

Public Service Act 2004

SAMOA

PUBLIC SERVICE ACT 2004

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PUBLIC SERVICE ACT 2004

2004. No. 14

AN ACT to modernise the legislative framework for the Samoa Public Service.

[Assent and commencement date: 2 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 1 other newspaper circulating in Samoa.

2. Objects—The object of this Act is 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 discrimination, – 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;

“Audit Office” means the Audit Office established under section 11 of the [Audit Act 2013](#), and includes any person authorised under that Act to exercise or perform any of the powers or functions of the Controller and Auditor General;

“Board” means the Public Service Board of Appeal established under Article 89 of the Constitution;

“Chief Executive Officer” 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(a) *repealed*

(b) the Controller and Auditor General; 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 Chief Executive Officer;

“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) *(repealed by s20 of the Attorney General’s Office Act 2013, No.15)*; or

(b) the Controller and Auditor General;

“losing Ministry” for 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 1 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 Chief Executive Officer” in relation to an employee or a position, means the Chief Executive Officer of the Ministry in which the employee works, or the Chief Executive Officer 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 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 1 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 Chief Executive Officer 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; and
- (b) developing and promoting policies for the efficient and effective management of the people employed under this Act; and
- (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) If:

- (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 Chief Executive Officer (other than the Attorney-General or the Controller and Auditor General) 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) When a person is re-employed under this section, his or her term of office as a member of the Commission is taken for the purposes of seniority, superannuation, retirement and leave to be service in the public service.

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

(2) Chief Executive Officers 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 a 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) If a delegation made under subsection (1) has been made subject to conditions, the person exercising the delegation must comply with those conditions.

10A. Commission's powers not to affect the Audit Office—The Commission may not exercise its powers under this Part so as to affect any person employed in or engaged by the Audit Office.

PART III CHIEF EXECUTIVE OFFICERS

11. Interpretation – In this Part, except where a provision expressly provides otherwise, a reference to a Chief Executive Officer includes the Secretary of the Public Service Commission, but does not include:

- (a) the Attorney General; or
- (b) the Controller and Auditor General.

12. Appointment of a Chief Executive Officer–(1) Subject to subsection (2), the Head of State may, on the advice of Cabinet, in writing, appoint a person to be a Chief Executive Officer for a period of up to 3 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 Chief Executive Officer 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 Chief Executive Officer are to be set out in a contract made between the Commission and the Chief Executive Officer.

(5) Subject to 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 Chief Executive Officer – 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 Chief Executive Officer and the Commission, in writing, terminate the appointment of a Chief Executive Officer on the ground of:

- (a) misbehaviour; or
- (b) poor performance; or
- (c) redundancy; or
- (d) physical or mental incapacity.

14. Commission taken to be decision-maker in relation to certain Chief Executive Officers – In any proceedings calling into question the Head of State’s exercise of or failure to exercise powers under section 12 or 13, the Commission is taken to have exercised or failed to exercise those powers, as the case may be.

15. General responsibilities of a Chief Executive Officer–(1)A Chief Executive Officer 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 3months after the end of each financial year, a Chief Executive Officer must provide a report to the responsible Minister on the operations of the Chief Executive Officer’s Ministry for that year.

(3)The Chief Executive Officer 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 3months after the end of each financial year, a Chief Executive Officer must provide a report to the Commission on human resource management in their Ministry.

16. Chief Executive Officer may delegate powers–(1)A Chief Executive Officer may, by instrument in writing, delegate to an employee any of the Chief Executive Officer’s powers under this Act, or under the regulations or determinations made under this Act.

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

(3)If 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, a Chief Executive Officer and an employee must uphold the following values in their work:

- (a) honesty– acting honestly, being truthful and abiding by the laws of Samoa; and
- (b) impartiality – providing impartial advice, acting without fear or favour, and making decisions on their merits; and
- (c) service – serving the people well, through faithful service to the Government; and
- (d) respect – treating the people, the Government and colleagues with courtesy and respect; and
- (e) transparency – taking actions and making decisions in an open way; and
- (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) A member of the Commission and a Chief Executive Officer shall act as a good employer in the performance of their functions under this Act.

