



Tuvalu

LEADERSHIP CODE ACT

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Tuvalu

LEADERSHIP CODE ACT

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Tuvalu

LEADERSHIP CODE ACT

AN ACT TO GUIDE THE CONDUCT OF THE LEADERS OF THE PEOPLE OF TUVALU¹

Commencement [28 November 2006]

PART I - PRELIMINARY

1 Short title

This Act (hereinafter referred to as this Code) may be cited as the Leadership Code Act.

2 Commencement

This Code applies to all leaders, and only to actions and omissions that occur after it takes effect.

3 Purpose

The purpose of this Act is to give effect to the Principles of the Constitution and the commitment of the leaders and the people of Tuvalu to the principles of good governance by providing a Leadership Code to guide and govern the conduct of the leaders of the people of Tuvalu. This Act also recognizes the continuance of the roles and functions of the Ombudsman (under the National Human Rights Institution of Tuvalu Act) as to the protection and promotion of human rights in Tuvalu.²

PART II - INTERPRETATION

4 Interpretation: general definitions

- (1) In this Code —
 - (a) the following terms have the meanings assigned to them, except where the context indicates otherwise;
 - (b) the singular is presumed to include the plural, and vice versa;
 - (c) a reference to an office includes a person acting as temporary replacement for the normal holder of that office, except where the context indicates otherwise; and
 - (d) grammatical variations of each term have correspondingly varying meanings.
- (2) “**all members**” of a body includes any positions that are currently vacant, except where that body is voting to fill vacancies in its own membership, in which case it includes all and only positions that are currently filled. A person who is a member of a body by virtue of his or her holding two or more different positions is counted once only for this purpose and for the purpose of quorum, voting, etc;
- (3) “**adoption**” means the procedure, in accordance with legislation and/or established custom, by which an adult voluntarily undertakes responsibility to care for, protect and bring up a particular legal minor as if that adult were that minor’s birth parent;
- (4) “**associate**” of a Leader, means —
 - (a) a spouse or close relative of that Leader;
 - (b) an individual or organisation (including an unincorporated profit-seeking organisation) standing to gain financially from a business venture in common with that Leader or with a close relative of that Leader;
 - (c) any other person whose affairs are so closely connected with the affairs of the Leader that a benefit derived by the person, or a substantial part of it, could pass to the Leader;
- (5) “**benefit**” means —
 - (a) any detectible advantage or gain (whether received inside or outside the nation), and includes any gift, loan or service (whether or not it has a monetary value) or any other personal advantage or favour given, other than those required by normal standards of basic courtesy and hospitality; and
 - (b) A reference in this Code to a benefit derived by a person includes a reference to:
 - (i) a benefit derived indirectly by the person; and

- (ii) a benefit derived (directly or indirectly) by another person or island community, group, etc, at the request or direction of the first person;
- (6) **“body”** means a collective entity formed by two or more identical or similar positions;
- (7) **“board”** means a board, Commission or other statutory body with power to make by-laws or regulations in relation to certain persons, groups, or activities where this power is not defined or limited on a geographical basis;
- (8) **“breach”** of this Code means —
- (a) any serious crime; or
- (b) any other conduct, not being a serious crime, that contravenes or infringes any of the provisions of this Code, or contravenes or infringes any valid ruling published by the Ombudsman before that conduct occurred;
- (9) **“bribe”** means a transaction or agreement in which a person gives or promises any undue payment or other advantage to a Leader, in order that to influence that Leader or another officer to act or refrain from acting in the performance of his or her official duties in order to obtain or retain business;
- (10) **“Cabinet”** means the Cabinet for Tuvalu established by section 75 of the Constitution of Tuvalu;
- (11) **“child”** means son or daughter (whether a legal adult or minor) and includes an adopted child, a step-child or an ex-nuptial child;
- (12) **“close relative”** of a person means a relative who is a parent, brother, sister, spouse (including a de facto spouse and an ex-spouse), son, daughter, uncle, aunt, cousin, nephew, niece, grandparent, or grandchild of that person (whether by birth, adoption or marriage);
- (13) **“company”** means an organisation, whether private or public, that by reason of its being legally incorporated has perpetual succession for its own existence and limited liability for its individual members or shareholders;
- (14) **“conduct”** means any proven or alleged action or inaction relating to a person’s legal powers, duties and other functions;
- (15) **“conflict of interest”** means the situation where —
- (a) that Leader, or an associate of that Leader, has an interest in that matter; and
- (b) that Leader’s legal or official powers or functions require or enable him or her to make, control or strongly influence decisions relating to that matter;
- (16) **“consent”** means agreement that —
- (a) was freely given;

- (b) was given while the person knew that he or she was fully entitled to refuse consent; and
 - (c) either is expressed in words, or can be implied from unambiguous words or conduct;
- (17) “**corporation**” means a company;
- (18) “**court**” means a body —
- (a) whose primary function is to resolve existing or impending disputes by interpreting pre-existing rules and principles and impartially applying them to specific factual circumstances; and
 - (b) whose members are all judges;
- (19) “**criminal offence**” means any deliberate, reckless or negligent conduct that is punishable according to law by —
- (a) any form of detention; or
 - (b) any fine or other monetary penalty that is paid into public funds.
- (20) “**custom**” means a tradition, practice or usage that is generally accepted as morally binding across the whole nation or within a particular sub-community. It is irrelevant that a custom may have emerged, or evolved or changed recently, or is not always obeyed;
- (21) “**de facto spouse**” means a person who is living with another person the same way as if they were husband and wife, although they are not legally married;
- (22) “**debenture**” includes debenture stock, bonds, notes and any other document evidencing or acknowledging indebtedness of a company in relation to money that is deposited with or lent to the company;
- (23) “**decision**” —
- (a) means a decision that is made individually by a Leader in his or her official capacity, or by a multi-member body, and that has legal force and effect; but
 - (b) does not include a vote cast by an individual member of a multi-member body;
- (24) “**defamation**” means an act of harming the reputation of another by making a false statement to a third person;
- (25) “**detention**” means imprisonment, house arrest, home detention, weekend detention, and any requirement that a person surrender his or her passport or report to police at stated intervals;
- (26) “**duties**” of an office means the legal duties of that office, including the duty to consider impartially whether to exercise a legal power of that office;
- (27) “**employee**” of a body means a person who works for that body (including an independent contractor), and is not an officer of that body;

- (28) **“Falekaupule”** means the body established under section 4(1) of the Falekaupule Act;³
- (29) **“financial gain”** means —
- (a) making a profit; or
 - (b) avoiding or reducing a loss;
- (30) **“fine”** means a monetary penalty, including one collected by forfeiture or restitution of property or assets, that is paid into public funds;
- (31) **“foreign company”** means a company of whose shares less than half are owned (whether directly or through parent companies) by citizens of the nation concerned;
- (32) **“functions”** of an office means the legal powers and duties of that office;
- (33) **“gift”** means —
- (a) the transfer of money, property or other benefit either —
 - (i) without recompense; or
 - (ii) for a consideration substantially less than full consideration; or
 - (b) a loan of money or property made on a permanent, or an indefinite, basis; or
 - (c) a service or any other benefit,
- but does not include travel or accommodation provided by an airline under a commercial loyalty scheme (e.g., Frequent Flyer points);
- (34) **“Government agency”** means —
- (a) the national Government; and
 - (b) a Kaupule; and
 - (c) a department, ministry, agency, or instrumentality (whether incorporated or not) of the nation or of a Kaupule;
- (35) **“Head of Government”** means the Prime Minister whose office is provided for by section 63(1) of the Constitution of Tuvalu;
- (36) **“Head of State”** means —
- (a) the Sovereign; or
 - (b) the Governor-General of Tuvalu whose office is provided for by section 55 of the Constitution of Tuvalu;
- (37) **“High Court”** means the High Court established under section 123 of the Constitution of Tuvalu;
- (37A) **“Human rights”** means human rights contained in any of the following:
- (a) in Part II of the Constitution and other laws of Tuvalu;
 - (b) International human rights treaties and conventions entered into by Tuvalu; and

- (c) customary international law, including the rights of women, children and people with disabilities;⁴
- (38) “**Indigenous**” means —
- (a) person of whose ancestors at least one is known to have been an inhabitant of the country; and
- (b) matters derived from or relating to the culture, traditions, and customary laws of such persons;
- (39) “**judge**” means an officer appointed under Part VII of the Constitution;
- (40) “**judicial officer**” means —
- (a) a judge; and
- (b) a magistrate or justice of a local court; or
- (c) a registrar or deputy registrar of a court or tribunal;
- (41) “**Kaupule**” means the body established under section 5 of the Falekaupule Act;
- (42) “**Leader**” means a person who currently holds any one of the following positions —
- (a) Head of State;
- (b) Head of Government;
- (c) Minister;
- (d) Member of Parliament;
- (e) judicial officer;
- (f) member of a Kaupule;
- (g) civil servant employed to give political or policy advice to a Minister;
- (h) holder of any statutory office established by legislation;
- (i) head of a Ministry or Department of the public service;
- (j) director of a corporation who is appointed by the Head of State, the Cabinet, the Head of Government, a Minister, the Parliament, a Kaupule, or other officers or bodies of the Government;
- (k) traditional leader who has ex officio legal powers, functions or recognition;
- (l) any other public servant, or officer of a Government or quasi-Governmental agency, that legislation may declare to be a Leader for the purposes of this Code;
- (m) the position of acting or temporary replacement for, or of permanent deputy to, a Leader; and
- (n) includes also any person holding office of the Ombudsman established under this Code;
- (43) “**legislation**” means provision(s), where applicable, of —

