the following penalties:

- (i) caution and reprimand the officer;
- (ii) order that a sum not exceeding \$1000 be deducted by way of penalty from the salary of the officer and paid into the Treasury Fund;
- (iii) transfer the officer to other duties;
- (iv) reduce the classification and/or the grading of the officer;
- (v) reduce the rate of salary of the officer (with or without reduction in grading);
- (vi) terminate the employment of the officer.

46. Recovery of loss-(1) Where:

(a) A charge under section 44 is established against an officer; and
(b) The Commission is satisfied that the breach of the Code of Conduct resulted in assessable loss to Government,

the Commission may direct that any amount up to the full extent of the loss be recovered from the officer by deduction from the officer's salary or entitlements.

(2) For the avoidance of doubt it is declared that Part XV of the Public Finance Management Act 2001 applies in addition to any matter provided for under this Act.

47. Suspension and temporary transfer-(1) Where:

- (a) A person has been appointed under subsection 44(1) to consider whether a charge should be made against an officer; or
- (b) A charge has been made against an officer under that subsection;

the CEO may, after giving the officer an opportunity to be heard on the matter:

- (i) suspend the officer from duty; or
- (ii) temporarily assign the officer to other duties in the Ministry,

pending the determination of the charge.

(2) Suspension under this section is with pay.

(3) Where an officer is not charged under subsection 44(1) within 21 days of the imposition of a suspension under this section, the CEO must revoke the suspension.

48. Dealing with poor work performance-(1) Where a CEO considers that an officer is not performing to the standard expected of an officer of that classification, the CEO must give the officer a written warning setting out:

- (a) The standard of performance expected of the officer;
- (b) The areas in which the CEO considers the officer's performance falls short of that standard; and
- (c) The steps the officer might take to improve their work performance.

(2) Where:

- (a) Four weeks or more have passed since the officer was given a warning under subsection (1); and
- (b) The CEO considers that the officer's work performance has not improved to the required standard,

the CEO must put in place a performance management plan for the officer.

(3) The Commission may determine the matters that are to be set out in a performance management plan.

(4) Where a performance management plan for an officer has been in place for three months or more and the CEO considers that the officer's performance has not improved to the required standard, the CEO may, after giving the officer an opportunity to be heard:

- (a) Transfer the officer to another position in the Ministry;
- (b) Reduce the classification of the officer and transfer the officer to another position in the Ministry; or
- (c) Terminate the employment of the officer.

48A. Unauthorised absence-(1) Subject to subsection (2), an employee:

- (a) who without permission absents themselves from duty, or fails to return to duty, other than in the circumstances referred to in paragraph (b), and continues to be absent without permission for a period of not less than 5 working days; or
- (b) who absents themselves from duty for the purpose of becoming engaged or involved, whether directly or indirectly, in an industrial action, including a strike,
shall be deemed to have been dismissed from their employment.

(2) If the employee subsequently satisfies the Commission that there was a valid reason for the employee's absence and for their failure to inform the Commission earlier of that reason, the Commission may reinstate the employee, and in such a case the employee shall be deemed not to have been dismissed from the office, but to have been on leave without pay from the Public Service during the period of absence.

Appeals

49. Appeal rights-(1) Subject to this Act, an officer is entitled to appeal against any of the following decisions:

- (a) The maximum salary assigned to the officer's position by the Commission on review of classification and grading;
 - (b) A decision to appoint or promote another person;
 - (c) A decision that the officer has breached the Code of Conduct;
 - (d) Any penalty imposed on the officer under section 43 or section 45;
 - (e) A direction under section 46 that an amount of money be recovered from the officer;
 - (f) A decision under subsection 35(4) to transfer the officer from one island of Samoa to another;
 - (g) A decision under section 48 to:
 - (i) transfer the officer;
 - (ii) reduce the officer's classification; or
 - (iii) terminate the employment of the officer.
- (2) An officer has the right to appeal against a decision to appoint or promote a person to a position only where:
- (a) the officer was an applicant for that position;
 - (b) the movement of the officer to that position would have been a promotion; and
 - (c) the position is not a contract position.

(3) The only ground of appeal in relation to a decision to appoint or promote a person is that the officer appealing has more merit for the position than the person who was appointed or promoted.

