

# POLICE SERVICE AMENDMENT BILL 2016

## SAMOA

### Explanatory Memorandum

#### **Introduction:**

The Bill seeks to amend section 55(4)(a) of the Police Service Act 2009 (Principal Act) to correct an incorrect reference. The Bill will also amend section 56 of the Principal Act to insert new subsections (8) and (9) under the same to allow the Head of State, on the advice of Cabinet, to suspend or terminate the Commissioner or Assistant Commissioner under certain circumstances without the need to establish a Commission of Inquiry if it is clear and substantial there are grounds for suspension or removal. The Bill inserts the same provisions into the Prisons and Corrections Act 2013 and the National Prosecution Office Act 2015 for uniformity. These new changes are an exception to the general rule which is a Commission of Inquiry or Tribunal may still be held if there is a need to do.

#### **Clauses:**

- Clause 1:** - provides for the short title and commencement provisions.
- Clause 2:** - amends section 55(4)(a) of the Principal Act by substituting "74" with "75".
- Clause 3:** - amends section 56 of the Principal Act to insert new subsections (8) and (9) to allow the Head of State, on the advice of Cabinet, to suspend or terminate the Commissioner or Assistant Commissioner under certain circumstances. It further allows the Commissioner or Assistant Commissioner to respond to the suspension or termination before it is officiated.

- Clause 4:** - consequentially amends:
- i. section 7 of the Prisons and Corrections Act 2013 to insert a new subsection (6) under the same to allow the Head of State, on the advice of Cabinet, to terminate the Commissioner or Assistant Commissioner without holding an Inquiry. It further allows the Commissioner or Assistant Commissioner to respond to the decision of termination before it is officiated.
  - ii. section 11 of the National Prosecution Office Act 2015 to insert a new subsection (9) under the same to allow the Head of State, on the advice of the Prime Minister, to remove the Director if the Prime Minister is satisfied the Director has breached the listed situations for example has committed an offence.



(Hon TUILAEPA Auelua Fatialofa Lupesoliai Lolofietele  
Neioti Aiono Galumalemana Dr. Sailele Malielegaoi)

**PRIME MINISTER**

**POLICE SERVICE AMENDMENT BILL 2016**

**SAMOA**

**Arrangement of Provisions**

1. Short title and commencement
2. Section 55 amended
3. Section 56 amended
4. Consequential amendments

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**2016, No.**

**A BILL INTITULED**

**AN ACT to amend the Police Service Act 2009 (“Principal Act”) and other related purposes.**

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

**1. Short title and commencement:**

- (1) This Act may be cited as the Police Service Amendment Act 2016.
- (2) This Act commences on assent of the Head of State.

**2. Section 55 amended:**

Section 55(4)(a) of the Principal Act is amended by substituting "74" with "75".

**3. Section 56 amended:**

Section 56 of the Principal Act is amended by inserting after subsection (7) the following:

"(8) Despite subsections (1) and (2), if Cabinet is of the opinion the 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 or Assistant Commissioner from office."

**4. Consequential amendments:**

- (1) Section 7 of the Prisons and Corrections Act 2013 is amended by inserting the following new subsection (6):

“(6) Despite subsection (4), the appointment of the Commissioner or Assistant Commissioner may be terminated under subsection (1) if Cabinet is of the opinion the Commissioner or an Assistant Commissioner:

- (a) has behaved in a manner likely to affect the confidence of the community in the ability to perform the duties of office; or
- (b) has failed to keep discipline within the Service or at prison; or
- (c) is unable to perform the duties of office by reason of physical or mental incapacity,

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

- (2) Section 11 of the National Prosecution Act 2015 is amended by inserting a new subsection (9) as follows:

“(9) Despite subsections (1) and (3), the Head of State may remove the Director on the advice of the Prime Minister if the Prime Minister:

- (a) has been given confirmation that the Director has been convicted of an offence;
- (b) has been given confirmation that the Director is bankrupt or has committed an act of bankruptcy under an Act regulating bankruptcy;

- (c) is satisfied the Director has become, by reason of physical or mental disability, incapable of performing the functions of the Director;
- (d) is satisfied that the Director has without lawful or reasonable justification, failed to discharge any function of the Director; or
- (e) is satisfied that the Director has engaged in any conduct which places the Director in conflict with the performance of the functions of the Director,

**PROVIDED THAT**, before the Prime Minister advises the Head of State, the Prime Minister shall give the Director an opportunity to respond.”.

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