



SAMOA

POLICE SERVICE ACT 2009

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2009

No. 11

AN ACT to provide for the repeal of the Police Service Act 1977 and for its replacement by a modern and comprehensive law applying to all aspects of the structure, functions and administration of the Samoa Police Service, and for related purposes.

*[Date of assent: 1 September 2009]
 [Commencement dates: for section 78: 1 September 2009
 For whole Act: 26 September 2009]*

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

PART 1 PRELIMINARY

1. Short title and commencement – (1) This Act may be cited as the Police Service Act 2009.

(2) Subject to subsection (3), this Act commences on a date nominated by the Minister by notice issued to that effect.

(3) Section 78 comes into effect on the date this Act is assented to by the Head of State.

(4) All regulations made under the authority of subsection (3) prior to the date of commencement of the remaining provisions of this Act shall take effect on the date of commencement determined by the Minister under subsection (2).

2. Interpretation – In this Act, unless the context otherwise requires:

“Assistant Commissioner” means an Assistant Commissioner of the Service appointed under section 22, and includes any person lawfully acting as an Assistant Commissioner;

“Board of Appeal” means a Board of Appeal constituted in accordance with section 40 or 54;

“commissioned officer” means a sworn member of the Service lawfully appointed to any commissioned officer rank prescribed in regulations, and includes any person lawfully acting as a commissioned officer from time to time;

“Commissioner” means the Commissioner of the Samoa Police Service appointed under section 12, and includes any person lawfully acting as the Commissioner;

“constable” means a member of the Service confirmed in the rank of constable under section 30(5);

“corporal” means a member of the Service confirmed in the rank of Corporal;

- “Court” means the Supreme Court of Samoa, and any level of the District Court;
- “General Instructions” or “Instructions” means any of the Instructions issued by the Commissioner as provided for by this Act and by section 74;
- “Judge” means a Judge of the Supreme Court and of the District Court;
- “Judicial Officer” has the same meaning as in Article 111(1) of the Constitution;
- “member” includes every employee of the Service (whether sworn or non-sworn, and whether holding permanent or temporary office in the Service), and includes all auxiliary members and all members serving periods of probation;
- “merit” means for the purposes of this Act, the merit of a person in relation to a position in the Service must be assessed on the basis of:
- (a) the skills and abilities; and
 - (b) educational qualifications; and
 - (c) experience and past work performance; and personal attributes,
- of that person that are relevant to the selection criteria for any position in the Service;
- “Minister” means the Minister responsible for Police and Prisons;
- “non-commissioned officer” means a sworn member of the Service holding a rank above constable and below any rank of commissioned officer;
- “non-sworn member” means any person engaged by the Service to perform functions other than those which are the responsibility of sworn members in accordance with this Act, and who have not taken the oath of office;
- “oath of office” means the oath of office to be taken by all sworn members in accordance with section 7;
- “Official property” has the meaning given to it in section 59;
- “probationer” means a member of the Service serving a period of probation in accordance with section 37;
- “recruit” means any person who is undergoing, or approved to undergo, the course of training required to become a sworn member, but who has not completed the course and has not taken the oath of office;

- “repealed Act” means the Police Service Act 1977;
- “sergeant” means a member of the Service confirmed in the rank of Sergeant under this Act;
- “senior sergeant” means a member of the Service confirmed in the rank of Senior Sergeant under this Act;
- “Service” means the Samoa Police Service continued in accordance with section 3;
- “sworn member” means the Commissioner, an Assistant Commissioner, a commissioned officer, a non-commissioned officer or a constable who has taken the oath of office.

PART 2

THE SAMOA POLICE SERVICE

3. Continuation of the Samoa Police Service – (1) The Police Service of Samoa established under section 3 of the repealed Act is continued under the name of the Samoa Police Service, and shall have the structure, functions and administrative arrangements provided for by this Act, and regulations made and General Instructions issued under this Act.

(2) A member of the Police Service established under the repealed Act is, without further authority than this Act, deemed to have been appointed as a member of the Samoa Police Service under this Act in the rank held by the member in the Police Service as at the commencement of this Act.

(3) A member deemed to be a member of the Samoa Police Service by reason of subsection (2) holds office subject to any condition applying to the appointment of that member in the Police Service at the time of commencement of this Act, including:

- (a) a member whose appointment is permanent shall continue to have a permanent appointment as if made under this Act;
- (b) a member whose appointment is temporary shall continue to have a temporary appointment as if made under this Act; and
- (c) a member on probationary appointment under the repealed Act continues to hold office on a probationary basis as if made under this Act.

4. References to the Police in other Acts – (1) All references in any law, instrument or official document in Samoa to the “Police”, “the Police Service”, “the Police Force” or the “Force” shall be deemed to be references to the Samoa Police Service.

(2) All references in any law, instrument or official document in Samoa to a member of the Police Service, the Police Force or the Force are deemed to be a reference to a member of the Samoa Police Service.

5. Functions of the Service – (1) The functions of the Samoa Police Service are to act at all times and perform such duties and exercise such powers in accordance with this Act and any other lawful authority, for:

- (a) the maintenance of law and order throughout Samoa; and
- (b) the preservation of peace in Samoa; and
- (c) the protection of life and property in Samoa; and
- (d) the prevention, detection and investigation of crime in Samoa; and
- (e) the enforcement of the law generally in Samoa, and of any laws which vest functions, powers and responsibilities in the Service, of all or any of its members.

(2) The Samoa Police Service may, with the approval of Cabinet, participate in regional or international peace keeping or policing programs or roles which have the same or similar functions as those specified in subsection (1) in places outside of Samoa.

**PART 3
STRUCTURE OF THE SERVICE**

Division 1 – Sworn and Non-Sworn Members

6. Members of the Service – (1) The Service shall be comprised of sworn and non-sworn members.

(2) The sworn members of the Service (in descending order of rank) are as follows:

- (a) the Commissioner appointed under section 12;

- (b) the Deputy Commissioner appointed under section 18;
- (c) assistant Commissioners appointed under section 22;
- (d) commissioned officers as provided under section 27;
- (e) non-commissioned officers as provided under section 29;
- (f) constables as provided under section 29;
- (g) auxiliary members as provided under section 31.

(3) All sworn members of the service must take the oath of office as provided for in section 7.

(4) All sworn members holding office by reason of section 3 and who have taken the oath of office under the repealed Act shall be deemed to have complied with the requirements of subsection (3).

(5) All other members of the Service, and persons under contract to the Service, who have not taken the oath of office, shall be regarded for the purposes of this Act as non-sworn members of the Service.

7. The Oath of Office – (1) Subject to section 6(3), a police employee or any other person who has satisfied the prescribed requirements may become a sworn member by taking the following constabulary oath before a judicial officer or such other person as the Minister may in writing appoint to administer the oath:

“I do swear that I will well and truly serve the Independent State of Samoa in the Police Service, without favour or affection, malice or ill will until I am legally discharged; that I will see and cause the peace of the Independent State of Samoa to be kept and preserved; that I will prevent to the best of my power all offences against the same; and that while I continue to hold office I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to law. So help me God.”

(2) A member who has taken and subscribed the oath as provided for in subsection (1) is deemed to have entered into a written agreement with the Independent State of Samoa as a member of the Service in whatever capacity the member may be required to serve as provided for by this Act, and at the current rate of pay of any rank to which the member may be entitled.

(3) The obligations applying under this section bind the member to serve the Independent State of Samoa until the member is legally discharged from the obligations.

(4) An implied agreement arising under this section shall be determined by the lawful dismissal or other removal from office of the member, or by the lawful resignation of the member under section 45.

(5) Before administering the oath under this section, the judicial officer or other person appointed to administer the oath must be satisfied that the person who is to undertake the Oath is:

- (a) adequately trained to exercise the powers of a constable; and
- (b) capable of exercising the powers of a constable.

8. Role of sworn members – (1) The sworn members of the Service are the only members who are responsible for exercising constabulary duties within Samoa, and subject to section 5(2), under approved arrangements for peace keeping and policing roles outside of Samoa on behalf of the Service.

(2) Members of the Service become sworn members by:

- (a) completing the approved courses of compulsory training, as set out in the Instructions; and
- (b) taking the oath of office under section 7; and
- (c) being awarded a rank, in the Service, under this Act.

9. Identity cards for members – (1) The identity card to be issued to each member of the Service shall be of a type and in the form approved by the Commissioner.

(2) An identity card shall clearly specify whether a member to whom it is issued is a sworn or a non-sworn member.

(3) An identity card shall be signed by the Commissioner or by a delegate of the Commissioner.

(4) An identity card of the approved type shall be issued to every member, and in the case of each sworn member the identity card shall be evidence of the sworn member's appointment as such in accordance with this Act.