(2) As a good employer, the Commission and a Chief Executive Officer 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; and
- (b) decisions on employment matters must be made fairly and properly; and
- (c) employees must have access to a simple and fair grievance system; and
- (d) employees must have reasonable access to training and development opportunities; and
- (e) employees must receive reasonable remuneration and reasonable terms and conditions of employment; and

(f) eligible persons must have a reasonable opportunity to apply for employment in the public service; and

(g) there must be equal employment opportunity in the public service; and

(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 – An employee and a Chief Executive Officer shall:

(a) be honest and impartial; and

(b) work carefully and diligently; and

(c) treat everyone with respect and courtesy and without coercion or harassment; and

(d) comply with all laws that apply to them; and

(e) comply with all lawful and reasonable directions given to them by persons who have authority to give those directions; and

(f) disclose, and take all reasonable steps to avoid, any real or apparent conflicts of interest in relation to their employment; and

(g) use Government resources properly; and

(h) use official information only for official purposes; and

(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; and

(j) uphold the values of the public service set out in section 17; and

(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

Division 1 – Employment in the public service

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

- (a) Chief Executive Officers (other than the Attorney-General and the Controller and Auditor General); and
- (b) contract employees; and
- (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.

Division 2 – Establishment, classifications and salaries

22. Approved staffing structure– (1)The Commission must, after consulting with the Chief Executive Officer of the Ministry of Finance and with the Chief Executive Officer 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 Chief Executive Officer 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 determined 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, grading 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; and

(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) If an officer in a Ministry is affected by a determination made by the Commission for the purposes of section 24, the Chief Executive Officer of that Ministry may, within the period of 2 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) When the Commission receives an application for review under subsection (1), it must:

(a) consult with the relevant Chief Executive Officer before carrying out the review; and

(b) conduct the review; and

(c) advise the Chief Executive Officer in writing of its decision.

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

(a) consult with the officer and the relevant Chief Executive Officer; and

(b) conduct the review; and

(c) advise the officer and Chief Executive Officer 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) Despite 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 Chief Executive Officer:

(a) must take all reasonable steps to transfer the officer to a position within the Ministry; or

(b) if the Chief Executive Officer is unable to transfer the officer to a position within the Ministry within a reasonable period, the Chief Executive Officer must advise the Commission that the officer is surplus to the requirements of the Ministry.

27. Salary on commencement—(1) When a Chief Executive Officer appoints or promotes a person to a position, the Chief Executive Officer must assign to that person the occupational class and the grading of that position.

(2) Where a Chief Executive Officer engages a person as a temporary employee the Chief Executive Officer 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, when an officer is promoted or transferred, the officer is entitled to a salary not less than the salary the officer was entitled to in the substantive position held at the time of the promotion or transfer.

28. Salary increments – If the relevant Chief Executive Officer 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.

Division 3 – Contract employees

29. Contract positions–(1) The Commission may, after consulting with the relevant Chief Executive Officer:

- (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) When 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 4 weeks after the date of the notice.

(4) The officer is taken to have retired from his or her employment 4 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 the retirement.

(5) The Commission must offer the officer a contract of employment as a contract employee in the position not less than 2 weeks after the date of the notice.

(6) When the officer signs the contract of employment before the end of the 4-week period from the date of the notice, the officer becomes a contract employee with effect from the date of retirement.

(7) If the officer does not sign the contract before the end of the 4-week period from the date of the notice, the offer lapses at the end of the 4-week period.

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

(2) If 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 or commission of an offence by contract employees— (1) If the relevant Chief Executive Officer:

(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 Chief Executive Officer 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 Chief Executive Officer under the applied sections and regulations.

33. Managing the work performance of contract employees—(1) If the relevant Chief Executive Officer considers that a contract employee is not performing their duties at the standard expected of a contract employee of that classification, the Chief Executive Officer 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 Chief Executive Officer under that section.

Division 4—Appointment, transfer and promotion of officers

34. Advertising vacancies—(1) Subject to this section, a Chief Executive Officer 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 Chief Executive Officer's Ministry.

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

(3) A Chief Executive Officer must not advertise a vacancy in a position unless the Chief Executive Officer 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. Chief Executive Officer's power of appointment, promotion and transfer—

(1) A Chief Executive Officer may, in writing:

(a) appoint a person; or

(b) promote an officer, –

to an advertised position in the Chief Executive Officer's Ministry where the Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer may at any time, in writing, transfer an officer employed in the Chief Executive Officer'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 Chief Executive Officer may, after consulting with the officer and with the approval of the Commission, in writing, transfer an officer from 1 island of Samoa to another if the Chief Executive Officer considers it is necessary in the interests of the Chief Executive Officer's Ministry.

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

35A. Commission's power of appointment – (1) Despite 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; and

(b) educational qualifications; and

(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 Chief Executive Officer of the losing Ministry and the Chief Executive Officer 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 Chief Executive Officer 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 6months.

(2)The relevant Chief Executive Officer may, in writing, at any time during the initial period of probation, extend the probation by a period of up to 3months.

(3)The relevant Chief Executive Officer 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 an offence requires the approval in writing of the Commission.

Division 5 – 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 (*Fundamental Rights*) of the Constitution.

