

# OMBUDSMAN (KOMESINA O SULUFAIGA) BILL 2013

## SAMOA

### Explanatory Memorandum

#### Introduction

The purpose of the Bill is to re-establish the office of the Ombudsman to include the functions on human rights.

#### Clauses:

#### PART 1 PRELIMINARY

- Clause 1: - states that, when enacted, the Bill will be called the Ombudsman (Komesina o Sulufaiga) Act 2013. The Bill will commence on the date of assent by the Head of State.
- Clause 2: - lists the defined terms.
- Clause 3: - provides the objectives of the Bill relating to administrative decisions and the promotion and protection of human rights.
- Clause 4: - deals with application to the Government.

#### PART 2 OMBUDSMAN

- Clause 5: - continues the Ombudsman as a legal entity.
- Clause 6: - provides for the independence of the Ombudsman.

- Clause 7:** - empowers the Head of State to appoint the Ombudsman acting on the recommendation of the Legislative Assembly.
- Clause 8:** - provides for the processes for selection and the criteria for appointment, as are set out in Schedule 3.
- Clause 9:** - provides for the oath of office of the Ombudsman.
- Clause 10:** - provides for the terms of office of six (6) years and other conditions for appointment.
- Clause 11:** - provides for the entitlement to salaries, allowances and other benefits determined by the Remuneration Tribunal.
- Clause 12:** - provides for restrictions from holding other offices by the Ombudsman.
- Clause 13:** - provides for acting Ombudsman if the Ombudsman is unable to carry out the functions, duties and powers.
- Clause 14:** - provides for the right to resign from office.
- Clause 15:** - empowers the Head of State to remove and suspend the Ombudsman for inability to carry out the functions of the office from infirmity of body or mind or for misconduct in office. It also empowers the Legislative Assembly to appoint a tribunal to carry out an investigation and to report to the Legislative Assembly.
- Clause 16:** - provides for automatic vacation of office on certain grounds, like conviction for a serious offence.
- Clause 17:** - provides for cases where the office becomes vacant.

**PART 3**  
**ADMINISTRATIVE DECISIONS**

*Division 1 - Powers and proceedings*

- Clause 18:** - provides for the power of the Ombudsman to investigate an administrative decision made by a Ministry or organization when there is a complaint or by the own initiative of the Ombudsman.
- Clause 19:** - provides for the powers of the Legislative Assembly and the Prime Minister to refer matter to the Ombudsman for investigation and report.
- Clause 20:** - provides for the power of the Ombudsman to investigate an administrative decision even if any legislation says the decision is final or that no appeal or review is allowed on the decision.
- Clause 21:** - sets out the matters that the Ombudsman cannot investigate.
- Clause 22:** - provides how complaints are to be made, including how to deal with letters from those in prisons and mental hospitals.
- Clause 23:** - empowers the Ombudsman to refuse investigation if there are adequate ways available to deal with the complaint or the investigation is unnecessary.
- Clause 24:** - provides for the duty of the Ombudsman to first inform the chief executive officer of a Ministry or organisation before starting the investigation and for other procedures on investigation.
- Clause 25:** - clarifies that a person is not entitled to be heard by the Ombudsman. It also provides the right to hear the Ministry and organisation on matters that may be adverse to the Ministry, including consultation with the Minister responsible for matter being investigated.
- Clause 26:** - provides the duty of the Ombudsman to refer matters to the appropriate authorities.

- Clause 27:** - empowers the Ombudsman to regulate other procedures.

*Division 2 - Results of investigations  
and immunities*

- Clause 28:** - deals with procedures after investigation.  
**Clause 29:** - prohibits the Ombudsman from making an adverse comment in a report unless the person affected is given the opportunity to be heard on them.
- Clause 30:** - provides for the duty to inform the complainant and the right to make comments if no action is taken on the recommendation within a reasonable time.
- Clause 31:** - protects the proceedings of the Ombudsman from being bad if they do not follow proper manner and procedures.
- Clause 32:** - protects the Ombudsman and staff from being called in court to give evidence on matters about the Bill.

**PART 4**  
**HUMAN RIGHTS**

*Division 1 - Functions*

- Clause 33:** - deals with the human rights functions of the Ombudsman, including promoting public awareness on human rights and enquiring on human rights violations.

*Division 2 – Inquiries*

- Clause 34:** - empowers the Ombudsman to initiate general inquiries on human rights violations.

- Clause 35:** - prohibits the Ombudsman from inquiring into a matter that is before the courts for determination or has been determined by the courts.
- Clause 36:** - provides for the contents of any report on human rights inquiry. The report is to be sent to the Speaker and referred to the relevant parliamentary select committee.
- Clause 37:** - provides for the duty of the select committee to scrutinise the report referred to it, including calling for responses to the report from the Government and other persons.

*Division 3 - Other matters*

- Clause 38:** - deals with handling of complaints about human rights violation. Complaints from individuals cannot be investigated on an individual basis but may form the basis of general inquiries under Division 2.
- Clause 39:** - empowers the Ombudsman to establish advisory groups or appoint experts for the purpose of human rights functions.
- Clause 40:** - provides the duty of the Ombudsman to prepare, by 30 June each year, annual reports on the status of human rights in Samoa. The report is to be tabled in the Legislative Assembly.

**PART 5**

**SPECIAL INVESTIGATION UNIT**

- Clause 41:** - empowers the Ombudsman to establish within the Office a special investigation unit to investigate complaints against police and prison officers.

**PART 6**  
**GENERAL POWERS**

- Clause 42:** - provides for the application of Part 6.
- Clause 43:** - empowers the Ombudsman to require persons to provide documents and information, including the power to summon and examine on oath persons.
- Clause 44:** - protects secret documents from being given to the Ombudsman.
- Clause 45:** - provides persons required to give information, answer questions or provide documents the same privileges and immunities applying to witnesses in courts.
- Clause 46:** - provides allowances for persons giving evidence to the Ombudsman.
- Clause 47:** - protects matters in another legislation that would be injurious to the public interest from disclosure in an investigation, proceedings or inquiry.
- Clause 48:** - empowers the Ombudsman to enter and inspect premises, with consent or warrant.
- Clause 49:** - deals with matters of national interest.
- Clause 50:** - provides for the duty of the Ombudsman and staff to maintain secrecy.
- Clause 51:** - empowers the Ombudsman to direct non-disclosure of information to other persons.
- Clause 52:** - empowers the Ombudsman to delegate powers.

