

**SAMOA**  
**OMBUDSMAN (SPECIAL INVESTIGATION UNIT)**  
**REGULATIONS 2016**

Arrangement of Provisions

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**PURSUANT** to section 67 of the Ombudsman (*Komesina o Sulufaiga*) Act 2013 (“the Act”), **I, TUI ATUA TUPUA TAMASESE EFI**, Head of State, acting on the advice of Cabinet, **MAKE** these Regulations:

**DATED** this 11<sup>th</sup> day of May 2016.

signed: (Tui Atua Tupua Tamasese Efi)

**HEAD OF STATE**

## **REGULATIONS**

### **PART 1 PRELIMINARY**

**1. Citation and commencement** - These Regulations may be cited as the Ombudsman (Special Investigation Unit) Regulations 2016, and commence on the date they are signed by the Head of State.

**2. Interpretation**-(1) In these Regulations, unless the context otherwise requires:

“complaint” means a complaint made under regulation 5 or referred under regulation 7;

“disciplined officer”:

(a) means a police officer appointed under the Police Service Act 2009 or a prison officer appointed under the Prisons and Corrections Act 2013; and

(b) includes an officer of a disciplined force prescribed under the Act.

“discipline force” means the Samoa Police Service, the Prisons Service or a discipline force prescribed under the Act;

“professional standard unit” means the unit within a disciplinary force responsible for dealing with public complaints on the exercise of powers of the disciplinary force by its members;

“Tribunal” means a Tribunal established under regulation 8;

“Unit” means the Special Investigations Unit established under section 41 of the Act.

(2) Anything required to be done in writing under these Regulations may be done by email or other forms of electronic written communication.

### **PART 2 FUNCTIONS AND POWERS OF THE UNIT**

**3. Functions of the Unit**-(1) The Unit has the following functions:

(a) to receive, investigate and monitor any complaint;

(b) to monitor the progress of complaints made directly to a discipline force;

- (c) to advise and make recommendations to a discipline force on how to efficiently dispose of complaints made directly to the discipline force;
  - (d) to consult and engage with a discipline force relating to complaints to that force, as the Ombudsman considers appropriate.
- (2) The Head of a disciplinary force must, within five (5) working days after 31 March, 30 June, 30 September and 31 December each year, provide to the Ombudsman a list of all complaints (“List”) received by the disciplinary force during each of those periods.
- (3) The List must set out the following:
- (a) the name, address and contact of the complainant;
  - (b) the names of the officer who is subject to the complaint;
  - (c) the nature and summary of the complaints; and
  - (d) the status of complaints.
- (4) However, subregulation (2) does not prevent the Ombudsman from requesting the Head of a disciplinary force:
- (a) to provide the status of any particular complaint;
  - (b) to submit a list before the List is due under subregulation (1); or
  - (c) any other information as the Ombudsman sees fit of any particular complaint.
- (5) The Unit must inform the professional standard unit of any complaint received under regulation 5 setting out the matters listed in subregulation (3).

**4. Powers of investigation-**(1) The Unit may:

- (a) investigate a complaint;
  - (b) obtain from the disciplined force or any other person any information relevant to the complaint;
  - (c) undertake interviews;
  - (d) for the purpose of obtaining any information relevant to the complaint, enter and search any public premises or with the consent of the occupier, enter and search any private premises for the purpose of investigation.
- (2) If consent is not given under subregulation (1)(d) or in the opinion of the Ombudsman consent will not be given, the Ombudsman may under section 48(3) of the Act apply to a District Court Judge for a warrant to enter and search the premises for the purpose of obtaining any information.

### **PART 3 COMPLAINTS**

**5. Complaints made directly to the Ombudsman-**(1) A person may, in writing or orally, make a complaint against a disciplined officer to the Ombudsman.

(2) Any oral complaint:

(a) may be made in person or by telephone or in any other verbal form of communication; and

(b) must be recorded in writing, as soon as practicable, by the Unit and signed by the complainant.

(3) A written complaint may be made on behalf of the person by:

(a) the parent or other blood relative of the person if the person is under the age of 18 years or is unable to make the complaint because of any physical or mental incapacity; or

(b) any other person approved by the Ombudsman.

(4) A complaint may be made under this regulation even if the complainant has lodged a complaint with the professional standard unit.

(5) If a complaint is made under subregulation (4), and the Ombudsman is satisfied that section 41(3)(b) of the Act applies, thereafter section 41(4) of the Act applies.

**6. Assessing of complaints-**(1) The Ombudsman:

(a) must assess any complaint received under regulation 5; and

(b) may, after assessing a complaint under subregulation (1) -

(i) dismiss the complaint if the complaint is frivolous or vexatious;

(ii) dismiss the complaint for any other good reason, such as inordinate delay in making the complaint;

(iii) refer the complaint to the relevant disciplined force to be dealt with by that force under its disciplinary rules;

(iv) deal with complaint if it is in the public interest to so or the complainant has requested that it be dealt with by the Ombudsman and the Ombudsman is satisfied that section 41(3)(b) of the Act applies;

(v) if the Ombudsman is of the opinion that an offence has been committed, refer the complaint to the Police for investigation.

(2) The Unit must, in writing, inform the complainant on any of its decision under subregulation (1)(b) within five (5) working days of making the decision.