Division 6 – 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 Chief Executive Officer 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 Chief Executive Officer 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) If a Chief Executive Officer suspects that an officer may have breached the Code of Conduct, the Chief Executive Officer or the Chief Executive Officer's delegate must carry out a preliminary investigation of 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) When an officer has been charged with a breach of the Code of Conduct, the relevant Chief Executive Officer must appoint an officer or a contract employee from a Ministry other than the Ministry in which the charged officer works, to carry out a complete investigation of the charge and to make recommendations to the Chief Executive Officer.

(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 and appears to be impartial.

(4) A person appointed for the purposes of subsection (2) may do any or all of the following:

(a) amend a charge;

(b) withdraw a charge;

(c) lay an additional charge, —
and must without delay, inform the officer of an amendment, withdrawal or additional charge.

(5) The procedure for investigating and determining a charge against an officer is specified in the regulations, but as a minimum, the procedure must provide that:

(a) the officer must be informed of the charge against the officer and any evidence in support of the charge; and

(b) the officer has a right to respond, either in writing or orally, to—

(i) confirm or to contradict the charge and any evidence in support of the charge; and

(ii) make a submission on a penalty to be imposed on the officer if the Chief Executive Officer is satisfied that the charge is true.

(6) Despite the other provisions of this Act, if:

(a) in the reasonable opinion of the Commission a Chief Executive Office is unwilling or unable to exercise any of the functions or powers given to a Chief Executive Officer under this section and sections 43, 45, 46, 47 and 48; and

(b) the Commission is, after consulting with the relevant Chief Executive Officer, of the opinion that the Chief Executive Officer's unwillingness or inability under paragraph (a) will or is likely to adversely affect the performance or reputation of any Ministry or other part of the Government, –

the Commission may exercise any of the Chief Executive Officer's functions and powers under this section and sections 43, 45, 46, 47 and 48.

(7) If the Commission acts under subsection (6), the Commission is taken for all purposes to be the Chief Executive Officer and this section and sections 43, 45, 46, 47 and 48 apply, with such adaptations and alterations as required, to enable the Commission to exercise the Chief Executive Officer's functions and powers under this section and sections 43, 45, 46, 47 and 48.

44A. Investigation not required—Despite section 44, if a Chief Executive Officer:

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

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

45. Penalties –If :

(a) an officer admits the truth of a charge; or

(b) the relevant Chief Executive Officer, 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 Chief Executive Officer may, after taking into account the service record of the officer, impose on the officer 1 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 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)If :

(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)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)When:

(a) a person has been appointed under subsection 44(2) 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 Chief Executive Officer 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) If an officer is not charged under subsection 44(1) within 21 days of the imposition of a suspension under this section, the Chief Executive Officer must revoke the suspension.

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

(a) the standard of performance expected of the officer;

(b) the areas in which the Chief Executive Officer considers the officer's performance falls short of that standard; and

(c) the steps the officer might take to improve their work performance.

(2) If :

(a) four weeks or more have passed since the officer was given a warning under subsection (1); and

(b) the Chief Executive Officer considers that the officer's work performance has not improved to the required standard, – the Chief Executive Officer 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) When a performance management plan for an officer has been in place for 3 months or more and the Chief Executive Officer considers that the officer's performance has not improved to the required standard, the Chief Executive Officer may, after giving the officer an opportunity to be heard:

(a) transfer the officer to another position in the Ministry; or

(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 who:

(a) 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) absents himself or herself from duty for the purpose of becoming engaged or involved, whether directly or indirectly, in an industrial action, including a strike, – mistaken 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 is 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.

Division 7 – 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) a penalty imposed on the officer under section 43 or 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 1 island of Samoa to another;

(g) a decision under section 48 to—

(i) transfer the officer; or

(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; and

(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; or

(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. 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 taken to be a Commission of

Inquiry under the [Commissions of Inquiry Act 1964](#), and, subject to 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 Chief Executive Officer 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 an officer or an employee of a recognised organisation representing officers of the public service.

(7) The Board may direct that appeals affecting more than 1 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) If 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; and

(b) the person or body who made the decision which is the subject of the appeal; and

(c) if 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) For an appeal against an appointment or promotion to a position, the Board must, if it decides that:

(a) the appellant has more merit for the position than the person who was appointed or promoted, allow the appeal; or

(b) the person who was appointed or promoted has more merit for the position than the appellant, disallow the appeal; or

(c) 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) If 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 Chief Executive Officer may fill the resulting vacancy in any manner authorised by this Act.

(3) If an appeal against an appointment or promotion is allowed, the appointment or promotion is cancelled and the relevant Chief Executive Officer 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) If there is an appeal against a penalty imposed by the Commission on an officer under section 43 or 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(*Fundamental Rights*) of the Constitution.