(5) The Commissioner shall issue Instructions concerning the following obligations of members to:

- (a) keep identity cards in their safe-keeping;

- (b) ensure that identity cards are not used by members or other persons for any unlawful or improper purpose;
- (c) produce an identity card when requested to do so during the course of a member's duties and responsibilities;
- (d) immediately report the loss or theft of the member's identity card; and
- (e) promptly return the identity card to the Commissioner upon cessation of the member from the Service.

(6) If a question arises as to the right of any member of the Service to hold or execute the member's office, it is not necessary to have or produce any written appointment or other document or matter whatsoever in proof of that right.

Division 2 –Employment of Members

10. Commissioner taken to be employer of members – (1)

The Commissioner is taken for all lawful purposes to be the employer of the sworn and non-sworn members of the Service, and has all the rights, duties and powers of an employer in respect of all members.

(2) Subsection (1) does not operate to create an employment relationship in circumstances where a non-sworn member is engaged under contract to the Service on a basis other than as an employee of the Service.

(3) Subject to the Constitution and the rule of law, the Commissioner must 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) members must have access to a simple and fair grievance system;
- (d) employees must receive reasonable remuneration and terms and conditions of service;
- (e) eligible persons must have reasonable opportunity to apply for employment in the Service;

- (f) there must be equal employment opportunity in the Service;
- (g) there must be sufficient number of members employed in the Service to ensure the effective and efficient delivery of policing services.

11. Code of Conduct to apply to all members – (1) The Commissioner may through General Instructions issue a Samoa Police Service Code of Conduct applying to the members of the Service.

(2) The obligation and duty applying under the Code of Conduct (as amended from time to time) are deemed to be a condition of the employment of the members of the Service, and to form part of the agreements deemed to have been entered into under section 7.

Division 3 – The Commissioner

12. Appointment of the Commissioner – (1) The Head of State, acting on the advice of Cabinet, may appoint a fit and proper person who is qualified to hold the office under section 13, to be the Commissioner of the Samoa Police Service.

(2) The period of an appointment of Commissioner shall be fixed by the Head of State, acting on the advice of Cabinet, but no appointment made under this section may be for a period that exceeds 3 years.

(3) The Minister shall ensure that a public advertisement is made whenever an appointment to the position of Commissioner is being considered.

(4) A Commissioner is eligible for reappointment to the office of Commissioner after the expiry of any term of appointment.

13. Eligibility for appointment as Commissioner – A person must not be appointed as the Commissioner under section 12 unless the person:

- (a) is, at the time of application, a commissioned officer of the Service or a police service in another country; and

- (b) has been a commissioned officer of the Service or a police service in another country, for a period of at least 10 years; and
- (c) satisfies any other prerequisite criteria which may be prescribed by regulations made or General Instructions issued under this Act.

14. Terms and conditions of appointment of Commissioner – (1) The salary and allowances of the Commissioner are to be determined by Cabinet, having regard to the advice of the Remuneration Tribunal.

(2) All other terms and conditions applying to the Commissioner are to be stated in a contract of appointment which has effect according to its terms, but subject to the provisions of this Act.

(3) Regulations made under this Act may prescribe terms and conditions relating to the appointment of the Commissioner or in relation to the Commissioner's employment in that office.

15. Appointment of Acting Commissioner – (1) In the event that there is a vacancy in the office of the Commissioner, or the Commissioner is absent from duty for any reason, an Assistant Commissioner who is nominated by the Minister in writing, shall be the Acting Commissioner and may exercise all the powers, duties and functions of the Commissioner during the period of the acting appointment.

(2) An acting appointment made under subsection (1) immediately ceases upon the appointment of a Commissioner after a period of vacancy, or the return to duty of the Commissioner after a period of absence.

16. Duties and Powers of the Commissioner – (1) The Commissioner is responsible to the Minister for the effective and efficient management of the Service.

(2) In addition to the powers conferred by this Act and any other law, the Commissioner may exercise any powers necessary for the following:

- (a) the effective and efficient management of the Service;
- (b) the performance by the Service of its functions under section 5, including its approved participation

- outside of Samoa in peace keeping or policing programmes and roles;
- (c) the effective liaison with regional and international policing bodies and agencies;
 - (d) the implementation within Samoa of its human rights and other international obligations;
 - (e) the implementation of the policies of the government in relation to policing and the role of the police in the law and justice sector.

17. Delegation of powers by the Commissioner – (1) The Commissioner may delegate any of the powers of the Commissioner to any Assistant Commissioner or other member of the Service.

(2) All delegations of powers under this section must be evidenced in writing but nothing in this subsection prevents the Commissioner from making a verbal delegation of power which must be confirmed in writing at the earliest opportunity.

(3) The Commissioner may impose any conditions or restrictions in relation to the exercise of a delegated power.

(4) The Commissioner may exercise any power that has been delegated under this section, and may revoke any delegation at the will of the Commissioner.

Division 4 – Deputy Commissioner

18. Appointment of a Deputy Commissioner– (1) The Head of State, acting on the advice of Cabinet, may appoint a fit and proper person who is qualified to hold the office under section 19, to be a Deputy Commissioner of the Samoa Police Service.

(2) The period of an appointment of Deputy Commissioner is for 3 years.

(3) The Minister shall ensure that a public advertisement is made and that a transparent selection process in accordance with General Instructions on recruitment and selection is applied whenever an appointment to the position of Deputy Commissioner is being considered.

(4) The Deputy Commissioner is eligible for reappointment to the Office of Deputy Commissioner after the expiry of any term of appointment.

19. Eligibility for appointment as the Deputy Commissioner– No person may be appointed to be a Deputy Commissioner under section 18 unless the person:

- (a) is a current or former commissioned officer of the Samoa Police Service, or a current or former member of senior rank in the Police Service of another country;
- (b) is or was a commissioned officer of the Samoa Police Service for a period of not less than 10 years or a member of senior rank in the Police Service of another country; and
- (c) satisfies all other prerequisites criteria which may be prescribed by regulations made or instructions issued under this Act.

20. Terms and conditions of appointment of the Deputy Commissioner– (1) The salary and allowances of a Deputy Commissioner are to be determined by Cabinet, having regard to the advice of the Remuneration Tribunal.

(2) All other terms and conditions applying to a Deputy Commissioner are to be stated in a contract of appointment which has effect according to its terms, but subject to the provisions of this Act.

(3) Regulations made under this Act may prescribe terms and conditions relating to the appointment of a Deputy Commissioner or in relation to the Deputy Commissioner's employment in that Office.

21 Duties and Powers of the Deputy Commissioner– (1) The Deputy Commissioner shall assist the Commissioner in the exercise of the Commissioner's powers and functions relating to the effective and efficient management of the Service.

(2) The Deputy Commissioner must exercise the powers that are delegated to him or her under section 17 and perform all the duties and functions that are vested in him or her by the Commissioner.

(3) All powers, duties and functions performed by a Deputy Commissioner are to be done in accordance with any condition, limitation or requirements imposed or required by the Commissioner.

Division 5 – Assistant Commissioners

22. Appointment of Assistant Commissioners – (1) The Head of State, acting on the advice of Cabinet, may appoint fit and proper persons who are qualified to hold the office under section 23, to be the Assistant Commissioners of the Samoa Police Service.

(2) The period of an appointment shall be fixed by the Head of State, acting on the advice of Cabinet, but no appointment made under this section may be for a period that exceeds 3 years.

(3) The number of Assistant Commissioners which may be appointed under this section and hold office at any time shall be determined by the staffing structure approved under section 34.

(4) The Minister shall ensure that a public advertisement is made and that a transparent selection process in accordance with General Instructions on recruitment and selection is applied whenever an appointment to the position of Assistant Commissioner is being considered.

(5) An Assistant Commissioner is eligible for reappointment to the office of Assistant Commissioner after the expiry of any term of appointment.

23. Eligibility for appointment as an Assistant Commissioner – No person may be appointed to be an Assistant Commissioner under section 22 unless the person:

- (a) is at the time of application a commissioned officer of the Service; and
- (b) has been a commissioned officer of the Service for a period of not less than 10 years ; and
- (c) satisfy all other prerequisite criteria which may be prescribed by regulations made or instructions issued under this Act.

24. Terms and conditions of Assistant Commissioners – (1) The salary and allowances of the Assistant Commissioners are to be determined by Cabinet, having regard to the advice of the Remuneration Tribunal.

(2) All other terms and conditions applying to the Assistant Commissioners are to be stated in a contract of appointment in each case which has effect according to its terms, but subject to the provisions of this Act.

(3) Regulations made under this Act may prescribe terms and conditions relating to the appointment of the Assistant Commissioners.

25. Duties and Powers of the Assistant Commissioners –

(1) The Assistant Commissioners shall assist the Commissioner in the exercise of the Commissioner's powers and functions relating to the effective and efficient management of the Service.

