

SAMOA

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2013, No. 15

AN ACT to establish the Attorney General's Office, to provide for its functions, administration and finance and to provide for other functions, duties and powers of the Attorney General, and for related purposes.

[25th June 2013]

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 Attorney General's Office Act 2013.

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

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

“Act” includes Ordinance or any other law;

“Attorney General” means the person appointed as such under Article 41 of the Constitution;

“constitutional function” means a function, duty or power of the Attorney General set out under Article 41 of the Constitution;

“common law”, in relation to the function of the Attorney General, includes equity in force in Samoa and any legal principle under a judgment of a Court;

“division” means a legal division, corporate division, or quasi-legal division established under section 5;

“employment guideline” means an employment guideline prepared under section 13;

“legal officer” means a person appointed as such under section 11, and includes a person appointed under section 11 for the purposes of section 3(1)(e) to carry out a legal service;

“legal service” means a legal service relating to a constitutional function, statutory function or common law function;

“Minister” means the Prime Minister or another Minister who is directed under Article 35 of the Constitution to be responsible for this Act and the Office;

“Office” means the Attorney General’s Office established by section 3(1);

“staff” means an officer or employee of the Office appointed under section 11, and includes a person appointed under section 11 for the purpose of section 3(1)(e) or seconded under section 12;

“statutory function” means a function, duty or power of the Attorney General under this Act or any other Act, and includes a function of the Office or a division.

PART 2

ESTABLISHMENT AND FUNCTIONS OF THE ATTORNEY GENERAL’S OFFICE

3. Establishment, composition and Minister

responsible-(1) This section establishes the Attorney General’s Office (mentioned in Article 83(g) of the Constitution) consisting of all of the following:

- (a) the Attorney General;
- (b) heads of each legal division;
- (c) legal officers;
- (d) administration staff;
- (e) any other person appointed or seconded for the purposes of this Act.

(2) The persons mentioned in subsection (1)(b) to (e) are to be appointed and employed under this Act.

(3) The Prime Minister or a Minister appointed in writing by the Prime Minister is responsible for the administration of this Act and the Office.

4. Functions - The Office has the following functions:

- (a) to manage and to assist in carrying out the constitutional, statutory and common law functions of the Attorney General;
- (b) to manage legal services to the Head of State, Prime Minister, Cabinet, Ministers, and Government and, subject to section 6(6) to other government agencies;
- (c) to provide administration and facilitate the financial provision of the Office;
- (d) to provide reports or information to the Minister on the operations of the Office;
- (e) upon request, to provide legal assistance to the other arms of the State.

5. Divisions-(1) The Office consists of legal divisions, corporate divisions or quasi-legal divisions established under this section.

(2) The legal divisions consist of the following:

- (a) a Civil Division to carry out the following functions -
 - (i) to institute, and conduct civil proceedings and other matters for the Government and subject to section 6(6) other government agencies;
 - (ii) to defend civil proceedings against Government and, subject to section 6(6), other government agencies;
 - (iii) to provide legal opinions to the Head of State, Prime Minister, Cabinet, Ministers and Government or, subject to section 6(6), government agencies;
 - (iv) to carry out other functions assigned to it by the Attorney General or other prescribed functions;
- (b) a Prosecution Division to carry out the following functions -
 - (i) to institute and conduct criminal proceedings;

- (ii) to provide legal opinions on criminal matters;
 - (iii) to carry out other functions assigned to it by the Attorney General or other prescribed functions;
- (c) a Legislative Drafting Division to carry out the following functions -
 - (i) to draft government legislation;
 - (ii) to provide other drafting services;
 - (iii) to provide legal opinions on legislation and legislative proposals;
 - (iv) to carry out other functions assigned by the Attorney General or other prescribed functions.
- (3) The Corporate and Finance Division is established to carry out the following functions:
 - (a) to provide administration of the Office;
 - (b) to manage the finance of the Office;
 - (c) to carry out other administrative functions assigned by Attorney General or prescribed functions.
- (4) The quasi-legal divisions and other legal or corporate divisions, including their functions, as may be established by regulations.
- (5) The Attorney General may:
 - (a) assign a legal officer to head and supervise each of the Civil Division, the Prosecution Division, and the Legislative Drafting Division (including any other legal division established under subsection (4)); or
 - (b) change the name of a division or create sections or units of a division, subject to section 19(a).