(4) Where an officer has appealed against a decision to appoint or promote another person to a position, the appeal lapses if:

- (a) The officer is promoted to a position of the same or an equivalent grade;
- (b) The appointment or promotion is cancelled; or
- (c) The position becomes vacant.

50. Appealing against a decision-(1) An officer may appeal against a decision by lodging a written notice of appeal with the Commission within 14 days after the date on which the decision was made.

(2) A notice of appeal must set out the grounds of the appeal.

(3) The Commission may in its discretion allow an extension of the appeal period set out in subsection (1).

51. The appeal process-(1) The Board may not hear an appeal unless the Commission has certified that mediation of the dispute has been attempted and that mediation has failed.

(2) The Board has jurisdiction to hear and determine an appeal, and for this purpose to summon witnesses, and to examine the witnesses on oath or otherwise.

(3) Within the scope of its jurisdiction the Board is deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1964, and, subject to the provisions of this Act, all the provisions of that Act apply accordingly.

(4) The Board may receive such evidence as it thinks fit, whether or not that evidence would be admissible in a Court of law.

(5) The onus of proof in an appeal lies on the appellant.

(6) At the hearing of an appeal:

(a) The Commission or the relevant CEO or each of them may be represented by counsel or other advocate; and

(b) The appellant:

(i) is entitled to be present; and

(ii) may be represented by counsel or by an officer or by an employee of a recognised organisation representing officers of the public service.

(7) The Board may direct that appeals affecting more than one appellant are to be heard together.

(8) Subject to this Act and the Regulations, the Board may determine its own procedure in hearing an appeal.

(9) Where the Board considers that an appeal is frivolous or vexatious:

(a) The appellant is not entitled to a refund of expenses; and

(b) The Board may order the appellant to pay all or some of the costs of the appeal; and

- (c) Any costs ordered to be paid by the appellant may be recovered by deduction from the salary of the appellant.
- (10) The Board must give a copy of its decision (including a statement of its reasons for the decision) to:
- (a) The appellant;
 - (b) The person or body who made the decision which is the subject of the appeal; and
 - (c) Where the appeal was against a decision to appoint or promote a person – that person.

52. Special provisions relating to appeal against appointment or promotion-(1) In relation to an appeal against an appointment or promotion to a position the Board must:

- (a) Where it decides that the appellant has more merit for the position than the person who was appointed or promoted – allow the appeal; or
 - (b) Where it decides that the person who was appointed or promoted has more merit for the position than the appellant – disallow the appeal; or
 - (c) Where it decides that neither the appellant nor the person who was appointed or promoted is suitable for the position – decide that the appointment or promotion is not sustained and direct that it be reviewed by the Commission, which is to have regard to any matters the Board specifies in its direction.
- (2) Where the Board directs that an appointment or promotion is to be reviewed:
- (a) The Commission must cancel the appointment or promotion; and
 - (b) The relevant CEO may fill the resulting vacancy in any manner authorised by this Act.
- (3) Where an appeal against an appointment or promotion is allowed, the appointment or promotion is cancelled and the relevant CEO must immediately promote the successful appellant to the position.
- (4) A promotion under subsection (3) is not subject to appeal.

53. Special provision relating to appeal against penalty or recovery of amount-(1) Where there is an appeal against a penalty imposed by the Commission on an officer under section 43 or section 45 or an amount to be recovered under section 46 the Board may:

- (a) Confirm the penalty or amount; or
- (b) Annul the penalty or amount ; or
- (c) Increase or decrease the penalty or amount by substituting another penalty provided for under section 45, or another amount provided for under section 46, as the case may be.

54. Restriction on challenge to decision of Board-(1) Proceedings before the Board must not be held bad for want of form.

(2) No proceeding or decision of the board is liable to be challenged in any Court, except on the ground of lack of jurisdiction.

(3) Despite any other law, no Court shall have jurisdiction to hear and determine any matter arising from or concerning the Board save for the matter referred to in subsection (2) and any matter concerning Part II of the Constitution (Fundamental Rights).

Grievances

55. Grievances-(1) A person who is an officer or a temporary employee is entitled to lodge a grievance with the relevant CEO and to have that grievance determined.