(2) The Assistant Commissioners shall exercise the powers that are delegated to them under section 17 and perform all the duties and functions that are otherwise vested in them by the Commissioner.

(3) All powers, duties and functions performed by the Assistant Commissioners are to be done in accordance with any condition, limitation or requirements imposed or required by the Commissioner.

26. *(Repealed by section 61(2) of the Prisons and Corrections Act 2013 [commenced on 4.4.14].)*

Division 6 – Other Commissioned Officers

27. Appointment of other Commissioned Officers – (1)

The Minister may, on the recommendation of the Commissioner, appoint fit and proper persons to be Commissioned Officers of the Service.

(2) The ranks of the Commissioned Officers shall be prescribed by regulations.

(3) In the absence of any regulations under subsection (2), the ranks of Commissioned Officers applying under the repealed Act as at the date of commencement of this Act shall be the ranks for the purposes of this Act.

(4) All appointments made under this section must be consistent with the staffing structure of the Service approved under section 34.

28. Terms and conditions of Commissioned Officers – (1)

The salary and allowances of the Commissioned Officers are to be determined by Cabinet, having regard to the advice of the Remuneration Tribunal.

(2) All other terms and conditions applying to the Commissioned Officers are to be as set out in Instructions.

Division 7 – Other Members of the Service

29. Non-commissioned officers and constables – (1)

Whenever there is a vacancy within the approved staffing structure of the Service, the Commissioner may appoint persons as non-commissioned officers and constables of the Service to fill the vacancy.

(2) Regulations made under this Act may provide for the appointment by the Commissioner of sworn members to prescribed ranks of non-commissioned officers and constables.

(3) All terms and conditions applying to the non-commissioned officers and constables shall be as set out in Instructions.

30. Appointment of recruits – (1) Subject to section 38, if there is a vacancy within the approved staffing structure of the Service, the Commissioner may appoint recruits to the Service to fill the vacancy.

(2) Regulations made under this Act shall provide for the basic eligibility requirements that must be met by all recruits to the Service.

(3) Recruits may not exercise any of the powers of the sworn members or perform any function of sworn members until they have successfully completed their required courses of training and taken the oath of office.

(4) Recruits may only wear an approved uniform of the Service upon the satisfactory completion of the required training course.

(5) Unless the Commissioner determines otherwise, upon completion of the required training course and the taking of the oath of office, a recruit shall take the rank of constable.

31. Auxiliary members of the Service – (1) With the approval of the Minister, the Commissioner may appoint auxiliary members of the Service, on such conditions as the Commissioner determines.

(2) All persons appointed as auxiliary members must have first satisfied the eligibility criteria stated in Instructions.

(3) A person appointed under this section shall take the oath of office provided for in section 7, but the person shall not have

any of the functions, powers or duties of a member the Service under this Act or any other enactment or at common law until such time as the person is ordered into active service by the Commissioner.

(4) No period of active service for any auxiliary officer may exceed 3 months at any one time, and each auxiliary member shall cease active service when ordered to do so by the Commissioner.

(5) Auxiliary members may only perform the functions and duties of sworn members of the Service in accordance with any directions, conditions or restrictions imposed by the Commissioner.

(6) Except for the provisions of this Act applying to probation, retirement, breach of duty and suspension of members, the provisions of this Act apply to the auxiliary members.

(7) A person appointed as an auxiliary member shall hold office at the will of the Commissioner.

(8) A person appointed under this section shall be paid such salary and allowances as are provided for in Instructions.

32. Appointment of non-sworn members – (1) If there is a vacancy within the approved staffing structure of the Service, the Commissioner may appoint persons as non-sworn members of the Service to fill any vacancy.

(2) A non-sworn member may not perform the policing functions provided for in section 8 for sworn members of the Service.

(3) The terms and conditions applying to the non-sworn members are those as provided for in any applicable contract relating to a non-sworn member, or as set out in Instructions.

(4) A non-sworn member shall be required to swear an oath of confidentiality which shall be in a form as set out in Instructions.

33. Change of status of positions – (1) With the approval of the Minister, the Commissioner may convert permanent positions in the Service as at the commencement of this Act, into contract positions to be held by non-sworn members.

(2) The Commissioner has the power to change positions within the Service held by sworn members so that those positions are to be held only by non-sworn members.

PART 4
STAFFING ARRANGEMENTS

Division 1 – General staffing matters

34. Approved staffing structure – (1) The Commissioner shall ensure that an Annual Staffing Structure Plan is prepared each year which shall state:

- (a) the maximum total number of positions, ranks and offices that form part of the Service; and
- (b) the maximum number of sworn and non-sworn members of each prescribed position, rank and office to be appointed during the period of the relevant annual plan, –

so that each annual plan shall provide for the maximum staffing numbers for the Service for the year of that plan.

(2) A plan prepared under subsection (1) is to be submitted to the Minister, and takes effect upon the approval of the Minister.

(3) The number of non-sworn members and the number of members of any position, rank or office at any particular time must not exceed the numbers stated for those members, positions, ranks and offices in an approved plan while that plan is current.

(4) An approved plan may be amended with the approval of the Minister.

35. Salaries and allowances – (1) All salaries, wages and allowances due to members of the Service shall be paid out of the approved appropriations from the Treasury Fund.

(2) The salaries, wages and allowances due to the members of the Service shall rank as a first charge on the Treasury Fund along with similar entitlements due to employees of the public service and under the relevant provisions of the Prisons and Corrections Act 2013.

36. Acting appointments – (1) If there is a vacancy in any office of the Service, or if any member is absent from duty for any reason, the Commissioner may either:

- (a) authorise any member of the Service to exercise all or any of the powers and duties of the vacant office of an absent member if the rank of that

office or member is higher than the member appointed to act in that office; or

- (b) appoint any member of the Service to a higher rank on a temporary basis.

(2) The powers under subsection (1) may be exercised before the vacancy or absence from duty actually arises, or, at any time, while the vacancy or absence continues.

(3) No authorisation or appointment made under subsection (1), and no act taken by any member acting under such an authorisation or appointment, may be questioned in any legal proceedings on the grounds that:

- (a) the occasion for such an authorisation or appointment had not in fact arisen; or
- (b) the member had not been appointed to any rank to which the authority to act relates.

(4) An authorisation or appointment made under subsection (1) may be revoked at any time by the Commissioner.

(5) Higher duty allowances shall be payable to officers who are authorised or appointed to act under subsection (1) in accordance with Instructions relating to conditions of service and entitlements.

37. Probation period to be served – (1) Subject to subsection (2), upon first being appointed to any position, rank or office within the Service, a person shall be on probation for a period of 2 years from the date of the appointment.

(2) The probation period applying under subsection (1) does not apply to appointments of the following:

- (a) the Commissioner;
- (b) the Deputy Commissioner;
- (c) Assistant Commissioners;
- (d) non-sworn members engaged under contract;
- (e) auxiliary members appointed under section 31.

(3) The Commissioner may give notice in writing to any member who is under probation in accordance with subsection (1), to:

- (a) end the member's period of probation and confirm his or her appointment; or
- (b) extend the member's period of probation for not more than 6 months.

(4) A member who does not receive a notice under subsection (3) is taken to have completed his or her probation period and to be confirmed in the position, on the expiration of the relevant probation period (or any extended period of probation imposed on the member).

(5) A member on probation shall, during the probation period, hold his or her office at the will of the Commissioner.

(6) Where this Act comes into force before the expiration of 2 years from the date of appointment of any member, that member is deemed to be on probation, and this section is taken to have applied to the member as from the date of his or her appointment.

Division 2 – Appointment and promotions

38. Appointment and promotion process – (1) Subject to subsection (2), no appointment to, or promotion within, the Service is valid to confer any rank, rights or privileges, unless the appointment or promotion is done under this section and Instructions on matters relating to recruitment and selection of members.

(2) This section does not apply to appointments of the Commissioner or Assistant Commissioners.

(3) When a vacancy in any position of the Service arises, the Commissioner shall appoint a Board to be called the Appointment and Promotion Board to conduct the recruitment and selection process for the relevant position.

- (4) The Appointment and Promotion Board shall comprise:
- (a) three persons with good knowledge of the relevant position requirements; and
 - (b) of the 3 persons appointed under paragraph (a), one person must be a person who is not a member of the Service.

(5) The Board shall consider appointments to the Service, and promotions within the Service, and shall make recommendations in a manner consistent with regulations made under this Act, and applicable Instructions.

(6) The Board shall ensure that the Board recommends for appointment and promotion, the best possible applicant for the appointment or promotion.