**PART 7**  
**ADMINISTRATION AND FINANCE**

*Division 1 - Office of Ombudsman*

- Clause 53:** - establishes the Office of the Ombudsman and its composition.

- Clause 54:** - provides for the power of the Ombudsman to appoint staff and determine salaries.
- Clause 55:** - empowers the Ombudsman to issue employment guidelines.

*Division 2 - Funds and annual reports*

- Clause 56:** - provides for the funds of the Ombudsman, like monies allocated by Parliament.
- Clause 57:** - provides for making of annual reports on the operation of the Office.

**PART 8**  
**OFFENCES**

- Clause 58:** - creates the offence of obstruction, non-compliance, making false statements, etc.
- Clause 59:** - creates the offence for failure to attend or provide documents to Ombudsman.
- Clause 60:** - creates the offence for failure to be sworn.
- Clause 61:** - provides for the offence for lying under oath under the *Crimes Ordinance 1961*.
- Clause 62:** - creates the offence of insulting or interrupting the proceedings of the Ombudsman.
- Clause 63:** - creates the offence of intimidating, harassing or threatening persons for making use of the rights given under the Bill.

**PART 9**  
**MISCELLANEOUS**

- Clause 64:** - exempts the Ombudsman from paying of court fees.

- Clause 65:** - exempts the Ombudsman and staff from personal liability for carrying out the functions, duties and powers in good faith.
- Clause 66:** - provides that the Bill is in addition to any other rights or remedies.
- Clause 67:** - empowers the Head of State to make regulations on the advice of Cabinet.
- Clause 68:** - repeals the *Komesina o Sulufaiga (Ombudsman) Act 1988* and provides for the savings and transitional matters.
- Schedule 1:** - lists treaties and conventions applicable to the Bill.
- Schedule 2:** - provides the forms for the oaths of office and secrecy.
- Schedule 3:** - provides for the selection and criteria for the appointment of the Ombudsman.



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 (Hon TOLOFUAI VALELEI Falemoe Leiatua)  
**MINISTER OF WOMEN, COMMUNITY  
 AND SOCIAL DEVELOPMENT**



## OMBUDSMAN (KOMESINA O SULUFAIGA) BILL 2013

### SAMOA

#### Arrangement of Provisions

#### **PART 1** **PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Objectives
4. Act binds Government

#### **PART 2** **OMBUDSMAN**

5. Continuation and legal personality
6. Independence
7. Appointment
8. Selection and criteria
9. Oath of office
10. Terms of office
11. Remuneration
12. Ombudsman to hold no other office
13. Acting Ombudsman
14. Resignation
15. Removal and suspension
16. Automatic vacation of office
17. Vacancy

#### **PART 3** **ADMINISTRATIVE DECISIONS**

#### *Division 1 – Powers and proceedings*

18. Powers to investigate administrative decisions
19. Referral of matters by parliamentary committees or Prime Minister
20. Overriding powers
21. Matters not to be investigated
22. Mode of complaint
23. Refusal to investigate complaint
24. Proceedings
25. Right to be heard and consultation
26. Referral of matters to appropriate authority
27. Other procedures

#### *Division 2 – Results of investigations and immunities*

28. Procedures after investigation
29. Right to be heard on any adverse comments
30. Complainant to be informed of result of investigation
31. Proceedings not to be questioned or to be subject to review

- 32. Ombudsman not to give evidence

**PART 4**  
**HUMAN RIGHTS**

*Division 1 - Functions*

- 33. Functions  
*Division 2 - Inquiries*
- 34. Initiating inquiries
- 35. No inquiry on matters before the courts
- 36. Inquiry reports
- 37. Parliamentary scrutiny  
*Division 3 – Other matters*

- 38. Complaints
- 39. Advisory groups and experts
- 40. State of human rights report

**PART 5**  
**SPECIAL INVESTIGATION UNIT**

- 41. Establishment and functions

**PART 6**  
**GENERAL POWERS**

- 42. Application
- 43. Production of documents, information and evidence
- 44. Secrecy protected
- 45. Privileges and immunities
- 46. Allowances and fees
- 47. Disclosure of certain matters not to be required
- 48. Power to enter premises
- 49. National interest matters
- 50. Confidentiality of information
- 51. Directives for non-disclosure of information
- 52. Delegation of powers

**PART 7**  
**ADMINISTRATION AND FINANCE**

*Division 1 – Office of Ombudsman*

- 53. Establishment
- 54. Appointment and remuneration of staff
- 55. Guidelines for employment

*Division 2 – Funds and annual reports*

- 56. Funds
- 57. Annual reports

**PART 8**  
**OFFENCES**

- 58. Offences of obstruction, non-compliance, false statements, etc.
- 59. Offence of failure to attend or provide documents
- 60. Offence of refusal to give evidence
- 61. Perjury
- 62. Contempt
- 63. Victimisation

**PART 9**  
**MISCELLANEOUS**

- 64. Exemption from fees
- 65. Exemption from personal liability
- 66. Non-derogation
- 67. Regulations
- 68. Repeals, savings and transitional

Schedules



2013, No.

**A BILL INTITULED**

**AN ACT to:**

- (a) continue the Ombudsman (*Komesina o Sulufaiga*) established under the *Komesina o Sulufaiga (Ombudsman) Act 1988*; and
- (b) provide the functions, duties and powers to promote good governance in public administration; and
- (c) provide the functions, duties and powers relating to human rights for ensuring the dignity, equality and worth of individuals and recognising that individuals have the right to life, liberty and freedom from discrimination; and
- (d) provide for related purposes.

**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 Ombudsman (*Komesina o Sulufaiga*) Act 2013.

(2) This Act commences on the date of assent by the Head of State.

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

“administrative decision” means a decision or recommendation made (including any recommendation made to a Minister), or any act done or omitted, on a matter of administration of a Ministry or organisation;

“complaint”, for Part III, means a complaint about an administrative decision, and “complainant” has a corresponding meaning;

“human rights” means human rights contained in any of the following:

- (a) in Part II of the Constitution and other laws of Samoa;
- (b) customary international law;
- (c) treaties and conventions listed in Schedule 1.

“investigation” means an investigation carried out under Part 3;

“Ministry or organisation” means:

- (a) a Ministry listed under the Ministerial and Departmental Arrangement Act 2003 or established by an Act; or
- (b) a public office, government agency or government corporation established by an Act or the Government; or
- (c) a public body listed under the Public Bodies (Performance and Accountability) Act 2001.