**7. Ombudsman may require disciplined forces to transfer complaints-**(1) If the Ombudsman requires a complaint under section 41(3)(b) of the Act to be referred to the Unit, the Ombudsman must, in writing, (“written request”) require the head of the disciplined force to transfer to the Unit any documents and any other information relating to the complaint.

(2) When the written request is received, the head of the disciplined force must ensure that any document or other information relating to the complaint is sent to the Unit within:

(a) a time of not more than five (5) working days, for urgent request; and

(b) a time of not more than 15 working days, in any other case, as specified by the Ombudsman in the written request (but the Ombudsman may, in writing, extend the time in paragraph (a) or (b)).

(3) The Ombudsman may exercise the powers under regulation 6(1)(b) to carry out a preliminary assessment of the complaint, subject to regulation 6(2).

#### **PART 4 TRIBUNAL**

**8. Establishment-**(1) The Tribunal is established consisting of:

- (a) the Ombudsman, as chairperson; and
- (b) two (2) other members appointed by the Head of State may, acting on the advice of Cabinet.

(2) The Tribunal may be constituted by:

- (a) the Ombudsman, sitting alone, for any preliminary matters; or
- (b) the Ombudsman and at least one (1) other member to hear and determine any complaint.

(3) If:

- (a) a complaint is made directly to the Ombudsman and it is to be dealt with under regulation 6(b)(iv); or
- (b) there is an allegation of bias made against the Ombudsman if he or she chairs the Tribunal,

the Ombudsman must appoint a lawyer who is qualified for appointment as a Judge of the Supreme Court to be the chairperson of the Tribunal.

- (4) A member appointed under subregulation (1)(b) or (3)(b):
- (a) is appointed for a term of three (3) years;
  - (b) is eligible to be re-appointed;
  - (c) is entitled to remunerations approved by Cabinet;
  - (d) upon expiry of term, continues until re-appointed or a successors is appointed;
  - (e) may, in writing addressed to the chairperson, resign from office;
  - (f) may be removed from office if the member is unable to carry out the duties or powers of the office for any good reason, including by reason of physical or mental incapacity.

**9. Powers** - The Tribunal may:

- (a) hear and determine any complaint investigated by the Unit;
- (b) impose the penalties provided under the disciplinary rules of the disciplinary force; and
- (c) make any other order as it thinks fit.

**10. Procedures**-(1) The Tribunal may:

- (a) inspect and examine any papers, documents, records, or things;
- (b) summon any person to appear and give evidence before it;
- (c) administer oaths for the purpose of its hearing;
- (d) require any person to produce for examination any papers, documents, records, or things in that person's possession or under that person's control, and to allow copies of or extracts from any such papers, documents, or records to be made;
- (e) require any person to provide, in a form approved by the Tribunal, any information that may be required by it, and any copies of or extracts from any such papers, documents, or records;
- (f) require that any written information or any copies or extracts provided under this regulation be verified by statutory declaration;
- (g) on its own initiative or on the application of any party to the proceedings, order that any document or information, or a copy of the document or information produced to it be supplied to any person appearing before the Tribunal, and in the order impose any terms and conditions that it thinks fit for the supply or use of the document or information or its copy; and

(h) regulate its procedure in any manner it thinks fit.

(2) The Tribunal must observe the rules of natural justice when hearing and determining a complaint.

**11. Hearing-**(1) A hearing of the Tribunal must be held at the times and places appointed by the chairperson.

(2) A hearing of the Tribunal may be adjourned by the Tribunal or the chairperson.

(3) The decision of the majority, for the purpose of the hearing is the decision of the Tribunal.

(4) The Tribunal may adopt any other hearing procedures at it thinks fit.

## **PART 5 MISCELLANEOUS**

**12. Protection from personal liability** - Section 65 of the Act applies to a person required to carry out any function, duty or powers under these Regulations.

**13. Protection and release of information-**(1) Any report, findings and recommendations of the Tribunal:

(a) are not admissible in any proceedings in Court, tribunal or other body; and

(b) must not be disclosed to any other person (other than to the relevant disciplinary force) except with the approval of the Ombudsman.

(2) Any document or other information given or provided to the Ombudsman or the Tribunal under these Regulations:

(a) may, if requested, be returned to the person who gave or provided the document or information; and

(b) subject to paragraph (a), must not be disclosed to any other person except with the approval of the Ombudsman.

(3) A person who contravenes subregulation (1)(b) or (2)(b) commits an offence and is liable on conviction to a fine not exceeding 10 penalty units.

**14. Offences-**(1) A person commits an offence if the person:

(a) does an act during the hearing of a matter before the Tribunal that amounts to a contempt of court;

(b) interferes with any investigation conducted under these Regulations;

- (c) provides or gives any document, information or evidence that the person knew to be false or misleading;
  - (d) is summoned by and fails, without any reasonable excuse, to appear before the Tribunal; or
  - (e) obstructs any person carrying any functions, duties or powers under these Regulations.
- (2) A person convicted of an offence under subregulation (1) is liable to a fine not exceeding 10 penalty units.

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**Issued under the authority of the Regulations Ordinance 1953.**

**Date of Commencement: 11 May 2016**

**These Regulations are administered by the Office of the Ombudsman.**

**Copies of these Regulations can be purchased from  
the Office of the Clerk of the Legislative Assembly.**

**Printed by the Clerk of the Legislative Assembly,  
by authority of the Legislative Assembly.**