(2) The regulations shall set out the subject matter in relation to which a grievance may be lodged and the procedure for determining grievances.

Termination of employment

56. Resignation-(1) A contract employee may resign from their employment by giving the relevant CEO and the Commission four weeks notice of resignation in writing.

(2) An officer may resign from their employment by giving the relevant CEO two weeks notice of resignation in writing.

(3) A temporary employee may resign from their employment by giving the relevant CEO notice of resignation in writing.

57. Age retirement-(1) Subject to this section, an officer is retired from their employment by operation of this section on reaching the age of 55 years.

(2) A CEO may, on application by an officer, allow the officer to retire from their employment after the officer has reached the age of 50 years and before they have reached the age of 55 years.

(3) A CEO may, on application by an officer, determine that the maximum retiring age of the officer for the purpose of subsection (1) is a specified age, being more than 55 years but not more than 60 years.

(4) Where the Commission is of the opinion that it is appropriate to do so in the circumstances and following consultation with the relevant CEO, the Commission may, on application by an officer, determine that the employment of that officer may be extended beyond the time when the officer has reached 60 years of age.

58. Officers who are surplus to requirements-(1) Where the relevant CEO advises the Commission that an officer is surplus to the Ministry's requirements because the Ministry has more officers of the officer's class and grade than it requires, the Commission may:

- (a) With the approval of the CEO of a different Ministry – transfer the officer to that Ministry; or
- (b) If the Officer cannot usefully be employed in any Ministry – terminate the officer's employment after giving the officer three months' notice in writing.

(2) Where an officers employment is terminated under subsection (1)(b) the officer is entitled to a redundancy payment calculated in accordance with the public service determinations made under section 9.

(3) Any officer who has received a redundancy payment because their employment was terminated under subsection (1)(b) is not eligible to be employed in the public service in any capacity for a period of two years after the termination of their employment.

**PART VI
PUBLIC SERVICE BOARD OF APPEAL**

59. Election of member of Board-(1) An election by ballot is to be held once every three years to determine the officer who is to be the elected member of the Board for the following three years.

(2) The Commission must recommend the making of regulations prescribing the manner in which ballots are to be taken.

(3) If any dispute arises in relation to an election under subsection (1), the Commission is to determine the dispute as it thinks fit, and the decision of the Commission is final.

(4) The Commission must publish notice of the election of the member of the Board in the Circular.

(5) Despite any other law, no Court shall have jurisdiction to hear and determine any matter arising from or concerning this section, save for any matter concerning Part II of the Constitution (Fundamental Rights).

60. Vacancy in office of elected member of Board-(1) If the elected member of the Board:

- (a) Dies; or
 - (b) By notice in writing to the Commission resigns their officer; or
 - (c) Ceases to be an officer of the public service; or
 - (d) Fails to attend any duly appointed meeting of the Board without sufficient cause,
- their office becomes vacant.

(2) Where the elected member's office becomes vacant more than nine months before the next scheduled election:

- (a) Another officer is to be elected by ballot in the manner provided by section 59; and

(b) The officer who is elected holds office for the remainder of the three-year term.

(3) Where the elected member's office becomes vacant less than nine months before the next scheduled election the deputy appointed under section 61(1)(b) is to act for the remainder of the three-year term.

61. Appointment of standing deputies-(1) The Commission must appoint:

- (a) A deputy of the member of the Board appointed under Article 89(1)(b) of the Constitution; and
- (b) A deputy of the member of the Board elected under Article 89(1)(c) of the Constitution.

(2) In appointing the deputy of the member elected under Article 89(1)(c) of the Constitution, the Commission must have regard to any nomination of the recognised organisation representing officers of the public service.

62. When a deputy is to act-(1) A deputy is to act for the member whose place they take where the member:

- (a) Dies; or
- (b) By notice in writing addressed to the Commission resigns their office; or
- (c) Fails to attend a duly appointed meeting of the Board; or
- (d) Is not available or is not eligible to act as a member of the Board.

(2) A deputy member who acts because of an event specified in subsection (1)(a) or (b) continues to act until another member has been appointed or elected, as the case may be, and that member has commenced to perform the duties of their office.