PART 3

ATTORNEY GENERAL AND LEGAL OFFICERS

6. Functions of Attorney General-(1) The Attorney General heads the Office as its Chief Executive Officer.

(2) In addition to the constitutional functions, the Attorney General has the following functions:

- (a) to formulate, implement, monitor and review policy directives for the Office;
- (b) to attend and advise Cabinet;
- (c) to manage, supervise and control legal officers, staff and the operations of the Office, including training of legal officers and staff;
- (d) to supervise legal officers in Ministries and government agencies who carry out legal services or other legal duties;
- (e) if necessary, to instruct a lawyer in private practice to provide a legal service;
- (f) to carry out statutory and common law functions.

(3) For the purpose of this Act, the Attorney General is the employer of persons appointed or seconded under this Act.

(4) In carrying out the role of Chief Executive Officer and the constitutional, statutory and common law functions, the Attorney General is to be assisted by the heads of each division.

(5) A person must not, on behalf of the Government, instruct a lawyer in private practice or any other person to carry out a legal service except through the Attorney General.

(6) A government agency may, in writing, request the Attorney General to provide legal service to it.

(7) A legal service requested under subsection (6) may not be provided if the Attorney General is satisfied that:

- (a) there is or will be a conflict of interest in giving the legal service to the agency; or
- (b) the Office does not have the resources or capacity to provide the legal service.

7. Independence-(1) Subject to subsection (2), when carrying out a constitutional, statutory or common law function, the Attorney General is not subject to the direction of a person except the direction of the Head of State, Prime Minister, Cabinet, a Minister, a court or a direction required under an Act.

(2) The Attorney General and prosecutors in the Prosecution Division (including other persons authorised by the Attorney General) are not subject to the direction of any other person

(except any direction of a court) when carrying out the functions under Article 41 of the Constitution (including statutory or common law function):

- (a) to institute, conduct or discontinue any proceedings for an offence alleged to have been committed;
or
- (b) in relation to any matter relating to an offence or a criminal matter.

8. Directions and delegation-(1) The Attorney General may, with or without condition:

- (a) give written directions for the purposes of this Act to the Office, a person appointed under section 11 or any other person, including legal officers in Ministries and government agencies; and
 - (b) delegate, in writing, a statutory function to a suitably qualified person under section 3(1)(b) to (e).
- (2) The Attorney General may:
- (a) concurrently perform a function delegated under subsection (1)(b); and
 - (b) vary, suspend or revoke a direction or delegation or vary, suspend or revoke a condition or impose a new condition.

9. Legal officers-(1) The Attorney General must ensure that there is sufficient number of legal officers to carry out constitutional, statutory and common law functions.

(2) The Act regulating the practice of lawyers in Samoa and government rules on the conduct of the legal business of the Government issued by Cabinet apply to the Attorney General and legal officers, including those in Ministries or government agencies.

(3) Legal officers, including those in Ministries or government agencies, must comply with any directions issued under section 8(1)(a).

(4) The Attorney General, legal officers, including those in Ministries or government agencies, must not engage in private practice of any kind except for voluntary legal work

without payment that is not related to a legal service or legal service in the Ministries or government agencies:

- (a) for the Attorney General, as approved by the Prime Minister;
- (b) for legal officers, including those in Ministries or government agencies, as approved by the Attorney General.

PART 4

ADMINISTRATION AND FINANCE

10. Values, principles and code of conduct - Part IV of the Public Service Act 2004 applies, with necessary adaptations, to this Act.

11. Appointments-(1) The Attorney General may appoint persons under section 3(1)(b) to (e) pursuant to appointment guidelines.

(2) A person must not be appointed as a legal officer or for the purpose of section 3(1)(e) to carry out a legal service unless the person has been or is qualified to be admitted as a barrister and solicitor in Samoa or in a country recognised in Samoa.

(3) The Attorney General must:

- (a) employ persons under this Act under contracts of employment; and
- (b) take into account the budget of the Office when appointing or seconding persons for the purpose of this Act.

(4) In this Part, “appoint” includes confirm, promote, demote, transfer, second, re-grade, discipline, suspend, terminate or re-appoint.