“Office” means the Office of the Ombudsman continued by section 53;

“officer” for a Ministry or organisation, includes an employee, a member of a board or committee or any other person engaged to perform an administrative decision;

“Ombudsman” means the person appointed under section 7 as the Ombudsman (*Komesina o Sulufaiga*);

“Speaker” means the Speaker of the Legislative Assembly;

“staff” means Assistant Ombudsmen, officers and other staff of the Office, and includes other persons engaged to carry out the functions, duties and powers under this Act.

**3. Objectives** - The objectives of this Act are:

- (a) to promote transparency, accountability and integrity in the administration and decision making of Ministries and organisations; and
- (b) to promote and protect the dignity of humankind enshrined in the Constitution, international human rights law, as the foundation of a fair, just and peaceful society.

**4. Act binds Government** - This Act binds the Government.

**PART 2**  
**OMBUDSMAN**

**5. Continuation and legal personality** - The Ombudsman (*Komesina o Sulufaiga*), previously established under the *Komesina o Sulufaiga (Ombudsman) Act 1988* continues and is established under this section as an independent corporate sole with perpetual succession and common seal and may:

- (a) own and dispose of property and other assets; and
- (b) enter into contracts; and
- (c) sue and be sued; and
- (d) do any other thing that a person may do in law.

**6. Independence**-(1) The Ombudsman:

- (a) is an independent officer of Parliament; and
- (b) must independently carry out the functions, duties and powers under this Act; and
- (c) when carrying out the functions, duties and powers under this Act, is not to be subject to a direction or influenced by a person, officeholder or authority.

(2) This section does not prevent a court from making a direction or order whether the Ombudsman:

- (a) has carried out the functions, duties and powers under this Act; or
- (b) should or should not carry out the functions, duties or powers.

**7. Appointment** - Subject to section 8, the Head of State may appoint a person recommended by the Legislative Assembly as the Ombudsman.

**8. Selection and criteria**-(1) The Ombudsman is to be selected pursuant to the selection processes and criteria set out in Schedule 3.

(2) An appointment that is not pursuant to section 7 and Schedule 3 is void.

**9. Oath of office** - The Ombudsman must, before taking office, take before the Speaker the oath of office set out in Part 1 of Schedule 2.

**10. Terms of office** - The Ombudsman:

- (a) is appointed for six (6) years; and
- (b) is eligible for re-appointment; and
- (c) on expiry of the term, continues in office until re-appointed or a successor takes the oath of office.

**11. Remuneration**-(1) The salary, allowances and other benefits of the Ombudsman are determined under the Remuneration Tribunal Act 2003 by the Tribunal taking into account the terms and conditions of other parliamentary officers and constitutional office holders.

(2) The salary, allowances and other benefits of the Ombudsman are not to be reduced during the term of office of the Ombudsman, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries, allowances and other benefits are determined under the Remuneration Tribunal Act 2003.

(3) The salary, allowances and other benefits referred to in subsection (1) are to be charged on the Treasury Fund, without further appropriation than this subsection.

**12. Ombudsman to hold no other office**-(1) The Ombudsman must not:

- (a) become a Member of Parliament while in office; or
- (b) without the approval of the Speaker in each particular case, hold any other office or employment or engage in any activity or practice that may in any way conflict with the Ombudsman's actual or perceived independence or impartiality.

(2) If the Ombudsman becomes aware of an actual or perceived conflict of interest, the Ombudsman must:

- (a) immediately inform the Speaker; and
- (b) take immediate action to avoid the conflict of interest.

**13. Acting Ombudsman** - If the Ombudsman is unable to carry out the functions of the office because of illness, absence on leave or from Samoa, vacancy or any other reason:

- (a) the Ombudsman; or
  - (b) the Head of State for vacancy of office on death,
- may, in writing, designate an Assistant Ombudsman to carry out the functions of the Ombudsman.

**14. Resignation** - The Ombudsman may, in writing to the Head of State, resign from office.

**15. Removal and suspension**-(1) The Head of State, acting on the recommendation of the Legislative Assembly, may remove the Ombudsman from office for inability to perform the functions of the office arising from infirmity of body or mind or for misconduct in office.

(2) The Ombudsman may not otherwise be removed except under this section.

(3) If the Legislative Assembly considers that the question of removal from office ought to be investigated, the Legislative Assembly may appoint a tribunal, consisting of:

- (a) a retired judge in Samoa or elsewhere or a lawyer qualified for appointment as a judge of the Supreme Court, as chairperson; and
- (b) two (2) other members.

(4) If the question relates to infirmity of body or mind, one of the members under subsection (3)(b) must be a medical practitioner registered under the Medical Practitioners Act 2007.

(5) The tribunal must enquire into the matter and provide a written report of the facts and its findings to the Legislative Assembly.

(6) If the question of removing the Ombudsman has been referred to the tribunal, the Head of State, acting on the recommendation of the Legislative Assembly, may suspend the person from office pending the determination of the question of removal.

(7) The terms and conditions for a tribunal are to be prescribed by regulations or determined by the Speaker if no regulations are made.

**16. Automatic vacation of office-**(1) As an exception to section 15, the office of the Ombudsman automatically becomes vacant if the Ombudsman:

- (a) becomes subject to an order of medical custody under the Mental Health Act 2007; or
- (b) has been adjudged bankrupt by a court of competent jurisdiction; or
- (c) has been duly nominated under section 48 of the Electoral Act 1963; or
- (d) has been convicted by a court or tribunal of competent jurisdiction, in Samoa or elsewhere, of any of the following -
  - (i) a serious criminal offence;
  - (ii) misuse of public funds;
  - (iii) a provision of this Act.

(2) In this section, “serious criminal offence” means an offence that prescribes a fine of at least 20 penalty units or imprisonment of at least two (2) years.

(3) The effective date of vacation of office is the date of the order, adjudication or conviction.

(4) If there is doubt as to the effective date of vacation of office, the Speaker may determine the date.

**17. Vacancy-**(1) The office of the Ombudsman becomes vacant when the Ombudsman dies, retires or resigns or is removed from office or vacates the office under section 16.

(2) A vacancy is to be filled pursuant to section 7 and Schedule 3.



**PART 3**  
**ADMINISTRATIVE DECISIONS**

*Division 1 – Powers and proceedings*

**18. Powers to investigate administrative decisions-(1)**

The Ombudsman may, on complaint or own initiative, investigate any administrative decision that affects a person in the person's personal capacity made by any of the following:

- (a) a Ministry or organisation; or
- (b) an officer when carrying out a power or function conferred by an enactment.

(2) The Ombudsman may, commence an investigation upon receiving a complaint even if the complaint may not, on its face, be against any administrative decision.