(7) After receiving a recommendation made by the Board in relation to an appointment to the Service, or a promotion within the Service, the Commissioner shall:

- (a) approve the Board's recommendation and make the appointment or promotion as recommended; or
- (b) on the grounds that the Board has failed to comply with any applicable Regulation or Instruction—
 - (i) direct that the recommendation be set aside by the Board, and that a new consideration of the appointment or promotion begin; and
 - (ii) give directions to the Board so that the defect in the Board's processes be remedied.

(8) The Commissioner does not have the power to direct that a recommendation of the Board be rejected, substituted or re-considered on the basis of merit.

39. Rights of Appeal – (1) Subject to subsection (2), a member of the Service, other than an auxiliary member, or a probationer, has a right of appeal to a Board of Appeal as constituted and provided for in section 40 against any recommendation for appointment or promotion made by the Appointment and Promotions Board under section 38.

(2) No such member has a right of appeal if:

- (a) the recommendation was in respect of a rank or office equal to or lower than that held by the member at the date of the recommendation; or
- (b) the vacancy to which the recommendation relates to was notified to the members of the Service in such manner as may be prescribed by regulations or General Instructions under this Act and the member was not an applicant for the vacancy in accordance with any such regulations.

40. Board of Appeal – (1) A Board of Appeal constituted to hear appeals under section 39, 49 or 53 shall consist of:

- (a) a Judge, as Chairperson; and
- (b) an Assistant Commissioner; and
- (c) any member of the Service being equal or senior in rank or position to the appellant.

(2) Subject to subsections (3) and (4), all members of the Board of Appeal are to be appointed by the Minister and are appointed for the purposes of each particular appeal.

(3) In making an appointment under this section, the Minister shall:

- (a) appoint a Judge in accordance with any decision made by the Chief Justice in this regard; and
- (b) appoint the other members after receiving nominations for these appointments from the Commissioner, but the Minister shall make the appointments on his or her own volition in a situation where the decision being appealed was made by or relates to the Commissioner.

(4) No member is eligible for appointment to a Board of Appeal in any case in which the member has:

- (a) been a member of the Board which made the decision which has been appealed against;
- (b) made any inquiry or investigation or made any report touching upon the subject matter of the appeal;
- (c) a personal interest or involvement in the matter under dispute; or
- (d) a close association with any of the disputing parties.

(5) The members of the Board of Appeal are entitled to receive a sitting fee and allowance approved by Cabinet.

41. Procedure for Boards and Board of Appeal – (1) The Appointment and Promotion Board and all Boards of Appeal shall conduct their proceedings and make such inquiries as are necessary in a manner which is consistent with any applicable Regulations or Instructions, and may otherwise regulate their proceedings as they see fit.

(2) No Instruction issued by the Commissioner shall be inconsistent with any requirement of this Act or any relevant Regulations, or affect the independence of the Appointment and Promotion Board or any Board of Appeal.

Division 3 – Transfers to related Services

42. Transfer of members within the Police and Prisons Services – (1) Subject to subsection (3) and the provisions of the Prisons and Corrections Act 2013, the Commissioner may

authorise the transfer of any member of the Service to the Prisons Service, and any member of the Prisons Service to the Service.

(2) A transferred member is entitled to receive no less than the pay and allowances of the equivalent of the member's rank in the Prisons Service or the Service to which the member is transferred.

(3) A member subject under this section and to be transferred to a sworn position of the Service or Prisons Service shall, before the transfer is completed, undergo a training required to become a sworn member of the Service or Prisons Service.

43. Temporary exchange of members with overseas Services – (1) The Minister may enter into an agreement with the proper authority of the government of a foreign country or territory for the temporary exchange of members of the Service and the Police Force of that country or territory.

(2) A member of the Service who, pursuant to any such agreement, is attached to the Police Force of any foreign country or territory:

- (a) continues to be a member of the Samoa Police Service;
- (b) is to be paid as if the member were on duty in Samoa; and
- (c) may at any time be recalled by the Minister, – but until so recalled shall–
 - (i) be under the control of and perform such duties as the member may be called upon to perform by the proper Police authority in that foreign country or territory; and
 - (ii) obey all lawful orders of the officers under whom the member may for the time being be placed.

(3) Despite subsection (2), the Minister may grant an allowance to any member of the Service while on any such temporary exchange of employment.

(4) The Minister may, in accordance with any agreement, appoint any member of the Police of the foreign country or territory with which such an agreement has been made to be a temporary member of the Samoa Police Service; and the member, on being so appointed and taking the oath prescribed by section 7, becomes a temporary member of the Samoa Police Service.

(5) The temporary appointment of any such person as a member of the Samoa Police Service shall not entitle that person to any pay or allowance from the Government of Samoa or make that person an employee of the Government for the purposes of any provident or superannuation scheme available or applicable to its employees.

44. Status of Officers on overseas missions – (1) The approval of Cabinet for the deployment of members of the Service to places outside of Samoa under section 5(2) must be in accordance with an assessment of the operational requirements of the Service made by the Minister which indicates that the overseas deployment shall not adversely affect the capabilities of the Service to perform its functions under section 5(1).

(2) Only sworn members of the Service may be deployed for service at places outside of Samoa, and all deployed members shall continue to be members of the Service and bound by the oath of office and the approved Code of Conduct to be issued by General Instructions.

(3) A member who commits an act of misconduct whilst on overseas deployment is subject to the disciplinary provisions of this Act as if the member had committed the misconduct in Samoa.

Division 4 – Leaving the Service

45. Resignation from the Service – (1) The Commissioner and Assistant Commissioners may not resign from office otherwise than in accordance with the terms of their contracts of appointment.

(2) No other member of the Service may resign from office unless the member has been expressly authorised in writing to do so by the Commissioner, or has given to the Commissioner 1 months' notice in writing of his or her intention to resign.

(3) Where in the opinion of the Minister special circumstances require that no member of the Service shall resign without permission, the Minister may declare by order that no member shall resign from the Service except on the conditions set out in the order.

(4) Subject to subsection (5), any member of the Service who:

- (a) resigns from office otherwise than under—
 - (i) this section; or
 - (ii) an order in force under this section; or
 - (b) deserts from the Service, –
- is liable to pay a fine not exceeding 1 penalty unit and is required to forfeit all arrears of pay then due to the member.

(5) Despite subsection (4), the Commissioner may, where the Commissioner considers it appropriate to do so in the circumstances, deem a member of the Service to have resigned where the member, without permission from a superior, absents himself or herself from duty, or fails to return to duty and continues to be absent without permission for a period of not less than 15 working days.

(6) A member who is deemed to have resigned under subsection (5) is required to forfeit all arrears of pay then due to the member and any other allowances or benefits the member may be entitled to at the time of the resignation.

46. Retirement from the Service – (1) Subject to subsection (2), all members of the Service shall be retired from the Service upon reaching the age of 55 years.

(2) Upon application made by a member, the Commissioner may:

- (a) allow the member to retire from the Service after the member has reached the age of 50 years but not yet reached the age of 55 years; or
- (b) determine that the maximum retirement age for that member is a specified age being over 55 years but less than 65 years.

(3) Despite anything in this section, if a serving member dies between the ages of 50 to 55 years, that person is deemed to have retired from the Service.

(4) The retirement age provided for in subsection (1) does not apply to the Commissioner, the assistant commissioners, auxiliary members and other non-sworn members engaged under contract.

47. Retirement as medically unfit – (1) This section applies to all sworn and non-sworn members of the Service (whether they are on permanent or temporary appointment, or appointment under contract), but does not apply to the following:

- (a) the Commissioner;
- (b) the Deputy Commissioner;
- (c) Assistant Commissioners.

(2) If the Commissioner at any time thinks it is likely that any member of the Service has become permanently medically unfit for further duty, the Commissioner may, by notice in writing, require the member to be submitted for examination by 2 medical officers within a stated period.

(3) The costs of the examination under subsection (2) shall be paid for by the Service.

(4) Failure to comply with a notice given under subsection (2) shall be a breach of duty within the meaning of section 50.

(5) A member of the Service who is certified by 2 medical officers to be permanently medically unfit to perform any specified duties in the Service that the Commissioner considers suitable and reasonable for the member, may be required by the Commissioner, with the approval of the Minister, to retire from the Service within such time, being not less than 1 month, as shall be determined by the Commissioner.

(6) A member required under this section to retire from the Service shall, on the expiration of the time determined by the Commissioner, cease to be a member of the Service.

(7) A member may, within 7 days of receiving a notice requiring the member to retire, appeal against the requirement and section 39, with the necessary modifications, applies to the appeal.

PART 5 DISCIPLINARY PROCEDURES

Division 1 – Poor Work Performance

48. Processes to address poor work performance – (1) Regulations made under this Act, and Instructions, may impose processes for the assessment of the work performance of members, and for dealing with poor work performance.

(2) The work performance of all members, other than members engaged on contract to the Service, shall be reviewed on at least an annual basis.