(3) A deputy member who acts because of an event specified in subsection (1)(c) or (d) continues to act until the member whose deputy they are becomes available or eligible to act as a member of the Board

63. Member of Board not to act in certain circumstances

(1) A member of the Board must not take part in any appeal

affecting an officer of the Ministry in which that member is an officer.

- (2) A member of the Board must not take part in any appeal:
 - (a) Affecting the member, their spouse or any near relative of the member; or
 - (b) Where the member or their spouse or any near relative has a pecuniary or other interest in the outcome of the appeal.

64. Assessors-(1) The Board may appoint a person with expert professional or technical knowledge to be an assessor for the purposes of an appeal.

(2) The assessor is to act as an extra member of the Board for the hearing and determination of the appeal, but has no vote in the determination of the appeal.

65. Remuneration of members of Board-(1) Each member of the Board, including an assessor, (other than a person who is a full-time salaried employee of the Government) is to be remunerated at a rate determined by Order of the Head of State acting on the advice of Cabinet.

(2) Each member of the Board, including an assessor, is entitled to be reimbursed for any travelling and other expenses reasonably incurred in attending meetings or hearings of the Board.

(3) All payments made under this section are to be paid out of money appropriated by the Legislative Assembly for the purpose.

PART VII MISCELLANEOUS

66. Medical and psychological examinations – The relevant CEO may require an employee or an applicant for employment to submit to medical and psychological examinations for the purpose of determining the employee's fitness to continue to perform duties, or the applicant's fitness to perform duties, in the public service.

67. Examinations – The Commission may set and conduct examinations to assess the merits of applicants for appointment, transfer or promotion.

68. Bonds-(1) Where a CEO proposes that their Ministry should provide an employee or a prospective employee with financial assistance for transportation, education, training or living expenses, the CEO may require the employee or prospective employee to enter into an employment bond with the Government and further may require the giving of a surety by a third person.

- (2) An employment bond entered into under this section:
 - (a) Must provide that the amount of the bond is reduced in proportion to the period of the bond the employee has worked in the public service;
 - (b) Is enforceable against the person who signs it and against any person who signs the bond as surety; and
 - (c) May be signed by the CEO on behalf of the Government.

69. No compensation for loss of salary – Subject to this Act and any other Act, an employee is not entitled to any compensation for any reduction in salary or in respect of termination of employment.

70. Employee statistics-(1) A CEO must prepare a list of all officers, contract employees, and temporary employees employed in the Ministry, including details of all gradings and salaries of all positions held.

(2) The list must be updated and supplied to the Commission on a quarterly basis.

71. Public service official circular-(1) The Commission is to publish, from time to time, the Public Service Official Circular.

- (2) A notice must be published in the Circular of every:
 - (a) Appointment;
 - (b) Promotion;

- (c) Employment of a contract employee;
 - (d) Termination of employment of an officer;
 - (e) Termination of employment of a contract employee;
and
 - (f) Retirement of an officer.
- (3) The Circular must be made available to all CEOs and all employees.

72. Regulations—(1) The Head of State, acting on the advice of Cabinet, may, on the recommendation of the Commission, make regulations prescribing matters:

- (a) Required or permitted by this Act to be prescribed;
or
 - (b) Necessary or convenient for giving effect to this Act.
- (2) Without limiting the scope of any regulations that might be made, the regulations may prescribe terms and conditions of employment of contract employees, officers and temporary employees.

PART VIII SAVINGS AND TRANSITIONAL

73. Savings and transitional provisions – The Head of State, acting on the advice of Cabinet may, on the recommendation of the Commission, make regulations for savings or transitional purposes consequent upon the repeal of the Public Service (Special Posts) Act 1989 and the transition from the Public Service Act 1977 and the Public Service (Special Posts) Act 1989 to this Act.

- 74. Repeals**—(1) The Public Service Act 1977 is repealed.
(2) The Public Service (Special Posts) Act 1989 is repealed.

75. Consequential amendments—(1) The Ministerial and Departmental Arrangements Act 2003 is amended as provided for in Schedule 1.

(2) The Remuneration Tribunal Act 2003 is amended as provided for in Schedule 2.