**19. Referral of matters by parliamentary committees or Prime Minister-(1)** Without limiting section 18, a parliamentary committee may refer to the Ombudsman:

- (a) to investigate a petition that is before that committee for consideration, or a matter to which the petition relates; and
- (b) subject to any special direction of the committee -
  - (i) investigate the petition or matter if it is within the Ombudsman's jurisdiction; and
  - (ii) make a report to the committee.

(2) Section 23, 29 or 30 does not apply to the investigation or report made under subsection (1).

(3) Without limiting section 18 and subsection (1), the Prime Minister may, refer a matter to the Ombudsman (except a matter about a judicial proceeding) if the Ombudsman consents to such a referral for investigation and report.

(4) Despite other provisions of this Act, the Ombudsman:

- (a) must -
  - (i) investigate the matter under subsection (3) if it is within the Ombudsman's jurisdiction; and
  - (ii) make a report to the Prime Minister; and

(b) may send a copy of the report to Parliament.

(5) Section 28 does not apply to an investigation or report made under subsection (4).

**20. Overriding powers** - The powers of the Ombudsman under this Act may be exercised as an exception to any enactment to the effect that:

- (a) the administrative decision is final; or
- (b) no appeal lies for the administrative decision; or
- (c) no proceeding or decision of the person or organisation whose administrative decision it is must be challenged, reviewed, quashed, or called into question.

**21. Matters not to be investigated**-(1) This Act does not authorise the Ombudsman to investigate any of the following:

- (a) an administrative decision for which there is, under an enactment, a right of appeal or objection, or a right to apply for a review, on the merits of the case, to a court, or to any tribunal constituted under an enactment, whether or not -
  - (i) the right of appeal, objection or application has been exercised in the particular case; and
  - (ii) any time, prescribed for the exercise of that right has expired;
- (b) a decision, recommendation, act, or omission of a trustee within the meaning of the Trustee Act 1975;
- (c) a decision, recommendation, act, or omission on any proceedings made -
  - (i) by the legal adviser to the Ombudsman pursuant to the rules of the time being approved by the Government for the conduct of Government legal business; or
  - (ii) by counsel for the Government.

(2) If a question arises whether the Ombudsman has jurisdiction to investigate a case or class of cases under this Part, the Ombudsman may apply to the Supreme Court for a

declaratory order determining the question under the Declaratory Judgments Act 1988.

**22. Mode of complaint-**(1) A complaint to the Ombudsman may be made in person, in writing, by telephone or in any other form of communication.

(2) As an exception to any enactment, a letter written and addressed to the Ombudsman by:

- (a) a person in custody on a charge or after conviction of an offence; or
  - (b) an inpatient under the Mental Health Act 2007,
- must be immediately forwarded, unopened, to the Ombudsman by the person-in-charge of the place or institution where the writer of the letter is detained or of which writer is an inpatient.

(3) A person, other than the Ombudsman, who opens a letter in contravention to subsection (2) commits an offence and is liable to a fine not exceeding 20 penalty units.

**23. Refusal to investigate complaint-**(1) The Ombudsman may refuse to investigate a complaint further, if, when investigating the complaint within his or her jurisdiction, it appears to the Ombudsman that:

- (a) under the law or existing administrative practice there is an adequate remedy or right of appeal, other than the right to petition Parliament, for the complaint (whether or not the complainant has utilised the remedy or right); or
  - (b) having regard to all the circumstances of the case, a further investigation is unnecessary.
- (2) Without limiting the powers under this Act, the Ombudsman may decide not to investigate or not to further investigate a complaint if:
- (a) it relates to an administrative decision of which the complainant has had knowledge for more than 12 months before the complaint is received by the Ombudsman; or
  - (b) in the Ombudsman's opinion -
    - (i) the subject-matter of the complaint is trivial; or

(ii) the complaint is frivolous or vexatious or is not made in good faith; or

(iii) the complainant does not have a sufficient personal interest in the subject-matter of the complaint.

(3) If the Ombudsman decides not to investigate or further investigate a complaint, the Ombudsman must inform the complainant of the decision (and may state reasons for the decision).

**24. Proceedings-**(1) The Ombudsman must, before investigating a matter, inform the chief executive officer of the Ministry or organisation affected, of the Ombudsman's intention to make the investigation.

(2) The Ombudsman may:

- (a) hear or obtain information from a person; and
- (b) make inquiries.

(3) The Ombudsman:

- (a) must conduct the investigation in private; and
- (b) is not required to hold a hearing.

**25. Right to be heard and consultation-**(1) A person is not entitled as of right to be heard by the Ombudsman.

(2) If during an investigation it appears to the Ombudsman that there may be sufficient grounds for the Ombudsman to make a report or recommendation that may adversely affect a Ministry, organisation or person, the Ombudsman must give the Ministry, organisation or person an opportunity to be heard.

(3) The Ombudsman may, during or after an investigation, consult the Minister responsible for the matter being investigated.

(4) On the request of the Minister responsible for the matter being investigated or if an investigation relates to any recommendation made to a Minister, the Ombudsman must, after making the investigation, consult the Minister before forming a final opinion on a matter referred to in section 28(1) or (2).

**26. Referral of matters to appropriate authority** - If, during or after an investigation, the Ombudsman is of the opinion that there is evidence of a breach of duty or misconduct on the part of an officer of a Ministry or organisation, the Ombudsman must refer the matter to the appropriate authority.

**27. Other procedures** - Subject to this Act, the Ombudsman may regulate other procedures under this Part.

*Division 2 - Results of investigations  
and immunities*

**28. Procedures after investigation**-(1) This section applies to the following cases:

(a) a case where, after an investigation, the Ombudsman is of the opinion that the administrative decision which was the subject-matter of the investigation -

(i) appears to have been contrary to law;

or

(ii) was unreasonable, unjust, oppressive, or discriminatory, or was in accordance with a rule of law or a provision of any enactment or a practice that is or may be unreasonable, unjust, oppressive, or discriminatory; or

(iii) was based wholly or partly on a mistake of law or fact; or

(iv) was wrong;

(b) a case where the Ombudsman is of the opinion that -

(i) in the making of the administrative decision under an enactment, a discretionary power has been exercised for an improper purpose or on irrelevant grounds or on the taking into account of irrelevant considerations; or

(ii) for a decision made in the exercise of a discretionary power, reasons should have been given for the decision.