(3) The work performance of each member shall be assessed in accordance with the performance expectations of the

member's rank, office or position as determined to apply by Instructions.

(4) All assessments of performance are to be kept on the personnel file for each member to whom the assessment relates.

(5) Any finding made during an assessment that a member has not satisfactorily performed his or her duties in accordance with the applicable performance expectations shall be referred to the Commissioner.

(6) Upon a referral being made under subsection (5), the Commissioner shall issue to the member a statement indicating the following:

- (a) the standard of performance expected of the member;
- (b) the manner in which the member's performance has been found to not meet the applicable standard of performance;
- (c) the action that is required of the member to remedy the finding of poor performance against the member.

(7) If a member who has received notification under subsection (6) has failed to improve his or her work performance as required by the notice within a period of 6 weeks of receiving the notice, the Commissioner may:

- (a) reduce the member's rank; or
- (b) reduce the member's pay; or
- (c) terminate the service of the member.

49. Appeals against dismissal for poor work performance

– (1) A member who has been penalised under section 48(7) on the grounds of poor performance may appeal to a Board of Appeal constituted under section 40.

(2) An appeal under this section shall be commenced by a written notice of appeal delivered to the Commissioner within 7 days of the penalty being imposed, and stating the grounds of appeal.

(3) After hearing an appeal under this section, the Board of Appeal may:

- (a) allow the appeal and order that the penalty not be applied, or that the member be re-instated to his or her rank or pay, or to the Service; or
- (b) confirm the penalty against the member; or

(c) vary the penalty imposed against the member.

(4) An appeal made under this section does not operate to stay the imposition of the penalty imposed, but the Board of Appeal may order that the member be entitled to any monies due to him or her if the appeal is allowed.

Division 2 – Breach of Duty

50. Conduct amounting to breach of duty – (1) This section does not apply to the Commissioner or an Assistant Commissioner.

(2) A sworn member of the Service commits a breach of duty amounting to misconduct if the member:

- (a) breaches a provision of this Act, or any Regulation or Instruction under this Act;
- (b) commits any criminal offence;
- (c) fails to obey a lawful order given to, or applying to the member;
- (d) is negligent in the performance of the member’s duty;
- (e) fails to disclose, and take reasonable steps to avoid, any real or apparent conflict of interest in relation to the member’s service;
- (f) acts in an insubordinate manner, sexually harasses, or displays any disrespect to a member of the Service or any member of the public; and
- (g) behaves in a manner which brings, or is likely to bring, the Service into disrepute, or which may affect the confidence that the community has in the Service.

51. Inquiries into breach of duty and punishment – (1)

An Assistant Commissioner or a Deputy Commissioner may charge (“the charge”) a member, other than the Commissioner, with a breach of duty under this Act (“charged member”).

(2) The charged member may admit or deny the charge.

(3) If the charged member admits the charge, the Assistant Commissioner or a Deputy Commissioner must refer the matter to the Commissioner for a penalty to be imposed under section 51B.

(4) If a charged member denies the charge, an Assistant Commissioner or a Deputy Commissioner may:

- (a) subsection to section 51B(5), refer the matter to the Commissioner to impose penalty under section 51B if there is clear evidence of a breach of duty not requiring the convening of a Disciplinary Tribunal; or
- (b) refer the matter to the Commissioner for the convening of a Disciplinary Tribunal under section 51A to determine.

(5) A member who is convicted by a court of an offence punishable by imprisonment is, in addition to the conviction and imprisonment, liable to any punishment under section 51B, as if the member had been charged under this section and the charge had been proved.

(6) A member who fails to respond to the charge within the time specified, is considered to have denied the charge.

51A. Disciplinary tribunals – (1) The Commissioner may appoint:

- (a) if the member charged is a non-commissioned officer, a disciplinary tribunal comprising a commissioned officer or any other person who is not a commissioned officer; or
- (b) if the charged member is a commissioned officer, a disciplinary tribunal comprising—
 - (i) two members of the Service of equal or senior rank to the charged member; and
 - (ii) one person who is not a member of the Service.

(2) The functions of a Tribunal are:

- (a) to inquire into the charge; and
- (b) to report on the matter to the Commissioner by submitting a written account of—
 - (i) the Tribunal's findings; and
 - (ii) the punishment recommended by the Tribunal, if the charge is proved.

(3) The procedures of the Tribunal are to be prescribed by Regulations.

51B. Penalties – (1) A Tribunal may recommend to the Commissioner one or more of the following penalties against the charged member:

- (a) no punishment be imposed;
- (b) be cautioned;
- (c) be discharged without the charge having been proved;
- (d) the rank or pay, or both be reduced;
- (e) a fine not exceeding 20 penalty units be imposed;
- (f) be dismissed from the Service;
- (g) suspension without pay.

(2) The Commissioner is not bound by any recommendation of a Tribunal.

(3) A dismissal decision is not effective until:

- (a) the decision is confirmed after an appeal; or
- (b) the date of expiry of an appeal, and the member has not lodged an appeal under section 39.

(4) The member is taken to be suspended, by operation of this subsection, from the Service without pay until the dismissal becomes effective under subsection (3).

(5) If the Commissioner decides to terminate a charged member pursuant to subsection (1)(f) for a matter referred under section 51(4), the Commissioner must ensure the charged member is given the right to respond to the decision to terminate him or her from the Service before he or she is terminated.

52. Suspension of members for breach of duty – (1) When a charge has been made that any member, other than the Commissioner or an assistant commissioner, has committed a breach of duty or an offence punishable by imprisonment, the member may be suspended from duty until such time:

- (a) as the charge has been inquired into and disposed of under section 51; or
- (b) for a criminal offence for which the member has been charged, the charge has been either dismissed by the Court, or the member has been acquitted.

(2) No suspension pursuant to this section shall continue for longer than 1 month except where:

- (a) an information has been filed in any Court charging the member with the offence; or

- (b) any delay in holding or concluding an inquiry into the charge or an appeal occurs through any circumstances beyond the control of the Commissioner.
- (3) A member who is suspended from duty under this section:
- (a) may at any time be reinstated in the Service, in his or her old position or any other, by the authority who suspended him or her; and
 - (b) is entitled to receive one (1) month's salary, allowance or other remuneration effective from the date of suspension.
- (4) A member suspended under this section is entitled to be paid the salary the member lost as a result of the suspension from duty:
- (a) if the member has been charged with either a disciplinary or a criminal charge, the charge is acquitted and dismissed by the Commissioner or the Tribunal or the Court; or
 - (b) if the member has been charged with both the disciplinary and criminal charges, the charge is acquitted and dismissed by the Court and the Tribunal or the Commissioner.

53. Appeals involving breach of duty – (1) A member, other than the Commissioner or an assistant commissioner, who is charged in writing with a breach of duty which the member denies or is deemed to deny in writing but which is found to have been proved under section 51, and who is dissatisfied with the finding of the Tribunal or the punishment imposed by the Commissioner, may appeal to a Board of Appeal.

(2) A member, other than the Commissioner or an Assistant Commissioner, who is charged in writing with a breach of duty which the member admits in writing, and who is dissatisfied with the punishment imposed by the Commissioner, may appeal to a Board of Appeal.

(3) An appeal shall be commenced by a notice of appeal in writing stating the grounds of appeal addressed to the Commissioner and transmitted to the Commissioner by the appellant within 7 days after the date on which the result of the inquiry has been communicated to the appellant.

(4) The Board of Appeal, after hearing the appeal may:

- (a) allow or dismiss the appeal; or
- (b) vary the penalty imposed on the appellant; or
- (c) grant or refuse pay during the member's period or periods of suspension; or
- (d) make any other such order as the Board of Appeal thinks just.

(5) If in the opinion of the Board of Appeal any appeal is frivolous or vexatious, the Board may order the appellant to pay the costs of the appeal, and the sum so ordered to be paid may be deducted from any pay due or accruing due to the appellant.

(6) Costs of the appeal shall otherwise be in the discretion of the Board.

54. Procedures for Tribunals and Boards of Appeal – (1)

A Tribunal holding an inquiry pursuant to section 51 and the Board of Appeal shall give to the member charged or appealing an opportunity to appear before the Tribunal or the Board (with or without legal representation at the option of the member) and to adduce evidence before the Tribunal or the Board, and make representations in answer to the charge or in support of the appeal.

(2) The Tribunal or the Board of Appeal may, on the application of the member charged or appealing or otherwise, issue summonses for the attendance of witnesses, administer an oath to any witness and examine the witness in the matter of the charge or the appeal.

(3) A person summoned under subsection (2) who:

- (a) does not without reasonable cause attend at the time and place named in the summons; or
- (b) refuses to be sworn or take an affirmation; or
- (c) being sworn or affirmed, refuses to give evidence or to answer any question lawfully put to him or her,

—
commits an offence and is liable to a fine not exceeding 5 penalty units.