- (a) the Constitution; or
 - (b) Acts of Parliament;
- (44) “**marriage**” means a marriage solemnised under the Marriage Act and does not include marriage conducted under customary practice;
- (45) “**Minister**” means the person holding or performing the functions of the office of a Minister under section 63 of the Constitution;
- (46) “**month**” means a calendar month;
- (47) “**office**” means a single unique position, or one of two or more identical or similar positions that form a body;
- (48) “**officer**” —
- (a) means a person holding permanently, or acting temporarily in, a position or office that carries the legal power to speak for, act for or otherwise commit the Government or some other organisation, group or body in some or all circumstances; and
 - (b) includes the Ombudsman Commission;
- (49) “**official gazette**” means the publication printed under the authority of the Government by which Government decisions are officially announced;
- (50) “**ombudsman**” means the Ombudsman Commission established under section 37 of this Code;
- (51) “**Parliament**” means the law making body established by section 86 of the Constitution of Tuvalu;
- (52) “**position**” means an office, and vice versa;
- (53) “**presiding member**” of a body means the officer who is ordinarily entitled to chair meetings of that body whenever he or she is present;
- (54) “**private company**” means a proprietary company, whether incorporated inside or outside the nation;
- (55) “**proceeds**” of a criminal offence means any property that a person would not have derived or gained if that person had not committed or encouraged that offence;
- (56) “**property**” means real estate or personal property of every description, whether situated inside or outside the nation, and includes —
- (a) cash and money in a bank, building society or credit union account; and
 - (b) an interest of any kind in property;
- (57) “**public company**” means a company, other than a private company, whether incorporated inside or outside the nation;
- (58) “**public funds**” means all the resources and entitlements owned by, owed to, or held by the Government, or held by the Government or any ministry or

department, agency, or any other person for or on behalf of the Government, ministry, department or agency. It includes money under the control of —

- (a) the nation; or
 - (b) Falekaupule; or
 - (c) a statutory body;
- (59) “**public prosecutor**” means the highest-ranking officer (by whatever name called), other than a Minister who has power to initiate or to veto criminal prosecutions in the name of the nation;
- (60) “**quasi-Governmental agency**” means an organisation (incorporated or not) that is not a Government agency, if either:
- (a) more than half of that organisation’s income in the last completed financial year came out of the public funds of the nation or of a Local Government; or
 - (b) that organisation has accepted any grants or loans out of the public funds of the nation or of a Local Government, unless either —
 - (i) all such grants and loans together represent less than ten per cent (10%) of that organisation’s income in the past financial year; or
 - (ii) every such loan has been repaid in full, including any interest; or
 - (iii) every such grant was given more than twelve (12) years previously; or
 - (c) at least half of the members of that organisation’s governing body are appointed by the Head of State, the Cabinet, the Head of Government, a Minister, by Parliament, a Kaupule, or other officers or bodies of the Government; or
 - (d) the organisation is a company at least half of whose shares are owned (whether directly or through parent companies) by the Government;
- (61) “**recent ex-Leader**” means a person who is not currently, but in the previous three (3) years has been, a Leader;
- (62) “**registrar**” or “**deputy registrar**” of a court or tribunal means an officer who is not a judge but who performs judicial functions delegated to him or her by, and does so under the supervision and control of, one or more judges;
- (63) “**relative**” of a person means a member of that person’s family (whether related by birth, marriage or adoption) where both of them know, believe or could easily ascertain that they are so related;
- (64) “**serious crime**” means any criminal offence (other than an offence that is a breach of this Code but not of any other law) for which the maximum penalty prescribed by law (regardless of the sentence actually imposed or served) is —
- (a) detention for one year or longer; or
 - (b) any form of capital or corporal punishment; or

- (c) disqualification from any office, profession, trade or employment, or loss of any legal right, privilege or freedom, for two years or longer;
- (65) “**share**” means —
 - (a) a share in the share capital of a company; and
 - (b) stock; and
 - (c) a convertible note; or
 - (d) a stock option;
- (66) A “**spouse**” means —
 - (a) a spouse who has married in a public ceremony conducted in accordance with legislation, unless that marriage has been terminated by death, annulment or divorce; or
 - (b) a current de facto spouse;
- (67) “**statutory body**” means a body established directly by legislation;
- (68) “**statutory office**” means an office or position established directly by legislation;
- (69) “**Traditional leader**” means the head of a clan, kaitasi or island community, holding office by authority of customs;
- (68) “**working day**” means a day that is not a Saturday or a Sunday, or a day that is not a Public holiday;
- (69) “**year**” means a period of twelve months beginning 1 January to 31 December.

5 Meaning of “owns or controls property”

In determining whether a person owns or controls property, regard may be had to —

- (a) shareholdings in, debentures over or directorships of a company that has an interest (whether direct or indirect) in the property; and
- (b) a trust that has a relationship with the property; and
- (c) family, domestic or business relationships between —
 - (i) persons having an interest in the property, companies or trusts concerned; and
 - (ii) any other person(s).

6 Meaning of “notice” and “delivered”

A “**notice**” —

- (a) may consist either of one single document, or two or more separate documents in substantially identical terms; and

- (b) is deemed “**delivered**” to a person when it is presented to that person individually, or is left (whether by a postal worker, a private courier, the author, or someone else acting on the author’s behalf) at the postal address of that person’s most recent known place of work or residence.

7 Offences by other persons

A person other than a Leader who —

- (a) takes part in conduct that breaches this Code;
- (b) obtains a benefit (directly or indirectly) from an act or omission that breaches this Code; or
- (c) exercises undue influence over, or in any other way brings pressure to bear upon, a Leader, so as to influence, or attempt to influence, the Leader to breach this Code,

thereby breaches this Code.

8 Resignations and vacancies generally

- (1) In addition to any other conditions specified in relation to particular positions, any position established by this Code falls vacant if and once the person holding it —
 - (a) dies;
 - (b) resigns, by delivering a written notice of resignation (signed and dated by him or her on the day of delivery) to an officer who is authorised to receive such notices;
 - (c) disappears in circumstances where it appears certain or likely that he or she has died or been kidnapped; or
 - (d) becomes, or is found to be, disqualified from being appointed or elected to that position in the first place; or
 - (e) is declared by a court to be too mentally or intellectually ill or impaired to carry out the functions of that position.
 - (f) A notice of resignation takes effect as soon as it is delivered to an officer who is authorised to receive such notice.
 - (g) No officer is authorised —
 - (i) to receive a notice of resignation from himself or herself; or
 - (ii) to reject or disallow a notice of resignation that is otherwise in order.
- (2) If a person is found to have become disqualified in the past from being appointed or elected to his or her position in the first place, then, unless it would cause hardship to innocent third parties, he or she is deemed to have vacated

that position at the time when he or she took office or became disqualified, whichever was later.

- (3) A position is also deemed to fall vacant as soon as it is established.

9 Definition of “unfit to hold office”

- (1) A person or body empowered to suspend or remove a particular officer on the ground that such officer is “**unfit to hold office**” may do so if, and only if, that officer either —
- (a) in the opinion of that person or body, has refused or neglected to carry out the functions of his or her office adequately; or
 - (b) in the opinion of that person or body, lacks the minimum physical or mental ability, or the moral character, needed to carry out the functions of that office adequately;
 - (c) has breached this Code and has done so, in the opinion of that person or body, flagrantly or persistently, or with serious consequences; or
 - (d) has been absent from duty, without reasonable excuse, for fourteen (14) days consecutively or 28 days cumulatively in any year.
- (2) “**Reasonable excuse**” means —
- (a) absence on leave granted in advance by written notice from the Head of State or the Head of Government; or
 - (b) any other unforeseeable or unavoidable circumstances which, in the opinion of that person or body, obstructed that officer from adequately carrying out the functions of his or her office.

10 Standard of proof for suspension or removal

A person who has the power, or who is a member of a body with the power, to suspend or remove a particular officer on the ground that such officer is “unfit to hold office” —

- (a) may sign a notice, vote for a resolution, or approve an order to suspend that Officer if, and only if, in that person’s opinion, there is a *prima facie* case that Officer is unfit to hold office;
- (b) must not specify a time, or approve an extension of time, for a suspension that is longer than the time reasonably necessary, in that person’s opinion, to investigate and discuss the matter adequately;
- (c) must sign a notice, vote for a resolution, or approve an order to remove that officer if, and only if, in that person’s opinion, it is proved on the balance of probabilities that that Officer is unfit to hold office; and
- (d) in either case, must satisfy himself or herself that his or her decision is made impartially and for the public benefit, after (so far as time and

circumstances permit) considering all reliable evidence available and hearing the arguments for and against.