Division 8 – Grievances

55. Grievances–(1)A person who is an officer or a temporary employee is entitled to lodge a grievance with the relevant Chief Executive Officer 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.

Division 9 – Termination of employment

56. Resignation–(1)A contract employee may resign from their employment by giving the relevant Chief Executive Officer and the Commission 4weeks’ notice of resignation in writing.

(2)An officer may resign from their employment by giving the relevant Chief Executive Officer 2weeks’ notice of resignation in writing.

(3)A temporary employee may resign from their employment by giving the relevant Chief Executive Officer 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 Chief Executive Officer 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 Chief Executive Officer 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)If the Commission is of the opinion that it is appropriate to do so in the circumstances and following consultation with the relevant Chief Executive

Officer, 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) If the relevant Chief Executive Officer 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 Chief Executive Officer of a different Ministry, transfer the officer to that Ministry; or

(b) if the officer cannot usefully be employed in a Ministry, terminate the officer's employment after giving the officer 3 months' notice in writing.

(2) When an officer's employment is terminated under subsection (1)(b), the officer is entitled to a redundancy payment calculated under the public service determinations made under section 9.

(3) An 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 a capacity for a period of 2 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 3 years to determine the officer who is to be the elected member of the Board for the following 3 years.

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

(3) If a dispute arises on 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 (*Fundamental Rights*) of the Constitution.

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,
—
his or her office becomes vacant.

(2)If the elected member's office becomes vacant more than 9 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 3-year term.

(3)When the elected member's office becomes vacant less than 9 months before the next scheduled election, the deputy appointed under section 61(1)(b) is to act for the remainder of the 3-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 an 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 he or she takes 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 his or her 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 he or she is 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 an 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 an appeal:

(a) affecting the member, his or her spouse or a near relative of the member; or

(b) where the member or his or her spouse or a 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) A 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 Chief Executive Officer 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) If a Chief Executive Officer proposes that his or her Ministry should provide an employee or a prospective employee with financial assistance for transportation, education, training or living expenses, the Chief Executive Officer 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 a person who signs the bond as surety; and

(c) may be signed by the Chief Executive Officer 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 compensation for a reduction in salary or for termination of employment.

70. Employee statistics–(1) A Chief Executive Officer must prepare a list of all officers, contract employees, and temporary employees employed in the Ministry, including details of all grading 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, the Public Service Official Circular.

(2) A notice must be published in the Circular of every:

(a) appointment; and

(b) promotion; and

(c) employment of a contract employee; and

(d) termination of employment of an officer; and

(e) termination of employment of a contract employee; and

(f) retirement of an officer.

(3) The Circular must be made available to all Chief Executive Officers 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. Repeal–(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 75(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
(Section 75(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– 2014

This is the official version of this Act as at 31 December 2014.

This Act has been revised by the Legislative Drafting Division from 2008 to 2014 respectively under the authority of the Attorney General given under the [Revision and Publication of Laws Act 2008](#).

The following general revisions have been made:

(a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.

(b) Insertion of the commencement date

(c) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:

(i) “any” changed to “a/an”

(ii) Present tense drafting style:

- “shall be” changed to “is/are”
- “for the time being” and “from time to time” removed

(iii) Removal/replacement of obsolete, archaic and Latin terms with plain language:

- “in relation to” changed to “for”
- “where” changed to “if”
- “deemed” changed to “taken”
- “notwithstanding” changed to “despite”

(iv) Numbers in words changed to figures

(v) Removal of superfluous terms: “the provisions of” and “under the Act”

(vi) Removal of “and” from “and/or”

(vii) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate.

(viii) Section 11 re-paragraphed

(ix) Correction of cross referencing in the Act (section 47(1)(1) reference to section “44(1)” corrected to section “44(2)”)

(x) Authorising provision for Schedules inserted (under Schedules 1 and 2 respectively)

(xi) Division numbers inserted for certain Parts

Since the publication of the *Consolidated and Revised Statutes of Samoa 2007*, the Act has been amended–

By the *Public Service Amendment Act 2009* (commencing 1 September 2009)

Section 3 - The definition of “head of a Constitutional Authority” was deleted and replaced with the current definition.

Section 44 - Subsection (1) to (5) were deleted and replaced with current subsections.

By the *Attorney General's Office Act 2013* (commencing 8 July 2013)

Section 2 -repealed paragraph (a) in the definition of

“Constitutional Authority”

- repealed paragraph (a) in the definition of “head of a Constitutional authority”

By the *Audit Act 2013* (commencing 27 January 2014)

Section 2 - The definition for “Audit Office” was inserted.

Section 10A - Insert new section 10A.

- All references to “Chief Auditor” substituted with “Auditor General”.

*This Act is Administered by
the Public Service Commission.*