(4) A person who wilfully gives false evidence at any inquiry or appeal commits perjury within the meaning of the Crimes Act 2013.

(5) The amount of any fine imposed under this section may be deducted from any money due or thereafter becoming due from the Government to the person fined by way of salary or otherwise.

Division 3 – Disciplining Commissioner and Assistant Commissioners

55. Termination of the Commissioner and Assistant Commissioners – (1) The Head of State, acting on the advice of Cabinet, may terminate the appointment of the Commissioner or an Assistant Commissioner for breach of duty or on grounds of incapacity, if the Commissioner or Assistant Commissioner:

- (a) has behaved in a manner likely to affect the confidence of the community in the ability of the Commissioner or an assistant Commissioner to perform the relevant role; or
- (b) has committed acts that would amount to poor performance by a member as provided for in section 48; or
- (c) is unable to perform the duties of the office by reason of physical or mental incapacity.

(2) The Head of State, acting on the advice of Cabinet, shall terminate the appointment of the Commissioner or an assistant commissioner if he or she is convicted of an offence for which a term of imprisonment may be imposed.

(3) The power to terminate under subsections (1) and (2) applies irrespective of any terms of the contract relating to the appointment of the member being terminated.

(4) Before a decision is taken to terminate under subsection (1) an inquiry into the performance or capacity of the Commissioner or an assistant commissioner shall be undertaken:

- (a) under section 75; or
- (b) as is otherwise determined by the Prime Minister, after consulting with the Attorney General:

PROVIDED THAT, in the case of the Commissioner only, the Ombudsman is made an additional member of any Committee of Inquiry appointed by the Minister or the Prime Minister under this Act to consider any matter relating to the disciplining of the Commissioner.

56. Suspension of the Commissioner, Deputy Commissioner and Assistant Commissioners – (1) The Head of State, acting on the advice of Cabinet, may suspend the Commissioner an assistant commissioner from office if there are

grounds for suspecting that the Commissioner, Deputy Commissioner or an Assistant Commissioner may be terminated in accordance with section 55.

(2) A suspension shall only be ordered under subsection (1) if there are grounds for believing that the Commissioner, Deputy Commissioner or an Assistant Commissioner:

- (a) is not capable of performing the duties of office prior to the holding of an inquiry under section 55(4);
or
- (b) should not, in the interests of maintaining the confidence of the community in the Service, continue to perform the duties of office until the matter is investigated under section 55(4).

(3) A suspension under this section shall apply until the matter has been investigated under section 55(4), and the decision whether to terminate or not has been made.

(4) Where a decision is made not to terminate the Commissioner, Deputy Commissioner or an Assistant Commissioner, then he or she shall be reinstated to the office.

(5) The Commissioner or the Deputy Commissioner or an Assistant Commissioner suspended under this section is entitled to receive one (1) month's salary, allowance or other remuneration effective from the date of suspension.

(6) The Head of State, acting on the advice of Cabinet, shall suspend the Commissioner, Deputy Commissioner or an Assistant Commissioner if he or she has been charged with an offence punishable by imprisonment.

(7) If the Commissioner, Deputy Commissioner or an Assistant Commissioner is acquitted of any charge that resulted in suspension, the Commissioner, Deputy Commissioner or Assistant Commissioner must be reinstated without loss of any benefit or status and be paid the salary they have lost as a result of the suspension from duty .

(7A) To avoid any doubt, a person under subsection (7) is not entitled to his or her salary if, as a result of the investigation relating to the subject of his or her suspension, he or she is not reinstated.

(8) Despite subsections (1) and (2), if Cabinet is of the opinion the Commissioner, Deputy Commissioner or an Assistant Commissioner:

- (a) is not capable of performing the duty of office; or

(b) should not in the interests of maintaining the confidence of the community in the Service continue to perform the duties of office,

Cabinet may advise the Head of State that the Commissioner or Assistant Commissioner be suspended or terminated,

PROVIDED THAT before a decision of suspension or termination is officiated, Cabinet must give the Commissioner or Assistant Commissioner an opportunity to be heard or to respond.

(9) The Head of State, acting on the advice of Cabinet under subsection (8), may suspend or terminate the Commissioner, Deputy Commissioner or an Assistant Commissioner from office.

Division 4 – Termination from the Service

57. Termination of other members from the Service – (1)

Members of the Service are terminated or deemed to be terminated from the Service in the following circumstances:

- (a) where the member has issued at least 1 months' notice in writing to the Commissioner of his or her intention to leave the Service;
- (b) where the member has been determined by the Commissioner to be medically unfit to carry on his or her duties under this Act;
- (c) where the member has been duly dismissed for poor work performance or a breach of duty;
- (d) where the member has been convicted of an offence for which a term of imprisonment is imposed.

58. Powers cease on termination – Whenever a member of the Service is dismissed or resigns or otherwise ceases to hold or exercise office, all powers and authority vested in the member as a member of the Police Service shall immediately cease.

59. Return of official property – (1) A member of the Service who ceases to be a member for any reason must, immediately upon ceasing to be a member, deliver up to a member empowered by the Commissioner for the purposes of this section, all of the property of the Service which is in the possession of the former member, including all official property.

(2) All property belonging to the Service of any nature which has been given to the former member for the purposes of his or her official duties as a member of the Service and which is still in the member's custody at the time of his or her ceasing to be a member is to be included in the property which must be returned in accordance with this section.

(3) A member who fails to comply with this section commits an offence and is liable on conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 3 months, or both.

(4) A Judge may issue a warrant to any sworn member to search for and seize all property in the custody of a former member which has not been delivered as required by this section.

PART 6 DUTIES AND POWERS OF MEMBERS

Division 1 – Duties of Members

60. Execution of Process – (1) A member shall aid and assist any Judge, Fa'amasino Fesoasoani or Registrar of any Court in the exercise of all or any of the judicial duties of the Judge, Fa'amasino Fesoasoani or Registrar.

(2) A sworn member shall obey and execute all the lawful summonses, warrants, orders, processes and commands of any Judge, Fa'amasino Fesoasoani or Registrar of any Court in the exercise of all or any of the judicial duties of the Judge, Fa'amasino Fesoasoani or Registrar.

(3) A sworn member who neglects or refuses to comply with an obligation under this section commits an offence and is liable on conviction to a fine not exceeding 1 penalty unit, and, in addition, may be dismissed from the Service.

(4) A warrant, order or process of any Court or any judicial officer or any Registrar of any Court directed, delivered or given to a sworn member may be executed and enforced by any other sworn member of the Service.

(5) A member acting under the authority of subsection (4) has the same rights, powers, and authorities for and in the execution

of any such warrant, order or process as if the same had been originally directed to that member expressly by name.

(6) Where a warrant has been issued for the arrest of any person and has not been executed, any sworn member of the Service in uniform, or on production of the member's badge or other evidence that the member is a sworn member of the Service, may, without having the warrant in his or her possession, arrest the person in respect of whom the warrant is issued.

Division 2 – Powers of Members

61. Powers to be in addition to other lawful powers – The powers of members under this Part are in addition to and not in derogation from the powers of members under the Police Powers Act 2007 and any other law.

62. Members may call for assistance – (1) A sworn member of the Service, when in the lawful execution of a duty, may call upon any male person, not being under the age of 18 years, to aid or assist the member to arrest or secure any person or to convey any person in the member's charge to a police station or other place, when reasonable necessity exists for calling for that assistance.

(2) A person who fails to aid or assist a sworn member of the Service when called upon commits an offence and is liable on conviction to a fine not exceeding 5 penalty units.

63. Identifying persons in custody – (1) Whenever any person is in lawful custody at a police station on a charge of having committed an offence, the sworn member of the Service in charge of the police station where the arrested person is so in custody may take or cause to be taken all such particulars as may be deemed necessary for the identification of that person, including:

- (a) a photograph of the person; and
- (b) the person's finger prints.

(2) In the exercise of a power under this section, a sworn member may use or cause to be used such reasonable force as may be necessary to exercise those powers.

(3) If the person for whom particulars including any photograph or finger prints have been taken under this section is

acquitted, the particulars are to be destroyed by the Service as soon as is practicable.

64. Dealing with seized property – (1) Subject to subsection (2), when a sworn member of the Service has taken possession of any kind of property and it is doubtful:

- (a) whether any person claiming the property; or
- (b) which of any 2 or more persons claiming rights to it,

—
is entitled to the possession of the property, a District Court Judge, on the application of any sworn member of the Service, or of a claimant to the property, may make an order for the delivery of the property to any person appearing to the Judge to be the owner of the property, or entitled to the possession of it.

(2) Subsection (1) does not apply to property taken under warrant of a judicial officer or Registrar of any Court.

(3) Subject to subsection (4), when making a decision under this section, the Judge shall do so in the presence of all parties claiming the property.