(2) If in a case to which this section applies the Ombudsman is of the opinion that:

- (a) the matter should be referred to the appropriate authority for further consideration; or
  - (b) the omission should be rectified; or
  - (c) the decision should be cancelled or varied; or
  - (d) any practice on which the decision, recommendation, act, or omission was based should be altered; or
  - (e) any law on which the decision, recommendation, act, or omission was based should be reconsidered; or
  - (f) reasons should have been given for the decision; or
  - (g) any other steps should be taken,
- the Ombudsman must report the opinion and reasons to the appropriate Ministry or organisation, and may make recommendations.

(3) For the purposes of subsection (2), the Ombudsman:

- (a) may request the Ministry or organisation to notify the Ombudsman, within a specified time, of any steps that it proposes to take to give effect to the Ombudsman's recommendations; and
- (b) must also send a copy of the report and recommendations to the Minister or organisation concerned with the report; or
- (c) may make the report public if the report relates -
  - (i) to an own motion investigation; or
  - (ii) to an issue that is already in the public domain and it is in the public interest to make the report public.

(4) If, within a reasonable time after the report is made, no action is taken which in the opinion of the Ombudsman to be adequate and appropriate, the Ombudsman may:

- (a) after considering any comment made by the Ministry or organisation affected by the report, send a copy of the report and recommendations to the Prime Minister; and
- (b) make a report to Parliament on the matter.

(5) The Ombudsman must attach to a report sent or made under subsection (4) a copy of any comment made by the Ministry or organisation affected by the report.

**29. Right to be heard on any adverse comments** - As an exception to section 28, the Ombudsman must not, in any report made under this Act, make a comment that is adverse to a person unless the Ombudsman has given the person an opportunity to be heard.

**30. Complainant to be informed of result of investigation**-(1) If, on an investigation following a complaint, the Ombudsman makes a recommendation under section 28(2) and (3), and no action which seems to the Ombudsman to be adequate and appropriate is taken on the recommendation within a reasonable time, the Ombudsman:

- (a) must inform the complainant of the recommendation;
- and
- (b) may make any comment on the matter.

(2) The Ombudsman must in any case inform the complainant in writing of the result of the investigation.

**31. Proceedings not to be questioned or to be subject to review**-(1) A proceeding of the Ombudsman must not be held bad for want of form, except on the ground of lack of jurisdiction.

(2) A proceeding or decision of the Ombudsman must not be challenged, reviewed, quashed, or called into question in a court.

**32. Ombudsman not to give evidence**-(1) The Ombudsman or a staff member must not be called to give evidence in a court, or in any proceedings of a judicial nature, for anything coming to his or her knowledge when carrying out the functions, duties or powers under this Part.

(2) Anything said or any information supplied or any document or thing produced by any person in an inquiry or proceedings before the Ombudsman under this Part has the same privilege of an inquiry or proceedings in a court.

(3) A report made by the Ombudsman under this Part is taken to be an official report made by a person holding an inquiry under the authority of the Legislative Assembly.

## **PART 4** **HUMAN RIGHTS**

### *Division 1 - Functions*

**33. Functions** - The Ombudsman has the following human rights functions:

- (a) to promote public awareness of human rights and efforts to combat all forms of discrimination or corruption through the provision of information and education;
- (b) to inquire into, and report on, alleged violations of human rights;
- (c) to monitor and promote compliance with international and domestic human rights law including through any of the following -
  - (i) making recommendations as to the desirability of Samoa becoming a party to an international human rights instrument;
  - (ii) reviewing existing and proposed legislation or reviewing other laws for consistency with international human rights law and recommending additional legislative and other measures to protect human rights;
  - (iii) advising the Government on its reporting obligations under international human rights instruments and on the content of those reports;
  - (iv) providing information to the international human rights system, including the Human Rights Council and its mechanisms and the human rights treaty monitoring bodies;
- (d) with the approval of a court, to participate in judicial proceedings as a friend of the court or as a party where human rights issues arise; or



- (e) to visit all public and, subject to section 48, private places of voluntary and involuntary confinement or detention;
- (f) to consult, engage and cooperate with relevant civil society organisations, including business and labour organisations, ethnic and minority organisations, and academic institutions, as the Ombudsman considers appropriate;
- (g) to consult, engage and cooperate with other national, regional and international human rights bodies as the Ombudsman considers appropriate;
- (h) to advise on any matter referred to the Ombudsman by the Government, having regards to the available resources and priorities of the Ombudsman;
- (i) to produce and publicise reports on any of the functions in this section;
- (j) to do anything incidental or conducive to the performance of any of the functions in this section or carry out any other human rights function under this Act.

*Division 2 - Inquiries*

**34. Initiating inquiries** - If the Ombudsman becomes aware of widespread, systemic or entrenched situations or practices that violate human rights, the Ombudsman may initiate an inquiry.

**35. No inquiry on matters before the courts** - The Ombudsman may not inquire into a matter that is the subject of any proceedings pending in any court, unless the court proceedings have been unreasonably delayed and are invited to do so under section 33(d).

**36. Inquiry reports**-(1) If an inquiry finds evidence of human rights violations, the report may include any or all of the following:

- (a) a determination that a violation of human rights has occurred and should not be repeated or continued;

- (b) a recommendation that a person should perform reasonable acts to redress the violation of human rights; and
  - (c) a recommendation that victims of violations are entitled to compensation for any loss or damage suffered;
  - (d) a recommendation for action to any person and require the person to report to the Ombudsman on the steps that the person has taken to give effect to the recommendations.
- (2) The Ombudsman shall:
- (a) make public the report, findings and recommendations; and
  - (b) provide Parliament with a copy of the report, findings and recommendations.
- (3) The Speaker shall cause the report to be tabled in Parliament pursuant to its Standing Orders for debate or referral to the relevant parliamentary committee.

**37. Parliamentary scrutiny-**(1) The parliamentary committee must scrutinise the report referred to it under section 36(3) under the Standing Orders and may require the Government or other persons to make formal responses to the report.

(2) The parliamentary committee must table its report, including any formal response, in Parliament for debate at its current or next meeting pursuant to its Standing Orders.

*Division 3 - Other matters*

**38. Complaints-**(1) The Ombudsman may receive oral or written complaints about breach of human rights.

(2) The Ombudsman may not investigate any individual complaints relating to human rights violations but the complaints may form the basis for conducting an inquiry under Division 2.

(3) With the written consent of the complainant, the Ombudsman may refer the complaint to the authority responsible for handling the complaint.

**39. Advisory groups and experts** - The Ombudsman may establish advisory groups or appoint an expert or a group of experts for the purpose of this Part pursuant to terms the Ombudsman considers appropriate.