11 Suspension period

- (1) A notice, resolution or order to suspend an officer expires two (2) months after it is delivered, passed or made, unless before that time either —
 - (a) another notice, resolution or order revoking the suspension is delivered, passed or made in the same way as required for a notice, resolution or order to suspend that officer; or
 - (b) another notice, resolution or order extending the suspension is delivered, passed or made in the same way as required for a notice, resolution or order to suspend that officer; or
 - (c) such expiry date (if any) as the notice, resolution or order itself may specify has passed; or
 - (d) the officer concerned has vacated office.
- (2) A suspension may be extended any number of times, as long as the total period does not exceed six (6) months.
- (3) When a suspension expires, the officer concerned is automatically reinstated, unless he or she has vacated office.

12 Ouster clause

No court or tribunal may inquire into or review whether a person's or body's opinion under sections 10 or 11 was honest, accurate, reasonable, or consistent with this Code.

13 Meaning of "interest"

A person "**has an interest in**" a matter if that person, whether alone or with others, and whether in a business or a personal capacity —

- (a) owns (directly or indirectly) property or other assets of any kind related to the matter; or
- (b) has a beneficial interest of any kind in that matter, whether through a trust or otherwise; or
- (c) owns shares in the company or body; or
- (d) will or could gain some financial benefit from decisions relating to that matter, unless such benefit is trivial or is shared reasonably equally with all or most other citizens.

14 Meaning of “culpability”

For the purposes of this Code —

- (a) a Leader who arranges for another person to do some action is treated as if that Leader himself or herself had carried out the action;
- (b) a Leader who permits some action that he or she could have prevented with little or no cost, difficulty or danger to him or herself or any other person, is treated as if that Leader himself or herself had carried out the action;
- (c) an action or omission is only liable to penalty if it is deliberate, reckless or negligent; and
- (d) a person who attempts or seriously threatens some action or omission that did not occur is treated the same as if that action or omission did in fact occur, unless the person voluntarily stops making the threat or attempt and takes every reasonable step to remedy all consequences of making it.

PART III - VALUES, PRINCIPLES AND OBLIGATIONS OF LEADERSHIP

15 Values of Leadership

This Act shall be interpreted in light of the following ethical values which Leaders should attempt to further as office-holders committed to good governance:

- (a) Respect for the law and the system of Government;
- (b) Respect for the people on whose behalf Leaders exercise power;
- (c) Respect for individuals;
- (d) Economy and efficiency in the use of public resources;
- (e) Diligence;
- (f) National security and regional peace;
- (g) Respect for the office each Leader holds;
- (h) Respect for custom and tradition.

16 Principles of Good Leadership

- (1) The Principles of Good Leadership (provided in Schedule 1) should guide Leaders in their conduct generally, and specifically in their interpretation of this Code.
- (2) The Values and Principles of Good Leadership should guide those who draft specific Codes of Conduct for sub-groups of specific Leaders.

- (3) In cases that this Code or a specific Code of Conduct does not explicitly cover, the Principles of Good Leadership should provide guidance to Leaders and to those giving advice and prior clearance.

17 General obligations of Leadership

In recognition of the Values and Principles of Good Leadership, the following ethical obligations are to apply to all Leaders and should provide the basis for any specific Codes of Conduct drafted for any sub-group of Leaders.

Respect for the law and system of Government

- (1) Democratic processes and institutions reflect national and local circumstances and must be upheld.
- (2) Such process and institutions include —
 - (a) That power must be transferred peacefully, through free, fair and open elections;
 - (b) The Rule of Law;
 - (c) The independence of the judiciary;
 - (d) Just and honest Government; and
 - (e) Indigenous rights, cultural values, traditions and customs.
- (3) This means in particular that —
 - (a) Any constitutional protections and institutions that safeguard indigenous rights and interests should be respected and interpreted purposively rather than narrowly;
 - (b) However, such protections, institutions, rights and interests do not override other elements of the law and system of Government, except where the Constitution provides.
- (4) Every Leader therefore —
 - (a) must uphold the laws of Tuvalu;
 - (b) must respect, support and enforce the decisions of courts and other tribunals including the Leadership Tribunal;
 - (c) must respect and carry out lawful instructions and lawfully-established policies;
 - (d) must observe and comply with both the letter and the spirit of the laws, by interpreting every law on the presumption that it was made for the public benefit, and by not taking advantage of mere formalities or technicalities to nullify the obvious intention for which a law was made;
 - (e) must disclose any fraud, corruption and maladministration of which the official becomes aware;

- (f) must not influence, exert pressure on, threaten or abuse persons carrying out their lawful duties;
 - (g) must not misuse any legal immunity or privilege as a cloak or shield for behaviour of a lower ethical standard than that which that Leader or the public would expect of the average citizen.
- (5) This value does not detract from a Leader's duty to act independently of Government if the official's independence is required by legislation or Government policy, or is a customary feature of the official's work.
- (6) The Government have an ethical responsibility to respect and implement resolutions of Parliament.
- Respect for the People on whose behalf Leaders exercise power*
- (7) Public power belongs to the people and is entrusted to Leaders to exercise it on their behalf and for their benefit.
- (a) Leaders who exercise power primarily for their own benefit, or to the detriment of the public benefit, betray the people's trust and take from the people what is rightfully theirs.
 - (b) All Leaders must acknowledge and accept that authority comes from the people, in accordance with the Constitution and through specific democratic electoral procedures.
- (8) Accordingly, the only criterion for the exercise of power is the public benefit —
- (a) The nature of the public benefit, and the means for advancing it, are often disputed; it is the right of the people to choose, through consensus or free, fair and open elections, which version of the public benefit will be preferred and which officials shall implement it.
 - (b) Political Leaders have an ethical responsibility —
 - (i) to formulate responsible and workable policies for exercising the people's power on their behalf;
 - (ii) not to dishonestly campaign for election into public offices;
 - (iii) to seek electoral support from every section of society and never to appeal (whether explicitly or by implication) to racial, ethnic or religious hatreds in order to win political support;
 - (iv) to accept, abide by, and not seek to bypass or protect themselves against, the lawful decision of the people.
 - (c) All Leaders have an ethical responsibility to ensure that political leaders abide by the above ethical responsibilities.
 - (d) Every exercise of public power must be publicly justified on the basis that it protects or promotes the public benefit.
 - (e) Appointed officials have an ethical responsibility to respect and implement (in this order) —
 - (i) the laws enacted by Parliament, and

- (ii) the policies laid down by Cabinet.
 - (f) Appointed officials have an ethical responsibility to remind elected officials of their legal responsibility and, where they are uncertain of ethical issues, to remind them to consult the Ombudsman in advance.
 - (g) Administrative officials are delegated power through legislation to carry out Government policy under the law.
 - (h) Administrative officials must never seek or accept any direction from Political leaders except where specified by law.
 - (i) Judges and other judicial officers are entrusted with judicial power, and independent tenure, so that they will impartially interpret and apply the laws of Tuvalu.
 - (i) Judges should be selected solely for their legal knowledge, their practical wisdom and their independence and impartiality.
 - (ii) Judges should decide every case before them with complete neutrality among the disputants and indifference to their identity, power, or status.
 - (iii) Judges should not be selected, or subjected to any pressure, with the motivation that they will act contrary to these duties.
 - (j) All information collected or held by the Government is the property of the people and should not be concealed unless there are compelling reasons specified by law.
 - (i) In view of the strong temptation for public officials to suppress information for whatever reason other than that specified by law, it is essential that the Ombudsman —
 - (ii) reviews the reasons offered for confidentiality, and
 - (iii) has power to release such information if those reasons are not upheld.
 - (k) Leaders are provided with facilities at public expense in order that public business may be conducted effectively. They must use these facilities in accordance with this purpose.
- (9) In particular, a Leader —
- (a) must be honest in his or her public dealings and should not intentionally mislead the Legislature or the public. Any misconception caused inadvertently must be corrected at the earliest practical opportunity.
 - (b) must never use control of public information to prevent the public knowing of the legal wrongdoing or ethical lapses of Leaders or that they have made false or misleading statements.
 - (c) must always give priority to his or her official duties over his or her private business interests;
 - (d) must perform his or her public duties uninfluenced by any fear that he or she will suffer, or any hope that he or she will benefit, as a result;

- (e) must conduct himself or herself, in both public and private life, in a way that does not place himself or herself in a position where that Leader faces, or could face, a conflict of interest, or in which the fair and impartial exercise of his or her official duties might be compromised;
 - (f) shall ensure that public facilities are used only for public purposes unless another use is specifically authorised in legislation, a public decision of the Cabinet or by a superior taking into account this Code and seeking advice in the case of doubt.
- (10) Having regard to the obligations mentioned in the preceding subsection, a Leader —
- (a) should not improperly use his or her official powers or position, or allow them to be improperly used; and
 - (b) should ensure that any conflict that may arise between the official's personal interests and official duties is resolved in favour of the public interest; and
 - (c) shall not use that Leader's power, position, influence or contacts primarily for his or her own personal enrichment or gratification; and
 - (d) should perform his or her public duties not influenced by fear or favour - that is, by any expectation or fear that he or she may benefit or suffer as a consequence.