(4) A Judge may make a decision under this section in the absence of any such parties who, having had reasonable notice of the hearing of the application, do not appear.

(5) In all cases under this section, a Judge may receive evidence on oath touching the matter of the application.

(6) If the owner or person entitled to the possession cannot be ascertained after undertaking a hearing in accordance with this section, the Judge may make such order with respect to possession of the property as the Judge thinks fit.

(7) If after the making of an order under this section, an action is commenced against a member of the Service for the recovery of the property or the value of the property, the order and the delivery of the property under the order may be produced in evidence and shall be a bar on the action.

(8) No order or delivery under subsection (7) affects the right of any person entitled by law to the possession of the property to recover the possession of it if this can be lawfully done.

65. Sale of unclaimed goods – (1) Subject to subsections (3) and (4), any goods and chattels which have lawfully come into the possession of any sworn member of the Service shall be held for not less than 3 months and if unclaimed in that time, shall by

direction of the Commissioner, be sold and disposed of by public auction.

(2) A notice of the sale proposed to be undertaken under subsection (1) is to be published in the Savali and in one other newspaper circulating in Samoa.

(3) Perishable goods may be sold at any time and in such manner as the Commissioner directs.

(4) Goods and chattels needed by the Service as evidence in any proceedings may be held by the Service in accordance with Instructions until those proceedings have been disposed of.

(5) The Commissioner may appoint any person not being the holder of an auctioneer's or business licence to conduct any sale by auction under this section, and may issue Instructions to determine any matter relating to the process of undertaking the auction of property under this section.

Division 3 – Protection of Members

66. Protection for members – (1) If an action is brought against any member of the Service for any act done in obedience to a warrant, order or process of any Court or judicial officer or Registrar of any Court, that member is not responsible for any irregularity in the issuing of the warrant, order or process or for want of jurisdiction in the Court, Judicial Officer or Registrar.

(2) On the production of any such warrant, order or process, and on proof to the satisfaction of the tribunal that the signature on it is in the handwriting of the person whose name appears subscribed thereto, and that the person is reputed to be and acts as a Judicial Officer or Registrar, as the case may be, of the Court purporting to exercise jurisdiction in the case, and that the acts complained of were done in obedience to the warrant, order or process, the tribunal trying the issue shall find a verdict for that member, and the member shall recover all the costs of defending the suit.

67. Limitation of Actions – (1) For the protection of members and persons acting in the execution of this Act, all actions against any person for anything done under the authority of this Act shall be commenced within 1 year after the cause of action has arisen.

(2) Notice in writing of the action and of the basis of the action shall be given to the relevant member or person and the Attorney General at least 1 month before the commencement of the action.

(3) The plaintiff in an action is not entitled to recover damages if:

- (a) a sufficient offer to make amends is made before the action is brought; or
- (b) a sufficient sum of money is paid into Court by or on behalf of the defendant after the action is brought, together with the costs incurred up to that time.

(4) If:

- (a) a verdict is given for the defendant; or
- (b) the plaintiff is non-suited or discontinues the action;
or

(c) judgment is given against the plaintiff, –
the defendant shall recover the full costs of defending the action.

(5) If a verdict is given for the plaintiff in any such action, the plaintiff shall not have costs against the defendant unless the Court before which the trial is held certifies its approval of the action and of the verdict obtained in the action.

PART 7 PROFESSIONAL STANDARDS UNIT

68. Professional Standards Unit – (1) A Professional Standards Unit is established as part of the Police Service.

(2) The Professional Standards Unit shall receive and shall investigate complaints about:

- (a) any neglect of duty or alleged misconduct by any Police Officer; or
- (b) any allegation of corrupt or improper practice thought to exist within the police service, even if no specific officer has been identified in relation to the alleged activity.

(3) All complaints to the Professional Standards Unit shall be provided in writing and may be submitted to the Commissioner of Police and copied to the head of the Unit.

(4) The members of the Professional Standards Unit shall be protected from disciplinary proceedings for any act taken bona

vide in the course of any investigation undertaken in accordance with the Act.

(5) The Professional Standards Unit shall be reviewed by the office of the Ombudsman on a regular basis and the details of any such review shall be contained in a written agreement between the Commissioner of Police and Ombudsman approved by the Attorney General or regulations made pursuant to subsection (8).

(6) Any irregularity or issues not resolved pursuant to the agreement in subsection (5) or Regulations shall be brought to the immediate attention of the Minister.

(7) The Attorney General, unless he or she decides otherwise, shall undertake all criminal prosecutions against a police officer.

(8) The Head of State, acting on the advice of the Cabinet, may make regulations in relation to the powers, proceedings and immunities of the Unit, and its officers and staff, including regulations which provide for the following:

- (a) the establishment, administration, staffing and operations of the Unit;
- (b) the powers of investigation of the unit, including powers to require that information, documents and records relevant to any matter under the investigation be provided;
- (c) the procedures for reporting the findings of the unit, and for implementing or actioning any recommendations made in the findings of the Unit;
- (d) protections for officers and staff of the Unit from interference, disciplinary proceedings and other immunities;
- (e) procedures for the regular review of the Professional Standards Unit in accordance with subsection (5), including powers to undertake such reviews and process for implementation of recommendations made under such reviews.”.

PART 8 OFFENCES

69. Possession of Official Property – (1) For the purposes of this section, and any other provision of this Act, regulations or instructions:

“official property” includes any uniform (or part of a uniform), badge, identity card or any other property of the Service which is issued for the use of members of the Service for any purpose associated with the functions of the Service.

(2) A person who, not being a member of the Service, unlawfully has in his or her possession any official property commits an offence and is liable to a fine not exceeding 5 penalty units.

(3) If a member reasonably suspects that a person unlawfully possesses any official property, the member may apply to a Judge, who may issue a warrant to search for and seize for the use of the Government, all official property in the possession of that person.

70. Impersonating a member of the Service – (1) A person who, not being a member of the Service, by words, conduct or demeanour:

- (a) pretends that he or she is a member of the Service; or
- (b) puts on or assumes the dress, name, designation or description of a member of the Service intending to persuade any other person that he or she is a member of the Service, –

commits an offence and is liable on conviction to a fine not exceeding 10 penalty units or to imprisonment for a term not exceeding 6 months, or both.

71. Bribing member of the Service – (1) A person who, not being a member of the Service, by words, conduct or demeanour bribes a member of the Service so as to induce the member to forgo, evade or in any other way act in a manner contrary to the member’s duties under this Act and any other Act, commits an offence and is liable on conviction to a fine not exceeding 4 penalty units or to imprisonment for a term not exceeding 6 months, or both.

(2) In this section, “bribe” means to give, offer or promise to offer a thing of value, whether pecuniary or otherwise in return for a benefit, whether directly or indirectly, to the person offering the bribe.

72. Gaining admission to Service by false representation

– (1) A person who gains admission into the Service through any false certificate or representation commits an offence and is liable upon conviction to a fine not exceeding 5 penalty units or to imprisonment for a term not exceeding 6 months, or both.

73. Member of Service not to engage in politics – (1)

Subject to subsection (2), no member of the Service may take part in an election or in any manner influence or seek to influence any elector at any such election other than by voting or for the purpose of carrying out the member's duties as members of the Service under this or any other Act.

(2) Despite subsection (1), a member may participate as a candidate for elections or assist in election campaigns:

PROVIDED THAT the member applies and obtains leave from the Commissioner for the duration of the election period he or she requires to be absent from the member's duties in the Service.

(3) In this section, "election" means an election of a member of Parliament, and includes general or any other bi-elections which may be held from time to time.

(4) A member who contravenes a provision of this section commits an offence and is liable to a fine not exceeding 3 penalty units.

PART 9 MISCELLANEOUS

74. General Instructions– (1) The Commissioner may issue Instructions relating to any of the Commissioner's functions and powers, and to ensure the effective and efficient management of the Service.

(2) Instructions issued by the Commissioner must not be inconsistent with the provisions of this Act or any regulations.

(3) The Commissioner shall implement procedures for the notification, publication and distribution of Instructions made under this section so that they are brought to the attention of the members of the Service, but all members are deemed to have knowledge of all Instructions once they are made.

(4) Instructions come into effect upon being made by the Commissioner and when issued remain in force until cancelled by the Commissioner.

(5) All members of the Service shall obey the Instructions, and the wilful breach of any Instruction by a member shall be a breach of duty and misconduct.

75. Minister may inquire into the Service – (1) The Minister may appoint a Committee of Inquiry, consisting of a Judge, who shall be the Chairperson, 1 commissioned officer of the Service and 1 non-commissioned officer of the Service, or any other person for the purpose of investigating and reporting to the Minister on any matter connected with the Service for which express provision is not made elsewhere in this Act or regulations.