**40. State of human rights report**-(1) The Ombudsman must, before 30 June in each year:

(a) prepare a report on the status of human rights in Samoa for the previous year, including the following -

(i) recommendations about reforms and other measures, whether legal, political or administrative, which could be taken to prevent or redress human rights violations;

(ii) any action taken by the Government on recommendations in any previous report;

(iii) any action taken by the Government to promote and protect human rights; and

(b) submit the report to the Speaker for tabling in the Legislative Assembly under its Standing Orders at its next meeting.

(2) When the report is tabled, the Legislative Assembly must refer the report to the parliamentary committee responsible for human rights to scrutinise the report pursuant to the Standing Orders.

(3) The parliamentary committee must:

(a) summon a Minister, public servant or other person affected by the report to appear before it to respond to any matter in the report; and

(b) prepare and transmit its report and recommendations to the Legislative Assembly to debate the report and the state of human rights in Samoa.

## **PART 5**

### **SPECIAL INVESTIGATION UNIT**

**41. Establishment and functions**-(1) The Ombudsman may establish within the Office a special investigation unit for the purposes of:

- (a) receiving, investigating and determining any complaints about a police officer, prison officer or officer of other prescribed disciplined force; and
  - (b) carrying out any other functions, duties or powers under any other Act or as are prescribed by regulations.
- (2) The functions, duties and powers of the special investigation unit are as prescribed by regulations.
- (3) The unit:
- (a) must not investigate any matter that is being investigated or inquired into by the Police, Prisons or prescribed disciplined force under their respective Acts; or
  - (b) as an exception to paragraph (a), may investigate the matter if the Ombudsman has reasons to believe that -
    - (i) there is an abuse of process by the Police, Prisons or prescribed disciplined force; or
    - (ii) there has been an unreasonable delay in the investigation; or
    - (iii) the matter has not been appropriately investigated.
- (4) The Police or Prisons or prescribed disciplined force must not:
- (a) investigate any matter investigated by the unit; or
  - (b) continue investigating a matter being investigated under subsection (3)(b).

## **PART 6**

### **GENERAL POWERS**

**42. Application** - This Part applies to Parts 3, 4 and 5.

**43. Production of documents, information and evidence**-(1) Subject to section 49, the Ombudsman may, for the purposes of Part 3, 4 or 5, require a person:

- (a) to provide any information; or

(b) to produce a document or thing, which may be in the possession or under the control of the person or for Part 3 under the possession or control of a Ministry or organisation.

(2) The Ombudsman may:

(a) summon and examine on oath -

(i) a person who is able to give the information under subsection (1);

(ii) the complainant under Part 3 or 5; or

(iii) any other person who is able to give the information; and

(b) administer oaths.

(3) The offence of perjury under the Crimes Ordinance 1961 applies to an examination under subsection (2) of this section.

(4) In conducting an investigation or inquiry, the Ombudsman:

(a) is not bound by strict rules of evidence or procedures; but

(b) must, at all times, conform to the principles of natural justice.

**44. Secrecy protected-**(1) Subject to subsection (2), a person who is bound by an enactment, other than the Public Service Act 2004, to maintain secrecy on a matter is not required:

(a) to supply any information to or answer a question put by the Ombudsman on that matter; or

(b) to produce a document or thing relating to the matter, if complying with the requirement would breach the enactment.

(2) The Ombudsman may require the person, with the prior written consent of a complainant, to supply information or answer a question or produce a document or thing relating only to the complainant.

(3) The person must comply with subsection (2).

**45. Privileges and immunities-**(1) A person has the same privileges and immunities in the giving of information, answering of questions, and production of documents and things as witnesses have in a court.

(2) Except on the trial of a person for perjury under the Crimes Ordinance 1961 on the person's sworn testimony:

- (a) no statement made or answer given by the person or another person in an inquiry by or proceedings before the Ombudsman is admissible in evidence against a person in a court or at an inquiry or in any other proceedings; and
- (b) no evidence in any proceedings or inquiry before the Ombudsman must be given against a person.

(3) No person is liable to prosecution for an offence against an enactment, other than this Act, by reason of the person's compliance with a requirement of the Ombudsman under this Division.

**46. Allowances and fees-**(1) A person who is required to attend before the Ombudsman under Parts 3, 4 or 5 is entitled to the witnesses' fees, allowances, and expenses fixed under regulations made under the Criminal Procedure Act 1972.

(2) For the purpose of subsection (1), the Ombudsman has the powers of a court under the regulations to fix or disallow, in whole or in part, or increase the amounts payable under the regulations.

**47. Disclosure of certain matters not to be required -** Subject to section 49, any enactment or other law which authorises or requires the withholding of a document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest does not apply to an investigation, proceedings or inquiry under this Act.

**48. Power to enter premises-**(1) For the purposes of this Act, but subject to other provisions of this section, the Ombudsman may:

- (a) enter and inspect any premises occupied by a Ministry, organisation, and subject to sections 43 and 44, carry out an investigation in the premises under Part 3;

(b) enter any public premises or with the consent of the occupier, enter any private premises, for the purposes of an inquiry under Part 4 or 5.

(2) Before entering the premises under subsection (1)(a), the Ombudsman must notify the chief executive officer of the Ministry or organisation by which the premises are occupied.

(3) If consent is not given under subsection (1)(b) or in the opinion of the Ombudsman consent will not be given, the Ombudsman may apply to a judge of the District Court for a warrant to enter the premises.

**49. National interest matters-**(1) If the Attorney General certifies that the exercise of the powers under section 43 or 48:

(a) would prejudice the security or defence of Samoa (including Samoa's relations with the government of another country or with an international organisation), or the investigation or detection of offences; or

(b) would involve the disclosure of the deliberations of Cabinet; or

(c) would involve the disclosure of proceedings of Cabinet, or of a committee of Cabinet, on any matter of a secret or confidential nature,

the Attorney General -

(i) must not require the information or answer to be given or the document or thing to be produced for the purposes of Part 3, 4 or 5; or

(ii) for Part 3, may by written notice to the Ombudsman, exclude the application of section 48 to any specified premises or class of premises;

(iii) for Part 4 or 5, may by written notice to the Ombudsman, exclude the application of section 48 to any specified premises.

(2) Subsection (1)(a) applies only to subparagraph (ii) or (iii).

(3) The Attorney General must send the certificate (including the reasons for the certificate) to the Speaker for tabling in Parliament.