Respect for individuals

- (11) Leaders should recognise the following principles and act in conformity with them:
- (a) All individuals are entitled to liberty under the law.
 - (b) All individuals are entitled to equal rights regardless of gender, race, colour, creed or political and religious belief.
 - (c) Individuals have an inalienable right to participate by means of free and democratic political process in framing the society in which he or she lives.
 - (d) Equitable economic, social and cultural development is important and urgently needed to satisfy the basic needs and aspirations of individuals.
- (12) In particular, a Leader shall treat members of the public and other Leaders —
- (a) honestly and fairly; and
 - (b) with proper regard for their rights and obligations.
- (13) A Leader shall act responsively in performing official duties.

Economy and efficiency

- (14) Leaders should recognise the following principles and act in conformity with them:

- (a) Resources are often limited; important and urgently needed economic, social and cultural development takes priority in the allocation of resources.
 - (b) Public resources belong to the people; officials elected or appointed to manage such resources do so only as trustees for the benefit of the public.
- (15) A Leader should, when performing his or her official duties, ensure that public resources are not wasted, abused, or used improperly or extravagantly.

Diligence

- (16) Every Leader shall, when performing his or her official duties —
- (a) exercise proper diligence, care and attention; and
 - (b) seek to achieve high standards of public administration.

National security and regional peace

- (17) Every Leader should recognise the importance of averting the causes of conflict to threats of its security, and of reducing, containing and resolving all conflicts by peaceful means, particularly by customary practices;
- (18) Any challenges to the lawfulness of a Government's existence or actions must be adjudicated by the courts, whose decisions must be respected by all Leaders.
- (19) A Leader shall —
- (a) never give, or obey, an illegal order to use force against another citizen;
 - (b) never seek to substitute his or her own judgement for that of the people expressed in constitutional elections;

Respect for the Office each leader holds

- (20) Leaders holding public office must commit themselves to good governance, that is, to exercising their authority (Leadership) and to interacting in ways that are open, transparent, accountable, participatory, consultative, decisive, and fair and equitable.
- (a) Public offices are created for the benefit of the people their holders are intended to serve.
 - (b) The integrity of those who hold public office strengthens those offices and increases their potential effectiveness.
 - (c) Any abuse of public office damages the office and the capacity of the offender's successors to serve the people.
- (21) In particular, a Leader —
- (a) must not bring the Government, or his or her own office or position, into public disrepute;
 - (b) should not yield to the temptation to damage the office he or she holds in order to retain it; and, accordingly,

- (c) must remember that other people will hold the office in future, and therefore seek to leave the office stronger and more respected than when he or she entered it;
- (d) must not engage in conduct that undermines public confidence in him or her or in the Government generally;
- (e) must avoid giving any appearance of using public office for private purposes;
- (f) should ensure that his or her conduct is in accordance with the Leadership Code, and should consult the Ombudsman if he or she has, or if an independent and fair-minded person might have, any reasonable doubts about the propriety of the course of action.

Respect for custom and tradition

- (22) Every leader must recognise that the stability of Tuvaluan society and the happiness and welfare of the people of Tuvalu, both present and future, depend very largely on the maintenance of Tuvaluan values and custom and tradition. The values and customs include:
- (a) the vitality and sense of identity of island communities and attitudes of cooperation, self-help and unity within and amongst those communities; and
 - (b) the strength and support of the family and family discipline.
- (23) A leader must therefore ensure that the exercise of his or her authority and his or her conduct must:
- (a) always seeks with courtesy agreement and/or search for consensus in accordance with traditional values;
 - (b) enhances mutual respect and cooperation between different kinds of authorities concerned, including the central Government, the traditional authorities, local governments and religious authorities; and
 - (c) be respectful of traditional protocols.

18 Appointments on merit

A Leader must —

- (a) act fairly in appointing or recommending people to offices and positions for which he or she has responsibility, so that people are appointed impartially and on merit; and
- (b) do his or her best to encourage participation in Government by all men and women according to their abilities;
- (c) not use his or her political influence to bring about the appointment or promotion, or to obstruct the suspension or dismissal, of an associate of that Leader; and

- (d) not use his or her political influence to interfere with appointments, dismissals, suspensions or promotions of public servants.

19 Gifts in accordance with custom

A Leader does not breach this Code by giving or accepting of a gift if he or she does so —

- (a) in accordance with Tuvalu custom; and
- (b) in the course of a traditional exchange of gifts; and
- (c) openly; and
- (d) for the benefit of a community or group, rather than an individual; and
- (e) in the case of a gift given to a Leader on behalf of the nation that gift shall be transferred to the Government as soon as practicable without giving offence to the givers.

20 Declaration of gifts received

A gift received by a leader that is not subject to section 19, and valued at \$100 or more, should be declared to the Ombudsman no later than 30 days after the gift was received.

21 Role of Traditional Leaders

It is the intention of this Code that traditional leaders be able to maintain their customary roles in connection with the conduct of Leaders, so long as that does not conflict in any way with the principles of this Code.

22 Loans

- (1) A Leader shall not accept a loan, advantage or other benefit, whether financial or otherwise, from any person, group or organisation.
- (2) This does not include a loan on commercially-profitable terms from a recognised lending institution, if the Leader satisfies the institution's normal business criteria.

23 Undue influence

- (1) A Leader shall not exercise undue influence over, or in any other way bring pressure to bear on —
 - (a) another Leader; or

- (b) any other person holding public office, or employed by a Government agency or quasi-Governmental agency so as to influence, or attempt to influence, the person to act in a way that is —
 - (c) in breach of this Code; or
 - (d) improper; or
 - (e) illegal; or
 - (f) against the requirements of the legislation under which the person was appointed; or
 - (g) contrary in any other way to the requirement of the person's office or position.
- (2) A Leader must not influence or attempt to influence or exert pressure or threaten or abuse or interfere with, persons carrying out statutory functions.

24 Bribery

A Leader must not offer, seek, attempt, invite, or accept a bribe, whether directly or indirectly, and whether for himself or herself or for another person, group or organisation.

25 Multiple office-holding⁵

- (1) A Leader, after becoming such a person, must not hold or engage in another public office or any other office for remuneration or allowance purpose at one time, without a written approval of the Ombudsman.
- (2) The Ombudsman shall not grant an approval under subsection (1) where it is of the opinion that -
 - (a) the remaining in, or engaging in other paid employment may involve the person in significant potential conflict of interest; or
 - (b) the obtaining of the paid employment involves or involved the use by that person of his official position; or
 - (c) other reasons the Ombudsman thinks fit.

26 Misuse of public assets and funds

A Leader must not use any public assets or funds —

- (a) for any purpose other than the purpose(s) for which it was appropriated for; or
- (b) in a manner that is grossly uneconomic or wasteful.

27 Abuse of defamation laws

It is a breach of this Code for a Leader —

- (a) to threaten or institute proceedings for defamation, without pursuing such proceedings to court;
- (b) to use any public funds to fund any proceeding for defamation;
- (c) to bring or continue any proceeding claiming that a Government agency has been defamed; or
- (d) to seek or accept punitive damages for defamation (that is, damages over and above the amount necessary to pay for publication of prominent corrections),

in circumstances where this is likely to deter further public discussion of matters of public benefit, unless the defendant was motivated by malice against that Leader, or by reckless pursuit of profit.

28 Abuse of ex gratia payments

- (1) It is a breach of this Code for a Leader to offer to an associated person, or to accept from an associated person, any ex gratia payment out of public funds in circumstances where it might appear to the average informed voter that the payment would not have been made at all, or that a substantially smaller amount would have been paid, if persons other than that Leader and that associated person had been involved.
- (2) For the purposes of this Code, when a payment is made from public funds to settle a civil action out of court —
 - (a) that payment is deemed to be an ex gratia payment, and
 - (b) the legal merits, and the likelihood of success, of the civil action are relevant when determining how that payment might appear to the average informed voter.

29 Disclosure of conflicts of interest

- (1) A Leader who knows, or who has reason to suspect, that he or she faces or will soon face a possible conflict of interest on some matter, must notify the Ombudsman of it in writing.
- (2) The Ombudsman, as soon as practicable, shall certify that, in its judgment, a particular conflict of interest is not material, if it considers either —
 - (a) that the benefit involved is trivial or is shared reasonably equally with all or most other citizens; or
 - (b) that the associate is not a close relative or is not closely associated with the Leader concerned as to seriously bias the Leader's decisions.

- (3) If the Ombudsman makes a certification under the previous sub-section, the Leader is excused from the provisions of section 31.
- (4) The Ombudsman may revoke a certification in writing, effective from the date when the Leader receives it.
- (5) Where the Ombudsman considers the conflict of interest to be a serious one and is concerned that the Leader may not be contacted in time to ensure the Leader's abstention under section 30, the Ombudsman may notify the Chair of the body discussing the matter. Where the leader is the Chair, the Ombudsman may inform any other member of that body attending the meeting.

30 Abstention where conflict of interest

A Leader who knows, or has reason to suspect, that he or she faces or will soon face a material conflict of interest on some matter must disclose that interest and be excused from the meeting when the matter is discussed (whether the Leader is a member of that body or not).

31 Divesting of interests

- (1) Every Leader must detach himself or herself of any interest that is foreseeably likely to cause regular or frequent conflicts of interest.
- (2) The Leader shall do this either by —
 - (a) selling or giving away the interest; or
 - (b) transferring the interest to a blind trust managed by others as long as the Leader remains in office or retains that interest.
- (3) In either case, the Leader —
 - (a) must divest himself or herself of the interest at the earliest reasonable opportunity, and
 - (b) must not involve himself or herself in the day-to-day management of the interest.