12. Secondment, transfer and consultation with the Public Service Commission-(1) The Attorney General may:

- (a) request the Public Service Commission to second an officer or employee of the Public Service to the Office; or

- (b) in consultation with the Public Service Commission, transfer a legal officer or staff of the Office to the Public Service.
- (2) When the Public Service Commission intends to establish or to make an appointment to any legal position in the Public Service, the Commission must, in writing, consult the Attorney General.
- (3) When processing the appointment of a person to a legal position in a Ministry or government agency, the Public Service Commission must invite the Attorney General or his or her representative authorised in writing by the Attorney General:
 - (a) to be a member of the selection panel to interview the person; or
 - (b) to be present when the Commission is considering the appointment of the person.
- (4) Subsection (2) does not apply to a legal position established under an Act unless the Act provides for consultation or other processes.

13. Guidelines for employment-(1) The Attorney General may issue employment guidelines:

- (a) setting out procedures for appointments or for appeals on disciplinary matters, demotion, transfer, suspension or termination; and
 - (b) on other matters relating to employment under this Act.
- (2) If there are no guidelines issued under subsection (1), the Attorney General must adopt the procedures of the Public Service.

14. Salaries, allowances and other terms of employment-(1) As an exception to section 13, the Attorney General may:

- (a) with the approval of Cabinet, determine the salaries, allowances and other terms of employment of persons appointed or seconded under this Act; or

- (b) if no determination is made under paragraph (a), adopt the same salaries, allowances and terms applicable in the Public Service for persons appointed or seconded under this Act.
- (2) If officers in the Public Service are given general increases in salaries or allowances, the salaries or allowances of persons appointed or seconded under this Act are to be increased accordingly.

15. Corporate plan and annual reports-(1) The Attorney General must ensure that:

- (a) a corporate plan is prepared for the Office pursuant to the same requirements applying to government agencies; and
- (b) an annual report is prepared setting out the operations of the Office in a year.
- (2) The Attorney General must send the annual report to the Minister who must, as soon as practicable, present the report to the Legislative Assembly pursuant to its Standing Orders.

16. Funds and audit-(1) The Government must ensure that sufficient funds of the Office are appropriated by Parliament.

(2) If it is necessary to do so, regulations may be made under section 19 to provide a fund for the Office into which the funds under subsection (1) and other prescribed funds may be paid.

(3) The Public Finance Management Act 2001 and the Audit Office Ordinance 1961 apply to the funds under subsection (1) or (2) of this section or public monies received by the Office.

PART 5 **MISCELLANEOUS**

17. Exemption from personal liability - The Minister, the Attorney General or a person appointed or seconded under this Act is not personally liable for carrying out or failing to carry out in good faith a constitutional, statutory or common law function.

18. Manuals and codes of practice - The Attorney General may issue:

- (a) practice manuals on any aspect of legal service; or
- (b) standards and codes of practice for the purpose of this Act.

19. Regulations - The Head of State may, on the advice of Cabinet, make regulations to give effect to or for the purposes of this Act, and in particular may make the following regulations:

- (a) to amend the functions or name of a division;
- (b) to prescribe matters relating to corporate plan, annual report and any other report that may be required under this Act;
- (c) to create a trust fund for the Office under section 16, and may include other funds to be paid into the trust fund and how funds are to be used;
- (d) to deal with matters required to be prescribed under this Act.

20. Public Service Act amendment - For section 3 of the Public Service Act 2004, in the definition of “Constitutional authority”, repeal paragraph (a).

21. Saving and transitional-(1) At the commencement of this Act, existing legal officers and other staff of the Office appointed or contracted to the Public Service continue in their appointments, contracts and terms of employment and are taken to be appointed or contracted under and subject to this Act.

(2) The Attorney General may, within 12 months from the commencement of this Act, issue written directions to deal with other transitional matters that may require legislative action.

(3) The Law and Justice Sector Secretariat of the Office that exists at the commencement of this Act is taken to be a quasi-legal division established under section 5(4) until it ceases or is revoked or transferred to another Ministry by the Attorney General by notice in the Savali.

**The Attorney General's Office Act 2013
is administered by the Office of the Attorney General.**

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