**50. Confidentiality of information-**(1) The Ombudsman and staff must maintain secrecy on matters that come to their knowledge under this Act.

(2) A staff must, before starting employment, take before the Ombudsman the secrecy oath set out in Part 2 of Schedule 2.

(3) As an exception to subsections (1) and (2) and subject to section 49, the Ombudsman may disclose in an Ombudsman's report made under this Act any matter as in the Ombudsman's opinion ought to be disclosed in order to establish grounds for the Ombudsman's conclusions and recommendations.

**51. Directives for non-disclosure of information-**(1) The Ombudsman may direct the following not to be published or disclosed to another person:

- (a) the name and identifying information concerning a person appearing before the Ombudsman;
- (b) any evidence given to the Ombudsman;
- (c) a document or thing produced to the Ombudsman.

(2) A person who contravenes a direction given under subsection (1) commits an offence and is liable on conviction to a fine not exceeding 50 penalty units.

**52. Delegation of powers-**(1) The Ombudsman may delegate to a member of staff any of the Ombudsman's functions, duties and powers under this Act ("delegation") except this power of delegation and the power to make any report under this Act.

(2) A delegation:

- (a) may be made to a member of staff or an office or a class of staff or offices;
- (b) may be made to a case or class of cases;
- (c) may be subject to conditions;
- (d) does not prevent the carrying out of delegated functions, duties or powers by the Ombudsman;
- (e) may be amended, suspended or revoked;
- (f) continues until revoked;
- (g) if the Ombudsman ceases to hold office, continues as if the delegation were made by the successor.



(3) A person purporting to exercise a delegated power must, when required, produce the authority of the delegation.

**PART 7**  
**ADMINISTRATION AND FINANCE**

*Division 1 - Office of the Ombudsman*

**53. Establishment-**(1) The Office of Ombudsman continues under this section comprising the following:

- (a) the Ombudsman;
- (b) one (1) or more Assistant Ombudsmen;
- (c) officers and staff;
- (d) any other person engaged by the Ombudsman for the purpose of this Act.

(2) Members of the staff report to and are accountable to the Ombudsman.

(3) The Ombudsman and staff are taken not to be employed in the Public Service for the purposes of the Public Service Act 2004.

**54. Appointment and remuneration of staff-**(1) Subject to this section, the Ombudsman may appoint sufficient number of staff for the purposes of this Act.

(2) The Ombudsman may determine:

- (a) the salaries and allowances of staff; and
  - (b) the terms and conditions of their appointments,
- taking into account the salaries, allowances, terms and conditions of appointment of similar independent agencies of the State.

(3) The Ombudsman must:

- (a) employ persons under this Act under contracts of employment; and
  - (b) take into account the budget of the Office when appointing persons for the purpose of this Act.
- (4) In this section, “appoint” includes confirm, promote, demote, re-grade, discipline, suspend, terminate or re-appoint.

(5) If officers and employees in the Public Service are given general increases in salaries or allowances, the salaries or allowances of staff are to be increased accordingly.

**55. Guidelines for employment-**(1) The Ombudsman may issue employment guidelines setting out:

- (a) procedures for appointments, disciplinary matters, demotions, suspensions or terminations; and
- (b) other matters relating to employment under this Act.

(2) If there are no guidelines issued under subsection (1), the Ombudsman must adopt the employment procedures in the Public Service.

*Division 2 - Funds and annual reports*

**56. Funds-**(1) The funds of the Ombudsman comprise the following:

- (a) monies appropriated by Parliament for the purpose of this Act; and
- (b) any fund received under subsection (3).

(2) Parliament must ensure that the Ombudsman has sufficient funds for the purposes of this Act.

(3) The Ombudsman may seek and receive additional funding from any person or organisation in Samoa or elsewhere, without compromising the independence of the Ombudsman or the objectives set out in section 3.

(4) The Ombudsman has the sole responsibility for the allocation of its funds.

(5) The Public Finance Management Act 2001 and the Audit Office Ordinance Act 1961 apply to the funds of the Ombudsman.

**57. Annual reports-**(1) Without affecting other reporting provisions in this Act, the Ombudsman must, in each year, prepare an annual report setting out the operations and financial matters of the Ombudsman for the preceding year.

(2) The Ombudsman must send the annual report to the Speaker for tabling in Parliament under its Standing Orders.

**PART 8**  
**OFFENCES**

**58. Offences of obstruction, non-compliance, false statements, etc.**-(1) A person commits an offence who:

- (a) without lawful justification or excuse, wilfully obstructs, hinders, threatens, intimidates, interferes with or resists the Ombudsman, staff or any other person when carrying out a function, duty or power under this Act; or
  - (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or
  - (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of the Ombudsman's powers, duties or functions under this Act.
- (2) A person convicted under subsection (1) is liable:
- (a) for an individual, to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding six (6) months;
  - (b) for a body corporate, to a fine not exceeding 500 penalty units.

**59. Offence of failure to attend or provide documents** - A person commits an offence who, after having been summoned, fails, without reasonable excuse, to appear or to produce any documents, books or information in the person's custody or control, before the Ombudsman, and is liable on conviction:

- (a) for an individual, to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding six (6) months; and
- (b) for a body corporate, to a fine not exceeding 500 penalty units.

**60. Offence of refusal to give evidence** - A person appearing as a witness before the Ombudsman commits an offence who refuses to be sworn or to make an affirmation or to

answer a question relevant to the inquiry put to the witness, and is liable on conviction:

- (a) for an individual, to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding three (3) months; and
- (b) for a body corporate, to a fine not exceeding 500 penalty units.

**61. Perjury** - A witness before the Ombudsman who knowingly gives evidence that is false commits the offence of perjury under the Crimes Ordinance 1961.

**62. Contempt** - A person commits an offence who wilfully insults the Ombudsman, or wilfully interrupts the proceedings of the Ombudsman, or is in any manner guilty of wilful contempt of the Ombudsman, and is liable on conviction:

- (a) for an individual, to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding six (6) months; and
- (b) for a body corporate, to a fine not exceeding 500 penalty units.

**63. Victimisation**-(1) A person commits an offence who wilfully victimises, intimidates, threatens or harasses another person on the ground that the person, or any associate of the person:

- (a) intends to make use of his or her rights under this Act; or
- (b) has made use of his or her rights, or promoted the rights of some other person, under this Act; or
- (c) has given information or evidence on a complaint, investigation, inquiry or proceeding under this Act; or
- (d) has declined to do an act which would contravene this Act; or
- (e) has done anything under this Act.