32 Government contracts

- (1) A Leader must not have any direct interest in any contract or agreement with a Government or quasi-Governmental agency, unless —
 - (a) he or she does so as a member of, and in common with the other members of, a registered business consisting of at least ten (10) persons; and
 - (b) the contract or agreement was awarded to that company on a competitive commercial basis and through a transparent, impartial process.

- (2) A Leader is not entitled to void, repudiate or escape a binding contract or agreement merely to avoid breaching this section, if this would cause serious hardship or disadvantage to others.

33 Annual statements of interests

- (1) Every Leader must lodge an annual statement for the preceding year, specifying details of the Leader's assets and liabilities.
- (2) The annual statement for each year must be delivered to the Ombudsman —
 - (a) within two (2) months of the day on which that person became a Leader (whether or not for the first time); or
 - (b) on or before the first day of June next occurring, whichever deadline is later.
- (3) The annual statement must set out details of the assets and liabilities of —
 - (a) the Leader; and
 - (b) any spouse or dependent child of the Leader (if known);
 - (c) any trust of which the Leader, or (if known) any spouse or child of the Leader, is a beneficiary.
- (4) The details to be set out in the annual statement are —
 - (a) all land and other property (except one family home and kaitasi land);
 - (b) all vehicles (except one family vehicle);
 - (c) all shares in companies (public or private);
 - (d) all income;
 - (e) all financial liabilities;
 - (f) all directorships in companies (public or private);
 - (g) all directorships or other offices held in unincorporated bodies;
 - (h) any assets acquired or disposed of during the period covered by the statement;
 - (i) any liabilities acquired or discharged during the period covered by the statement.
- (5) The details must include assets inside and outside Tuvalu.
- (6) However, an annual statement need not include —
 - (a) any liabilities in respect of the family home; or
 - (b) the personal effects of the Leader, or of a spouse or child of the Leader.

34 Advice and Assistance on the preparation of annual statements

- (1) Leaders and persons nominated for Leadership positions have the right to consult the Ombudsman as to which matters should be declared in the annual statement.
 - (a) Such persons may seek clearances for non-disclosure of particular interests that, in the judgement of the Ombudsman, do not have to be disclosed under this Code.
 - (b) Such judgments are covered by the provisions of Part V of the Code and may provide clearance for the non-declaration of an interest until further notice.
- (2) Such consultations shall be confidential unless the Leader acts contrary to the written advice of the Ombudsman.
- (3) Where the Ombudsman advises disclosure, the Leader must either disclose the interest or detach themselves of that interest.
- (4) Where the Ombudsman advises detachment, the Leader must either detach himself or herself of the interest, or resign.
- (5) The Ombudsman may revoke a clearance under the preceding subsection if experience demonstrates that interests of the kind exempted have caused problems in the case of this or another Leader.
 - (a) If the Ombudsman wishes to revoke such a clearance, he or she must notify the Leader in writing and the Leader must amend his or her annual statement within 30 days of receiving such notice.
- (6) The Ombudsman may approach some or all Leaders before they submit their first annual statements with a view to advising and assisting them in filling out their annual returns.
- (7) Where the Ombudsman does not approach all Leaders, he or she must publish the categories of Leaders whom he or she intends to approach and must approach all Leaders in those categories.
- (8) The Ombudsman may require Leaders of a certain category to provide a full disclosure of all interests for his or her advice. The Head of Government may require Ministers, ministerial staffers and/or public servants to make such disclosures.
- (9) Unless required to under the previous subsection, Leaders are not required to accept the assistance of the Ombudsman but failure to do so will be reported by the Ombudsman in any subsequent investigation into alleged breaches by the Leader and may be taken into account by a court of competent jurisdiction as a factor increasing culpability.

35 Names of Leaders published annually

The Ombudsman must ensure that —

- (a) the names and positions of all leaders that have filed their annual statements; and
- (b) the names and positions of all Leaders who have not filed their annual statements by the required deadline,

are published in the official gazette, by 15 June in each year.

36 Failure to file annual statement

A Leader who —

- (a) has not filed an annual statement by the required deadline, or within fourteen (14) days after the Ombudsman has sent him or her a written notice reminding him or her to do so (whichever is later); or
- (b) files a statement knowing that it is false or misleading in any relevant detail,

has breached this Code.

PART IV - MACHINERY PROVISIONS

37 Establishment of the Ombudsman Commission

There is established in Tuvalu the office of the Ombudsman Commission which shall consist of:

- (a) A Chief Ombudsman who shall be the head of the Ombudsman Commission; and
- (b) two other Ombudsman Commissioners –
 - (i) one with responsibilities under this Act (Leadership Code Ombudsman); and
 - (ii) one with responsibilities for discharging the functions under the National Human Rights Institution of Tuvalu Act (Human Rights Ombudsman).⁶

38 Functions of the Ombudsman⁷

- (1) The Ombudsman has the following functions:
 - (a) to enquire into any complaints or allegation of misconduct on the part of any leader;
 - (b) to enquire into any defects in administrative practice appearing from any matter being enquired into;

- (c) to enquire into any case of an alleged or suspected discriminatory practice by a leader;
 - (d) to give prior advice on potential breaches of this Code;
 - (e) to investigate and report on any complaints of any alleged breaches of this Code;
 - (f) the human rights functions set out in part IV of the National Human Rights Institution of Tuvalu Act.
- (2) The Ombudsman Commissioners have primary responsibility for their assigned function under section 37(b), but the Ombudsman Commissioners and Chief Ombudsman together have co-operative responsibility for the effective operation of the office as a whole, and to act together to determine the strategic direction and general nature of activities undertaken in the performance of the Ombudsman Commission function.

39 Powers of the Ombudsman

The Ombudsman must perform the functions of the office, and exercise the powers relating to the office, as provided by this Code and any other Act.

40 Appointment and term of Chief Ombudsman and Ombudsman Commissioners⁸

- (1) The Chief Ombudsman shall be appointed on a full-time basis for 5 years and eligible for re-appointing, by the Head of State, acting in accordance with the advice of a committee comprising of the Prime Minister (Chairperson), the Speaker, the Chief Justice, the chairman of the Public Service Commission and a senior representative of the Tuvaluan Civil Society.
- (2) The Ombudsman Commissioners shall be appointed on permanent basis by the Head of State, acting in accordance with the advice of the Public Service Commission.
- (3) The Chief Ombudsman or Ombudsman Commissioners shall hold office, unless he or she sooner vacates or no longer holds or is removed from the office pursuant to section 43, until his or her successor comes into it, even though the term for which he or she was appointed has expired.

41 Appointments to reflect the diversity of society in Tuvalu

The appointment Committee shall have regard to the desirability of reflecting the diversity of society in Tuvalu.⁹

42 Qualifications of the Chief Ombudsman and Ombudsman Commissioners¹⁰

- (1) The Chief Ombudsman and Ombudsman Commissioners must be persons who:
 - (a) have knowledge, understanding and appreciation of the culture and values of Tuvalu; and
 - (b) have knowledge, understanding and appreciation of human rights; and
 - (c) have high integrity and competence; and
 - (d) are capable of discharging their functions without fear or favour; and
 - (e) are of high standing in the eyes of the community.
- (2) A person is disqualified for appointment as the Chief Ombudsman or Ombudsman Commissioners if they:
 - (a) are a member of Parliament; or
 - (b) hold any other public office; or
 - (c) have been declared bankrupt; or
 - (d) have been sentenced for at least a period of 12 months or fined under any other Act during the last 5 years; or
 - (e) have been convicted by a court for dishonesty.

43 Removal of Chief Ombudsman and Ombudsman Commissioners¹¹

The Chief Ombudsman, or the Ombudsman Commissioners may be removed from office by the Head of State on the recommendation of the Committee established under section 40 if:

- (a) he or she breaches any provision of this Code or the National Human Rights Institution of Tuvalu Act; or
- (b) for inability to perform properly the functions of his/her office or position (whether arising from infirmity of body or mind, or from other cause); or
- (c) the Committee agrees with the recommendation of an independent assessment convened by itself to assess the suitability of the Chief Ombudsman or the Ombudsman Commissioners continuing in his or her office.

44 Appointment of Acting Chief Ombudsman and Ombudsman Commissioners¹²

- (1) The Head of State, acting in accordance with the advice of the Chairperson of the Committee established under section 40 may appoint:

- (a) one of the Ombudsman Commissioners to act as Chief Ombudsman if that position becomes vacant suddenly or the Chief Ombudsman is on duty travel or on leave; or
 - (b) any person to act as an Ombudsman Commissioner when the substantive holder is on leave or unable to perform their duties.
- (2) Where such temporary appointment is to exceed a term of six months, such appointment is subject to section 40.
- (3) An acting Chief Ombudsman or Ombudsman Commissioner shall vacate office immediately if and once the Chief Ombudsman or the Ombudsman Commissioner returns from leave, or the position is filled by a person duly appointed under the preceding subsection.