SCHEDULE 1

- Section 4.** - Delete the words ‘the Schedule’ from subsection 4(1), and substitute ‘Schedule 1’;
- Delete the words ‘the Schedule’ from subsection 4(4), (twice occurring) and substitute ‘Schedule 1’;
- Section 5** - Delete the words ‘the Schedule’ from subsection 5(2), and substitute ‘Schedule 1’;
- Section 6** - Delete section 6(1) and substitute the following:
- ‘Amendment of Schedules’**-(1) The schedules may be amended from time to time by Order of the Head of State acting on the advice of the Prime Minister.’;
- Section 8** - Delete the words ‘the Schedule’ from section 8, and substitute ‘Schedule 1’;
- After section 8** - Insert the following after section 8:

“8A. References to abolished Departments and Ministries – Reference in any Act, Ordinance, Regulation, Rule, Proclamation, Order, Notice, Bylaw or other act of authority to a Department or Ministry (howsoever called) abolished under this Act or by operation of an amendment to Schedule I shall be read for all purposes as referring to the Ministry listed in Schedule 1 which has responsibility for the activities or functions of the abolished Ministry or Department.”

- Section 9** - Delete the words ‘the Schedule’ from section 9 (twice occurring) and substitute ‘Schedule 1’;
- Section 10** - Delete the words ‘the Schedule’ from section 10, and substitute ‘Schedule 1’
- Section 11.** - Delete the words ‘the Schedule’ from section 11, and substitute ‘Schedule 1’;
- Section 12** - Repeal section 12 and substitute the following section:

‘12. Schedule of Chief Executive Officers – There shall be the Chief Executive Officers designated in Schedule 2.’;

- Schedule 2** - Add, at the end of the Act, the following:

SCHEDULE 2

CHIEF EXECUTIVE OFFICERS (Section 12)

Chief Executive Officer, Ministry of the Prime Minister
Chief Executive Officer, Ministry of Finance
Chief Executive Officer, Ministry of Agriculture
Chief Executive Officer, Ministry of Commerce, Industry and Labour
Chief Executive Officer, Ministry of Communications and Information Technology
Chief Executive Officer, Ministry of Education, Sports and Culture
Chief Executive Officer, Ministry of Foreign Affairs and Trade
Chief Executive Officer, Ministry of Health
Chief Executive Officer, Ministry of Justice and Courts Administration

Chief Executive Officer, Ministry of Natural Resources and Environment

Chief Executive Officer, Ministry of Police, Prison and Fire Service

Chief Executive Officer, Ministry for Revenue

Chief Executive Officer, Ministry of Works, Transport and Infrastructure

Chief Executive Officer, Ministry of Women, Community and Social Development.

SCHEDULE 2

The Remuneration Tribunal Act 2003 is amended by deleting section 3(1)(j) and substituting the following:

“(j) Included in Schedule 2 of the Ministerial and Departmental Arrangements Act 2003;”

REVISION NOTES 2008

This law has been reviewed in accordance with the powers provided for in section 5 of the *Revision and Publication of Laws Act 2008*. Some minor amendments of a non-substantive nature have been made to conform to modern drafting styles.

This law repealed the Public Service Commission Act 1977 and the Public Service (Special Posts) Act 1989.

The following amendments have been made to this law since its enactment and are incorporated into this law as follows –

By the Public Service Amendment Act 2007 -

Section 35A A new section has been inserted.

Section 41 This section was repealed and replaced by the section in its current form.

- Section 44** Subsection (1) was repealed and replaced with the current form.
- Section 44A** A new section has been inserted.
- Section 48A** A new section has been inserted.
- Section 49** Subsection (2) was repealed and replaced with the current form.
- Section 57** A new subsection (4) has been inserted.
- Section 58** The word “regulations” was replaced by “public service determinations made under section 9.”

This law has been consolidated and revised by the Attorney General under the authority of the *Revision and Publication of Laws Act 2008* and is an official version of this Act as at 31 December 2007. It is an offence to publish this Act without approval or to make any unauthorised change to an electronic version of this Act.



Aumua Ming Leung Wai
Attorney General of Samoa

**The Public Service Act 2004 is
administered in the Public Service Commission.**