- (2) A person convicted under subsection (1) is liable:
- (a) for an individual, to a fine not exceeding 200 penalty units or to imprisonment for a term not exceeding six (6) months; and
  - (b) for a body corporate, to a fine not exceeding 500 penalty units.

## **PART 9**

### **MISCELLANEOUS**

**64. Exemption from fees** - The Ombudsman is exempted from paying fees for any court or tribunal proceedings.

**65. Exemption from personal liability** - The Ombudsman or a staff member is not personally liable for carrying out, in good faith, any function, duty or power under this Act.

**66. Non-derogation** - This Act:

- (a) is in addition to any other enactment or law under which -
  - (i) a remedy or right of appeal or objection is provided for a person; or
  - (ii) a procedure is provided for the inquiry into or investigation of a matter; and
- (b) does not limit or affect the remedy, right of appeal, objection or procedure.

**67. Regulations**-(1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to or for the purposes of this Act, and in particular to amend Schedule 1 or 2.

(2) Regulations are to be laid before the Legislative Assembly.

**68. Repeals, savings and transitional**-(1) The Komesina o Sulufaiga (Ombudsman) Act 1988 is repealed.

(2) At the commencement of this Act:

- (a) the current Ombudsman continues in office under this Act for a term of six (6) years from the commencement of this Act unless he resigns or

is removed from office pursuant to this Act before the expiry of six (6) years;

- (b) the current staff of the Ombudsman continue as if they were appointed under this Act as staff of the Office, subject to their current terms of employment;
  - (c) any pending complaint or investigation continues as if it were made under this Act;
  - (d) any property of the Government under the control or possession of the Ombudsman continues to be under the control or possession of the Ombudsman, subject to any agreement between the Government and the Ombudsman as to the ownership and transfer of the property.
- (3) Regulations may be made under section 67 within two (2) years of commencement of this Act to deal with any other transitional or saving matter.

**SCHEDULE 1**

(section 2)

**LIST OF TREATIES AND CONVENTIONS**

1. Convention on the Elimination of Discrimination Against Women
2. Convention on the Rights of the Child
3. Discrimination (Employment and Occupation) Convention 1958 (No. 111)
4. International Covenant on Civil and Political Rights

**SCHEDULE 2**

(sections 9 and 50(2))

**OATHS**

**PART 1 – OATH/AFFIRMATION  
OF OFFICE OF OMBUDSMAN**

- I,.....[*swear by Almighty God/affirm*] that I:
- (a) will well and truly serve the Independent State of Samoa; and
  - (b) will justly and faithfully carry out the duties of the Office of the Ombudsman in accordance with the law, without fear or favour, affection or ill will; and
  - (c) will not directly or indirectly, except as may be required in the discharge of my office, divulge any information received by me or on behalf of myself.

[*So help me God*].

**PART 2 - OATH/AFFIRMATION  
OF SECRECY FOR STAFF**

I,....., [*swear by Almighty God/affirm*] that I will not directly or indirectly, except as may be required in the discharge of my duties under the Ombudsman Act 2013, divulge any information received by me or on behalf of myself under the Act.

[*So help me God*].

**SCHEDULE 3**  
(sections 8 and 17)

**SELECTION AND CRITERIA**

**1. Establishment-**(1) The Screening Committee (“Committee”) is established comprising the following members:

- (a) the Chairperson of the Public Service Commission, as Chairperson;
- (b) a retired judge or a lawyer qualified for appointment as a Supreme Court judge, appointed by the Chairperson;
- (c) a member to represent civil society groups and the private sector, appointed by the Chairperson.

(2) The following persons are not eligible for appointment under clause 1(1)(b) or (c):

- (a) a member of Parliament;
- (b) a Minister;
- (c) public servant or a person engaged by the Government or in the “service of Samoa” within the meaning under Article 111 of the Constitution;
- (d) a director or employee of a public body regulated under the Public Bodies (Performance and Accountability) Act 2001;
- (e) any other person prescribed by regulations.

(3) All members constitute a quorum.

(4) The Committee may regulate its own meeting procedures.



**2. Functions** - The Committee must consider applications and determine candidates for appointment or re-appointment as the Ombudsman.

**3. Advertisement of vacancies**-(1) When the position of the Ombudsman becomes vacant or will become vacant within six (6) months before expiry of the term, the Government must advertise the position in a newspaper having wide circulation in Samoa.

(2) The Government must send the list of applicants who responded to the advertisement under subsection (1), including any qualified individual it considers for appointment (“applicants”), to the Committee for determinations.

(3) If no applicant qualifies under clause 6, the vacancy must be re-advertised.

**4. Determination of applications** - When determining the suitability of the applicants for appointment or re-appointment, the Committee:

- (a) must take into account clause 6; and
- (b) may take into account clause 7.

**5. Report of the Committee**-(1) After determining the applications, the Committee must prepare and send to the Legislative Assembly a report on its determination setting out:

- (a) the names of all qualified applicants; and
  - (b) the screening process.
- (2) The report:
- (a) must include information and documentation that demonstrates how an applicant meets the criteria in clause 6 and why the Committee believes the applicant is suitable to be recommended by the Legislative Assembly to the Head of State for appointment;
  - (b) may include information and documentation that demonstrate how an applicant meets any general criteria under clause 7.
- (3) A copy of the report is to be sent to the Prime Minister.

**6. Specific criteria** - An applicant is not eligible for appointment as the Ombudsman unless the applicant is qualified for appointment as a judge of the District Court and meets the following criteria:

- (a) has extensive knowledge or experience in all of the following -
  - (i) the principles of human rights and relevant domestic and international human rights law;
  - (ii) the promotion and protection of human rights;
  - (iii) good governance and public administration; and
- (b) has the knowledge and experience in public governance and administration;
- (c) is recognised as being a person of integrity and good character; and
- (d) is capable of fulfilling the position with independence and impartiality; and
- (e) is a citizen of Samoa; and
- (f) any other criteria prescribed by regulations.

**7. General criteria** - In considering applicants, the Committee may consider any of the following general criteria:

- (a) knowledge of, or experience in -
    - (i) current economic, employment, and social issues;
    - (ii) cultural issues, Fa'a-Samoa and the needs and aspirations (including life experiences) of different communities in Samoa;
    - (iii) other diverse matters likely to come before the Ombudsman;
  - (b) skills or experience in -
    - (i) public advocacy and education;
    - (ii) financial management;
    - (iii) academia, social welfare, community development, law, business, commerce, economics or industry;
  - (c) any other criteria prescribed by regulations.
-