45 Salary and benefits¹³

- (1) The Chief Ombudsman's salary shall be equivalent to that of a Cabinet Minister's basic salary and exclusive of a Minister's statutory allowances.
- (2) The Chief Ombudsman and Commissioners shall be paid a salary equivalent to that of an Ordinary Member of Parliament's basic salary and exclusive of an Ordinary Member of Parliament's statutory allowance.
- (3) The committee established under section 40 shall determine from time to time the benefits or allowances that are appropriate to be accorded to the Chief Ombudsman and the Ombudsman Commissioners.

46 Decisions of the Ombudsman

The Ombudsman must communicate its decisions by delivering a written notice to the parties affected under this Code and its decision shall be signed, or where it has resolved that a particular investigation shall be carried out its decision shall be signed.

47 Independence of the Ombudsman

The Tuvalu Ombudsman shall comply with directions given or made under this code or the National Human Rights Institution of Tuvalu Act, but otherwise is not subject to direction or control by any other person or authority.

48 *Repealed*¹⁴

49 Repealed^{LS}**PART V - RULINGS, ADVICE AND CLEARANCES****50 Ombudsman may issue rulings**

- (1) The Ombudsman may from time to time, whether on its own initiative or at the request of any resident in Tuvalu, publish rulings to clarify the meaning or effect of any of the values, principles and obligations of Leadership set out in Part III of this Code.
- (2) In particular, such rulings —
 - (a) may clarify the particular ethical standards applicable to holders of a particular office, or by officers and employees in a particular Department, agency or other section of the Government, in light of the circumstances of that office, Department, agency or section; and
 - (b) may clarify which details are required to be included in the annual statement of interests.
- (3) A ruling so published by the Ombudsman is valid if, and only if —
 - (a) it represents a reasonable interpretation of, and is consistent with, this Code; and
 - (b) it is generally applicable and is not limited to any particular person, place or thing.
- (4) If the validity of such a ruling is challenged, whether in the course of civil or criminal proceedings or by way of a question stated by the Ombudsman, a court of competent jurisdiction shall —
 - (a) make a declaration as to whether the ruling is valid, partly or conditionally invalid, or completely invalid; and
 - (b) such a declaration shall be binding on the inferior courts.
- (5) The Ombudsman may also from time to time, at the request of any resident of Tuvalu made in writing, communicate its ruling to the complainant and the office concerned of the fairness or otherwise of the office's decision or action.

51 Advice and clearance by Ombudsman

- (1) The Ombudsman shall give advice, when requested by Leaders, on possible breaches of this Code.
- (2) When giving such advice, the Ombudsman may also include a statement (hereinafter a "clearance") declaring that, in his or her opinion, proposed conduct by a Leader would not breach this Code.

- (3) The Ombudsman may only give a clearance if —
 - (a) the clearance relates to a possible breach of this Code that has not yet occurred or commenced;
 - (b) the clearance relates to the Leader who requests it;
 - (c) the clearance is requested by a written notice that is signed by that Leader and that discloses all relevant information that that Leader does or should know, about the possible breach;
 - (d) the clearance is given in writing;
 - (e) the clearance recites all information given to the Ombudsman by the Leader concerned; and
 - (f) if the Ombudsman considers that the clearance should be conditional upon certain terms) — the clearance specifies all such terms.
- (4) A clearance given by the Ombudsman is valid and conclusive unless —
 - (a) the giving of that clearance was plainly contrary either —
 - (i) to this Code; or
 - (ii) to a valid ruling published by the Ombudsman before the clearance was given; or
 - (b) the Ombudsman gave the clearance only or mainly because of fraud, duress, inducement; or
 - (c) the Ombudsman was prohibited by this Code from giving that person a clearance; or
 - (d) the subsequent conduct of that Leader is substantially contrary to any terms specified in the clearance; or
 - (e) the information recited in the clearance is false or misleading in any serious respect.
- (5) Clearance for the Ombudsman, or to any of their associates can only be given by —
 - (a) an Acting Chief Ombudsman appointed specifically to clear the Chief Ombudsman or his/her associates; or
 - (b) the Chief Ombudsman, together with one commissioner, for the other commissioner and his/her associates.
- (6) The Ombudsman may ask the Leader requesting the clearance for further information for the purpose of giving the clearance.
- (7) The Ombudsman may refuse to give the clearance if he or she reasonably believes that —
 - (a) he or she does not have enough information about the issue to give the clearance; or

- (b) under the circumstances, giving the clearance would not be consistent with the purposes of this Code because it would amount to encouraging a serious risk of breaching this Code.
- (8) A person breaches this Code if he or she makes any statement (whether explicit or implied) —
- (a) falsely claiming that he or she has been given a clearance that he or she has not; or
 - (b) making any false or misleading claim as to the contents or terms of a clearance that he or she has been given.

52 Relevant issues when giving a clearance

When deciding whether to give a Leader a clearance on a potential breach of this Code, or whether to make such clearance subject to specified terms, the Ombudsman —

- (a) must have regard to the following factors:
 - (i) the difficulty of explaining to the average person that giving a clearance would be justified;
 - (ii) whether the extra benefit, if any, for the Leader would be trivial;
 - (iii) whether a refusal to grant a clearance would amount in practice to rewarding other Leaders for dishonesty or manipulation of the rules;
 - (iv) where the clearance requested involves a possible conflict of interest - the difficulty and cost of finding a replacement decision-maker who does not face the same conflict of interest; and
 - (v) the closeness of the relationship between the decision-maker and the associate concerned; and
- (b) may also have regard to any other ethical, integrity or Leadership Codes, legislation or standards that the Ombudsman considers appropriate.

53 Liability under this Code

A person cannot be held to breach of this Code unless the prosecution proves beyond reasonable doubt that the person's conduct was plainly contrary either to —

- (a) to this Code itself; or
- (b) to a valid ruling published by the Ombudsman before the alleged breach occurred or commenced.

54 Liability where clearance given

- (1) It is a sufficient defence to any prosecution for a breach of this Code to show, on the balance of probabilities, that —
 - (a) the Leader requested and was given a valid clearance on the matter from the Ombudsman before the alleged breach occurred or commenced;
 - (b) before clearance was given, the Leader disclosed all relevant information within his or her knowledge to the Ombudsman; and
 - (c) the Leader’s conduct has been fully consistent with all conditions, if any, specified in the clearance.
- (2) However, the preceding subsection does not prevent a person from being charged, prosecuted, tried, convicted, sentenced or punished for conduct that breaches or infringes another law as well as this Code.

55 Revocation of clearance

- (1) The Ombudsman may revoke a clearance previously given to a Leader, if it appears now to the Ombudsman that that clearance —
 - (a) is invalid; or
 - (b) is valid but mistaken.
- (2) If a clearance is revoked, the Leader cannot be held to breach this Code by reason of any conduct he or she engaged in before the clearance was revoked.

56 Confidentiality of advice

- (1) “**Protected information**” means —
 - (a) any information that is known to have been disclosed by a Leader to the Ombudsman for the purpose of requesting advice or a clearance.
- (2) A person must not disclose protected information to any other person unless —
 - (a) the information is disclosed to the Ombudsman or to the Leader who requested the advice or clearance;
 - (b) the Leader who requested the advice or clearance consents to the disclosure (including, but not limited to, consenting for the purpose of showing a defence to a prosecution for a breach of this Code); or
 - (c) the Ombudsman discloses, or consents to the disclosure of, the information.
- (3) The Ombudsman must not disclose, or consent to the disclosure of, any protected information unless the information is disclosed —
 - (a) to the Ombudsman, to the Leadership Tribunal or to a Court, if and because the Ombudsman believes that a Leader has breached, or intends

to breach, this Code without being given a clearance, or contrary to the terms of a clearance given, by the Ombudsman; or

- (b) to the general public, in order to correct any false or misleading claim made by a Leader (whether deliberately or not) as to the existence or terms of a clearance granted or supposedly granted to that Leader.

57 Ombudsman not to be sued

- (1) Neither the Ombudsman nor a person acting under the Ombudsman's direction or authority is liable to an action, suit or proceeding for or in relation to an act done or omitted to be done in good faith in exercise or purported exercise of any power or authority conferred by this Act.
- (2) A reference in this section to the Ombudsman includes a reference to a Deputy Ombudsman or a delegate of the Ombudsman.

57A Protection from Civil actions ¹⁶

Civil proceeding do not lie against a person in respect loss, damage or injury of any kind suffered by another person by reason of any of the following acts done in good faith:

- (a) the making of a complaint to the Ombudsman under this Act;
- (b) the making of a statement to, or the furnishing of a document or information for the purpose of this Act.

57B Protection from subpoena¹⁷

- (1) Documents in the possession of the Ombudsman are not subject to subpoena, discovery or any other process, whether judicial or administrative, which would make such documents available to a third party.
- (2) This provision does not prevent a person from gaining access to documents which that person has provided to the Ombudsman or any other person.

57C Protection from Judicial review¹⁸

No action taken by the Ombudsman or a person acting in the position of Ombudsman, or a delegate or employee of the Ombudsman shall be subject to judicial review.

58 Report to Parliament

- (1) The Ombudsman must, as soon as practicable after the end of each financial year, give the Parliament a written report about the performance of the Ombudsman's functions for the financial year.