(2) Without limiting subsection (1), any such Committee may be appointed to investigate and report on the claim of any member or members of the Service with respect to their promotion, pay or conditions of service.

(3) The Chairperson of the Committee may issue summonses for the attendance of witnesses, and any member may examine on oath any person in relation to any matter under investigation.

(4) The Committee may administer oaths to witnesses.

(5) A person so summoned who does not attend at the time and place named in the summons, or who refuses to be sworn, or being sworn, refuses to give evidence or answer any question lawfully put by the Committee or during a proceeding of the Committee, is liable to a fine not exceeding 5 penalty units.

76. Police Service Fund – (1) There is continued in the Treasury the account called the Police Service Fund.

(2) There shall be paid into the Police Service Fund all:

- (a) fines recovered by any means under this Act from any member of the Service; and
- (b) proceeds of every sale of goods and chattels in terms of section 65, after deducting the costs of any such sale.

(3) Any money in the Police Service Fund may be expended on such facilities for the general welfare and the exclusive use of the members of the Service as determined by a Police Service Fund Committee comprised of:

- (a) the Commissioner; and
 - (b) a commissioned officer and a non-commissioned officer elected annually by the members of the Service.
- (4) An expenditure exceeding \$1000 shall be made with the prior approval of the Minister.

77. Recovery of Fines – (1) Fines paid by offenders arising from action taken by members of the Service (whether by prosecution action or the giving of on the spot fines in accordance with any law) shall be dealt with:

- (a) as provided by any specific provision of any law applying to a particular fine or penalty; or
 - (b) under section 117 of the Criminal Procedure Act 1972, if no other law makes specific provision in relation to them.
- (2) This section does not apply to any fine or penalty imposed upon a member of the Service under the authority of this Act for any breach of duty, misconduct or poor work performance.

78. Long service and good conduct awards – (1) The Commissioner may award a Long Service and Good Conduct Medal (including a clasp to such medal) in such form and on such terms and conditions as may be prescribed by Instructions.

(2) Regulations made under this Act may prescribe other awards for bravery or service overseas, or any other aspect of policing, which may be awarded to members, and the qualifications, terms and conditions for the granting of any such awards.

79. Regulations – (1) The Head of State, acting on the advice of Cabinet, may make regulations as are necessary or expedient for the implementation of this Act and the effective and efficient management of the Service.

(2) Without limiting subsection (1), regulations made under this Act shall make provision for:

- (a) the qualifications for employment in the Service;
- (b) for the welfare of members of the Service;
- (c) the employment of the members of the Service, including provisions relating to pay, allowances,

promotion, leave, discipline and control of the Service; and

- (d) all matters necessary for rendering the members of the Police Service efficient for the discharge of their duties.

(3) Regulations made under this Act may prescribe offences and impose fines and other penalties for the breach of any such regulations.

80. Repeal and savings – (1) The Police Service Act 1977 is repealed.

(2) Notwithstanding the repeal of the Police Service Act 1977:

- (a) every person appointed as a temporary member of the Police shall continue to hold office at the will of the Commissioner; and
- (b) subject to such exceptions and modifications as may be prescribed, the provisions of this Act and of all regulations and instructions with respect to officers of the Police Service shall extend and apply to temporary members of the Police.

(3) All Regulations, Orders and Instructions made or saved under the authority of the Police Service Act 1977 and which are in force immediately prior to the commencement of this Act shall, so far as they are not inconsistent with the provisions of this Act, continue in force but may at any time be revoked or varied under the authority of this Act.

(4) Despite the provisions of this Act, all applications, prosecutions and other matters arising out of or under the provisions of the Police Service Act 1977 which are not determined or otherwise dealt with under such provisions at the date of the commencement of this Act shall be determined or otherwise dealt with under the provisions of the Police Service Act 1977.

REVISION NOTES 2010 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division from 2010 – 2020/3 March 2021 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) Correction of cross references in:
 - (i) section 2 – in the definition for “General Instructions” reference to section 73 was substituted with section 74;
 - (ii) section 51(10)(b) – reference to section 73 was substituted with section 39;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General, where appropriate:
 - (i) “Every” and “any” changed to “a/an” or “each”;
 - (ii) Present tense drafting style:
 - “shall be” changed to “is/are” or “is/are to be”;
 - “shall have” changed to “has”;
 - “hereby”, “for the time being” and “from time to time” removed;
 - (iii) Offence provisions: “shall be guilty” changed to “commits”;
 - (iv) Removal/replacement of obsolete, archaic and Latin terms with plain language:
 - “notwithstanding” changed to “despite”;
 - “in accordance with the provisions of” changed to “under”;
 - “deemed” changed to “taken”;
 - “where” changed to “if”;
 - “in the case of” changed to “for”;
 - (v) Numbers in words changed to figures;
 - (vi) Removal of superfluous terms: “the provisions of”;
 - (vii) Adopting practice of placing “and” or “or” at the end of each paragraph where appropriate;
 - (viii) “the foregoing provisions of this section”, “the preceding subsection” and similar wording changed to the actual section/subsections;
 - (ix) Section 51A(3) revised so that the word “proceedings” is changed to “procedures”;
 - (x) References to “Deputy Commissioner” deleted;
- (e) Part in Roman numerals changed to decimal numbers;
- (f) Reference to “Prisons Act 1967” substituted with “Prisons and Corrections Act 2013”.

The following amendments have been made to this Act since its enactment:

By the Police Service Amendment Act 2013, No. 23 (commenced on 15.10.13):

Section 13 substituted with new section 13;

Division 4 of Part 3 *repealed*;

Section 51 section 51 substituted with new section 51 and new sections 51A and 51B inserted.

By the *Prisons and Corrections Act 2013, No.11, commenced on 4.4.14 with the rest of the Act commencing on 1.1.15:*

Section 26 repealed;
Section 35(2) deleted “and under the relevant provisions of the Prisons Act 1967” after “public service”;
(NB: *Any reference in this Act to the Prisons Service and the Commissions is taken to be a reference to the Samoa Prisons Corrections Service (Prisons) and the Commissioner of Prisons respectively as established and appointed under the Prisons and Corrections Act 2013).*

By the *Police Services Amendment Act 2013, No. 23 commenced on 15 October 2013:*

Section 4 to substitute previous section 51 and insert new section 51A.

By the *Police Service Amendment Act 2015, No.40, commenced on 2 September 2015:*

Section 46(2)(b) deleted and substituted “60” with “65”.

By the *National Prosecution Office Act 2015 (No.34) which commences on 1 January 2016:*

Section 68(7) omit “Attorney General” and substitute “Director of Public Prosecutions”.

By the *Police Service Amendment Act 2017, No. 4 (commenced on 26 January 2017):*

Section 55(4)(a) substituted “74” with “75”

Section 56 inserted new subsections (8) and (9)

By the *Police Services Amendment (No.2) Act 2017, No. 25 commenced on 21 December 2017:*

Section 6(2) to insert new paragraph (b) (which was formerly repealed by *Act 2013, No. 23*);

Section 13(a) and (b) substituted “member” with “commissioned officer”;

New Division 4 inserted under Part 3;

Section 23(a) and (b) substituted “member” with “commissioned officer”;

- Section 51** inserted “or a Deputy Commissioner” after “Assistant Commissioner” in subsections (1) and (3);
subsection (4) substituted;
new subsection (6) inserted;
- Section 51B** new paragraph (g) inserted in subsection (1);
new subsection (5) inserted;
- Section 52** in subsection (3), paragraph (b) substituted;
new subsection (4) inserted;

By the *Constitution Amendment Act (No. 1) 2017, No 8*:

- Section 68** omit “Director of Public Prosecutions” and substitute “Attorney General” in subsection (7).

By the *Prisons and Corrections Amendment Act 2020, No 12, commenced on the 7 April 2020*:

- Section 35(2)** insert after “public service” the words “and under the relevant provisions of the Prisons and Corrections Act 2013”.
- Section 42** for subsection (1), after “Subject to” insert “subsection (3) and the provisions of the Prisons and Corrections Act 2013” and omit “any law which makes provision in relation to the management of the prisons in Samoa”; and
after subsection (2) insert a new subsection (3).

By the *Miscellaneous (Salary Conditions Upon Suspension) Amendment Act 2021 No. 6, commenced on 3 March 2021*:

- Section 52** substitute subsections (3)(b) and (4);
- Section 56** insert references to “Deputy Commissioner”, subsection (5) and (7) substituted;
It is noted that although section 56 is amended to substitute subsection (7) while also inserting a new subsection, that subsection has been renumbered as subsection (7A) as the amendment did not specifically substitute subsection (8) nor repeal it. Subsection (8) is therefore retained in the Act whilst the new subsection is renumbered as subsection (7A).

*This Act is administered by
the Ministry of Police, Prisons and Correction Services.*