- (2) The report must be in general terms and must contain names of leaders who sought the Ombudsman's clearance or advice.

PART VI - INVESTIGATION OF BREACHES

59 Ombudsman to Investigate

The Ombudsman shall investigate any complaint —

- (a) against any breach of this Code; and
- (b) by a resident of Tuvalu against the unfairness of a decision or action made by a public office.

60 Investigation of Complaints

- (1) The conduct of one or more leaders (which may include the Ombudsman) must be investigated and reported upon —
 - (a) if the Ombudsman receives a complaint from a person that that leader has, or that those leaders together have, committed a particular breach of this Code; or
 - (b) if the Ombudsman itself believes that that leader may have, or that those leaders together may have, committed a particular breach of this Code, and brings this to itself as a written complaint.
- (2) If the leader(s) named in the complaint is or include one of the Ombudsman or his/her associates then the complaint shall be farmed out and the investigation must be carried out, and any decisions relating to that complaint must be made by the body who carry out the investigation.
- (3) Otherwise, every complaint must be brought to or immediately referred to the Ombudsman, and the investigation must be carried out, and any decisions relating to that complaint must be made, by the Ombudsman.
- (4) Where the Commissioner of Police is requested by the Ombudsman to investigate a complaint, the Commissioner must —
 - (a) ensure that the police force investigates the complaint; and
 - (b) within 60 days of the complaint being made —
 - (i) forward the results of the investigation to the Director of Public Prosecution with copies to the Ombudsman, if the Commissioner of Police is of the view that there is sufficient evidence to support a prosecution; or
 - (ii) to inform the Ombudsman in writing giving reasons for the decision if she or he finds insufficient evidence to support the complaint.

61 Anonymity

If the person bringing the complaint requests in writing that his or her name not be published, then his or her name must not be disclosed to anyone except —

- (i) to the Ombudsman or the Commissioner of Police; or
- (ii) to the Director of Public Prosecution; or
- (iii) as permitted or required by an order of a court.

62 Right to access material for investigation

- (1) When carrying out any function conferred by this Code, the Ombudsman, the Commissioner of Police, or any other body appointed by the Ombudsman under section 60(2) —
 - (a) must be given full access at all convenient times to all minutes, records, contracts, documents, books, accounts and other material of Government agencies and quasi-Governmental agencies that relates and is relevant to the investigation; and
 - (b) may require any person having possession or control of any such material to deliver such material to the Ombudsman, the Commissioner of Police or the body appointed under section 60(2) at a reasonable time and place specified in the notice; and
 - (c) may take extracts or make copies from any such material, without paying any fee for it.
 - (d) A time and place specified in a notice requiring delivery of material are deemed reasonable if either —
 - (i) the time is at least 5 working days after the notice is delivered, and the place is within the nation; or
 - (ii) the person to whom the notice is addressed consents in writing to a shorter time and/or to a place outside the nation.
- (2) Where a person fails to comply with a notice or any other requirement under this section, the Ombudsman or the Commissioner of Police may request the court to make an order compelling that person to comply.

62A Power to obtain information¹⁹

- (1) Where the Ombudsman has reason to believe that a person is capable of furnishing information relevant to an investigation under this Act, the Ombudsman may, by notice in writing served on the person, require that person, at such place, and within such period or on such date and at such time, as are specified in the notice:

- (a) to furnish to the Ombudsman, by writing signed by that person or, in the case of a body corporate, by an officer of the body corporate, any such information; or
 - (b) to attend before a person specified in the notice to answer questions relevant to the investigation.
- (2) The Ombudsman may administer an oath of affirmation to a person required to attend before him or her and may examine the person on oath or affirmation.
- (3) Where the Attorney General furnishes to the Ombudsman a certificate certifying that the disclosure to the Ombudsman of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure to the Ombudsman of the contents of any documents of records would be contrary to the public interest:
- (a) by reason that it would prejudice the security, defence or international relations of Tuvalu; or
 - (b) by reason that it would involve the disclosure of deliberations or decision of the Cabinet; or
 - (c) by reason that it would involve the disclosure of deliberations or advice of the Cabinet; or
 - (d) by reason that it would:
 - (i) endanger the life of a person; or
 - (ii) create a risk of serious injury to a person,

the Ombudsman is not entitled to require a person to furnish any information concerning the matter, to answer questions concerning the matter or to produce documents or records to the Ombudsman concerning those matters.

- (4) Notwithstanding the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this Act on the ground that the furnishing of the information, the production of the document or record or the answer to the question:
- (a) would contravene the provisions of any other enactment; or
 - (b) might tend to incriminate the person or make the person liable to a penalty; or
 - (c) would disclose one of the following:
 - (i) a legal advice given to a Minister, a Department or other arm of government;
 - (ii) a communication between an officer of a Department and another person or body, being a communication protected against disclosure by legal professional privilege; or
 - (d) would be otherwise contrary to the public interest, but the information, the production of the document or record or the answer to the question is

not admissible in evidence against the person in proceedings other than proceedings for an offence relating to the giving of false evidence to an enquiry constituted under this Act.

- (5) A person is not liable to any penalty under the provisions of any other enactment by reason of his or her furnishing information, producing a document or other record or answering a question when required to do so under this Act.
- (6) The fact that a person is not excused under subsection (4) from furnishing information, producing a document or other record or answering a question does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or other record or answer.
- (7) A person to whom a notice under this section has been served who fails to show himself or herself as required in the notice, shall be guilty in breach of this code.

63 Rejecting trivial complaints

- (1) The Ombudsman or Commissioner of Police must ensure that every complaint it receives is investigated fully, unless it decides not to commence an investigation, or decides to suspend or terminate an investigation already commenced, because it considers that —
 - (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or
 - (b) the complaint has been too long delayed to justify an investigation; or
 - (c) the subject-matter of the complaint is outside the jurisdiction of the Ombudsman or the Commissioner of Police.
- (2) If the Ombudsman or the Commissioner of Police decides not to commence an investigation, or decides to suspend or terminate an investigation already commenced, this does not prevent the Ombudsman or the Commissioner of Police from later investigating that matter, or any related matter(s), on its own initiative.

64 Conduct of proceedings: Evidence

A person or body conducting any investigation, hearing or other proceeding under this Code (except where an order is sought to remove an officer or to disqualify a person from office, or where a criminal prosecution is involved) —

- (a) should have regard to the ordinary rules relating to admissibility of evidence in criminal trials.
- (b) criminal proceedings against a leader or other person for a breach of this Code are to be conducted in the same way as any other criminal proceedings.
- (c) forfeiture proceedings under this Code are to be conducted in the same way as civil proceedings for the recovery of a debt or other property.

65 Completed Report

- (1) The Ombudsman must give a copy of the report to the Commissioner of Police within 5 days if, in his or her opinion, the complaint involves criminal misconduct.
- (2) The Ombudsman must obtain the response of the leader or any other person concerned in his or her report, and that respond incorporated into the report, before giving a copy of the report to the Commissioner of Police.
- (3) No action for defamation shall lie against the Ombudsman or any of its members or employees for making such a report.
- (4) Where the investigation is in response to a complaint against a decision or action of a public office, the Ombudsman shall give a copy of his or her report to the Office concerned and the complainant after taking their views or comments into consideration.

PART VII - PROSECUTION OF BREACHES**66 Prosecution for breaches of the Code²⁰**

- (1) The Ombudsman shall prosecute any leader who breaches this code.
- (2) Prosecution for breaches of this code shall ordinarily be in the Senior Magistrate Court.
- (3) The Ombudsman may, in his or her discretion, elect to prosecute breaches of this code in the High Court.
- (4) In exercising the discretion to prosecute breaches of this Code in the High Court, the Ombudsman shall take into account the seriousness of the alleged breach including, but not limited to:
 - (a) the amount of any monies involved;
 - (b) the position held by the person or persons alleged to have committed the breach;
 - (c) the period over which the breach is alleged to have occurred; and
 - (d) whether the alleged breach was deliberate or otherwise.
- (5) In all cases potentially involving forfeiture of office, the prosecution shall be in the High Court.
- (6) All breaches of the code occurring after the entry into force of this Act shall be dealt with according to this provision.

67 Criminal related allegations

- (1) On a criminal related allegation, the Director of Public Prosecution shall:
 - (a) consider the Commissioner of Police's report; and
 - (b) within 30 days of receiving this report, decides whether to prosecute the leader or his or her associates or refer the report back to the Commissioner of Police for further investigation with copies to the Ombudsman; and
 - (c) after receiving the results of the investigation, decide whether there are sufficient grounds to prosecute the leader or any other person.
- (2) If, after considering the report under subsection 1(a) or after considering the results of the further investigation under subsection 1(c), the Director of Public Prosecution decides that the report is vexatious, frivolous or trivial, the Director of Public Prosecution may determine not to prosecute a leader or his or her associates.
- (3) If the Director of Public Prosecution decides not to prosecute a leader on the grounds provided in subsection (2) above, he must then follow the procedure set out in section 68(3).
- (4) Any officer mentioned under this Part shall not act on the provisions of sections 67 and 68 if the allegation are made against him.

68 Prosecution by the Director of Public Prosecution

- (1) Where there are sufficient grounds or evidence to support the prosecution under this Code or any other Act, the Director of Public Prosecution must prosecute that prima facie case within 3 months of receiving the Commissioner of Police's report.
- (2) The Director of Public Prosecution may decide not to prosecute only on the basis that there is either insufficient grounds or evidence to support a prosecution or that the complaint is vexatious, frivolous or trivial.
- (3) If the Director of Public Prosecution decides not to prosecute a leader or any other person, he must —
 - (a) notify the Ombudsman and the Commissioner of Police of the decision within 7 days of making the decision giving reasons for that decision; or
 - (b) if the Ombudsman is the subject of the complaint, notify the Prime Minister;
 - (c) notify parties concerned; and
 - (d) publish a notice in the Gazette within 14 days of the decision, stating that he has decided not to prosecute and the reasons for such a decision.

69 Forfeiture of gains

- (1) If a leader who has been convicted of a breach of this Code has or is believed to have obtained property or any other benefit from such breach, the court shall order that —
 - (a) all such properties obtained shall be forfeited to the Government of Tuvalu; or
 - (b) he shall pay a pecuniary penalty equivalent to the value of the benefit he obtained; or
 - (c) both, but the total amount ordered to be paid must not exceed the value of the property or benefit obtained.
- (2) This section shall also apply to any other person other than the leader who has obtained property or a benefit in any way from the conduct that constituted the breach.
- (3) The amount ordered to be paid under subsection (1)(b) above shall be paid to the Government of Tuvalu (and may be recovered as a debt due in a court of competent jurisdiction).

70 Restraining order

- (1) If the Director of Public Prosecution is of the opinion that property that may have been obtained from a breach of this Code may be disposed of by a leader or other person, the Director of Public Prosecution may apply to the court for an order restraining the leader or any other person from dealing with the property.
- (2) If the High Court makes such restraining order, the leader or any other person must not sell, dispose of or otherwise deal with the property without the approval of the court.

71 Effect of forfeiture order

- (1) If the High Court makes a forfeiture order against property, the property vests absolutely in the Government of Tuvalu.
- (2) Every registrar and every person who is charged with the responsibility of recording the ownership of property (whether as a matter of public record or otherwise) must take notice of any further order, and must (without needing any authorisation other than this section) take all such steps to record the ownership of such property in the name of the Government of Tuvalu or the Government's nominee upon production of the order.

72 Hardship a factor

Before the court makes an order —

- (a) declaring gains to be forfeited; or
- (b) restraining persons from dealing with property,

it must consider the hardship that making the order would cause to any other person affected by such order who did not breach this Code, especially if such person is not himself or herself a leader.

73 Suspension from office

- (1) The High Court may, if the Ombudsman so requests, make an order suspending from office a leader who is under suspicion for breach of this Code whilst pending investigations.
- (2) A leader who is suspended pursuant to subsection (1) above shall receive 50% of his net salary and shall continue to receive all such allowances, entitlements and privileges.

74 Dismissal from office

- (1) Where a leader is convicted of a breach of this Code, the High Court may, if it regards the breach as serious, make an order dismissing the leader from office.²¹
- (2) In determining whether a breach is serious, the court may have regard to —
 - (a) in the case of a breach involving a financial matter, the amount involved;
 - (b) whether the conduct of the leader was significantly below what would be expected of a leader;
 - (c) where it is possible to discern, the motives of the leader;
 - (d) the extent to which the breach diminished the respect or public confidence in the leader's position; and
 - (e) whether the leader has been previously convicted of a breach of this Code.
- (3) Any further payment or allowance (including accrual of entitlements to a pension or superannuation) to that leader ceases upon dismissal.

75 Disqualification from office

Where the leader is dismissed from office under section 74, the leader is disqualified from standing for election as, or being appointed as, a leader of any kind for a period of four (4) years from the date of the conviction.

76 Punishment under the criminal law

- (1) Where a breach of this Code is also a serious crime or other criminal offence, the offender is liable to be charged, prosecuted, tried, convicted, sentenced and punished for that crime or offence in addition to other orders under this Code.
- (2) A report by the Ombudsman or the Commissioner of Police may accuse a person of a criminal offence —
 - (a) whether or not that person is or has been a leader; and
 - (b) whether or not that person was named in the complaint (if any) that was originally brought to the Ombudsman or the Commissioner of Police.

77 Appeals²²

- (1) A decision of the Senior Magistrate Court under this Act may be appealed to the High Court within 21 days from the date such decision was made.
- (2) A decision of the High Court under this Act may be appealed to the Court of Appeal within 21 days from the date such decision was made.

78 Defence to prosecution

- (1) It is not a defence to a prosecution under this Code that the accused was no longer a leader at the time he or she was investigated, prosecuted, convicted or sentenced.
- (2) To establish jurisdiction, it is sufficient for the prosecution to establish that the accused was a leader at the time the offence was committed.

79 Regulations

- (1) The Minister may make regulations, not inconsistent with this Act, for all matters required or necessary to give effect to this Act.
- (2) The regulations so made by the Minister shall be tabled for information of Members of Parliament and the public during the next immediate session of Parliament.

PART VIII - DOCUMENTS OF OMBUDSMAN²³**80 Documents of Ombudsman**

The Public Records Act does not apply to documents of the Ombudsman other than those documents relating to the normal administrative function of the Ombudsman's office.

81 Retention of Documents by Ombudsman

- (1) The Ombudsman shall retain all documents relating to the Annual Statement of Interest of Leaders for at least seven years.
- (2) The Ombudsman shall retain all requests for advice under Part V for at least seven years.
- (3) The Ombudsman shall retain all documents obtained pursuant to Part VI.
- (4) The Ombudsman shall retain all documents obtained pursuant to Part VII.
- (5) The Ombudsman may place the documents mentioned in subsection (1), (2), (3) and (4) in the Archives Office.

82 Availability of Documents of Ombudsman

- (1) Notwithstanding any other provision of this or any other Act the documents obtained by the Ombudsman pursuant to Parts VI and VII shall be made public after 20 years.
- (2) The Ombudsman may direct that the documents be made public at some earlier time but not less than seven years after:
 - (a) the completion of a report for documents obtained under Part VI; or
 - (b) the completion of a prosecution for documents obtained under Part VII.
- (3) No document or part of a document shall be provided which would reveal the identity of a complainant under Part VI unless that material has:
 - (a) already lawfully been made public; or
 - (b) with the consent of the complainant.
- (4) No document or a part of a document shall be made public for which there is a legitimate claim for public Interest Immunity or legal Professional Privilege.
- (5) In this Part “document” includes a recording by any means.

PART IX – BREACHES OF THE LEADERSHIP CODE ACT [24](#)**83 Breaches**

A person who does not comply with part 3, 5 and 6 commits an offence under this Code and is liable to punishment in accordance with Part 6.

PART X – PUNISHMENT OF LEADERS²⁵

84 Fine or Imprisonment

- (1) A leader who is convicted of a breach of section 17, or 18, or 19, or 20, or 25, is liable to –
 - (a) a fine not exceeding \$200; or
 - (b) imprisonment for a period not exceeding 3 months.
- (2) A leader who is convicted of a breach of section 22, or 23, or 24, or 26, or 27, or 28, is liable to:
 - (a) a fine not exceeding \$1,000; or
 - (b) imprisonment not exceeding 5 years.
- (3) A leader who is convicted of a breach of section 29, or 30, or 31, or 32, is liable to:
 - (a) a fine not exceeding \$500; or
 - (b) imprisonment not exceeding 6 months.
- (4) A leader who is convicted of a breach of section 36, is liable to:
 - (a) a fine of \$100; and
 - (b) if the breach is a continuing one to a fine not exceeding \$20 a day for each day or part day the leader remains in breach.
- (5) A leader who is convicted of a breach of this Code for which no specific penalty is provided is liable to a fine not exceeding \$2,000.

ENDNOTES

¹ Act 1 of 2006

Amended by Act 11 of 2017, commencement 24 November 2017

Cross references to the repealed 1986 Constitution, have been changed to references to the new Constitution, in accord with Schedule 5 clause 2 of the 2023 Constitution

² Amended by Act 11 of 2017

³ Cap. 4.08

⁴ Inserted by Act 11 of 2017

⁵ Substituted by Act 11 of 2017

⁶ Amended by Act 11 of 2017

⁷ Amended by Act 11 of 2017

⁸ Substituted by Act 11 of 2017

⁹ Substituted by Act 11 of 2017

¹⁰ Substituted by Act 11 of 2017

¹¹ Substituted by Act 11 of 2017

¹² Substituted by Act 11 of 2017

¹³ Substituted by Act 11 of 2017

¹⁴ Repealed by Act 11 of 2017

¹⁵ Repealed by Act 11 of 2017

¹⁶ Inserted by Act 11 of 2017

¹⁷ Inserted by Act 11 of 2017

¹⁸ Inserted by Act 11 of 2017

¹⁹ Inserted by Act 11 of 2017

²⁰ Substituted by Act 11 of 2017

²¹ Amended by Act 11 of 2017

²² Substituted by Act 11 of 2017

²³ Inserted by Act 11 of 2017

²⁴ Inserted by Act 11 of 2017

²⁵ Inserted by Act 11 of 2017