



Tuvalu

**NATIONAL HUMAN RIGHTS
INSTITUTION OF TUVALU ACT**

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Tuvalu

NATIONAL HUMAN RIGHTS INSTITUTION OF TUVALU ACT

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Tuvalu

NATIONAL HUMAN RIGHTS INSTITUTION OF TUVALU ACT¹

AN ACT TO (A) EXTEND THE FUNCTIONS OF THE OMBUDSMAN ESTABLISHED UNDER THE LEADERSHIP CODE ACT; AND (B) PROVIDE THE FUNCTIONS, DUTIES AND POWERS RELATING TO HUMAN RIGHTS FOR ENSURING THE DIGNITY, EQUALITY AND WORTH OF INDIVIDUALS AND RECOGNIZING THAT INDIVIDUALS HAVE THE RIGHT TO LIFE, LIBERTY AND FREEDOM FROM DISCRIMINATION; AND (C) PROVIDE FOR RELATED PURPOSES

Commencement [24th November, 2017]

1 Short Title

This Act may be cited as the National Human Rights Institution of Tuvalu Act 2017.

2 Commencement

This Act shall come into operation on the date of publication.

3 Purpose

The purpose of this Act is to recognise, respect, protect and fulfil the dignity of humankind enshrined in the Constitution and international human rights law sustaining a foundation of a fair, just and sustainable and peaceful society and establish a National Human Rights Institution and its Officers for the purposes of administering the provisions of this Act and related laws.

4 Act binds State

This Act binds the Crown.

PART II - INTERPRETATION

5 Interpretation: general definitions

In this Act:

- (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.

“**act**” includes an activity, condition, enactment, policy, practice or requirement;

“**breach**” means any other conduct that contravenes or infringes any of the provisions of this Act;

“**Cabinet**” means the Cabinet for Tuvalu established by section 75 of the Constitution of Tuvalu;

“**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 and/or as defined in the laws of Tuvalu;

“**complaint**” means a complaint lodged under Part IV;

“**complainant**” means a person who lodged a complaint under Part IV whether on the person’s own behalf or on behalf of another person or persons;

“**conduct**” means any proven or alleged action or inaction relating to a person’s legal powers, duties and other functions;

“**corporation**” means a company;

“**court**” means a body created by law 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;

“**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;

“**customary International law**” means international obligations arising from established state practice;

“**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;

“**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;

“**employee**” of a body means a person who works for that body (including an independent contractor), and is not an officer of that body;

“**fine**” means a monetary penalty, including one collected by forfeiture or restitution of property or assets, that is paid into public funds;

“**functions**” of an office means the legal powers and duties of that office:

- (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;

“**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;

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

“**legislation**” means provision(s), where applicable, of: —

- (a) the Constitution; or
- (b) Acts of Parliament;

“**Minister**” means the Minister responsible for Justice or Legal Affairs;

“**month**” means a calendar month;

“**Office**” means the Office of the Ombudsman established by the Leadership Code Act;

“**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;

“**Ombudsman**” means the Ombudsman Commission established under section 37 of the Leadership Code Act;

“**Ombudsman Commissioner**” means the Ombudsman Commissioner responsible for discharging the functions under this Act as defined in s.37(1)(b)(ii) of the Leadership Code Act;

“**Parliament**” means the law making body established by section 83 of the Constitution of Tuvalu;

“**position**” means an office, and vice versa;

“**private company**” means a proprietary company, whether incorporated inside or outside the nation;

“**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 ; and
- (b) an interest of any kind in property;

“**public company**” means a company, as defined in the Companies Act;

“**Staff**” means the Chief Ombudsmen, Ombudsman Commissioners, officers and other staff of the Ombudsman’s Office, and includes other persons engaged to carry out the functions, duties and powers under this Act;

“**National Human Rights Institution of Tuvalu**” means the institution created under this Act;

“**working day**” means a day that is not a Saturday or a Sunday, or a day that is not a Public holiday;

“**year**” means a period of twelve months beginning 1 January to 31 December.

PART III - OMBUDSMAN

6 Continuation of Ombudsman and legal personality

The Office of the Ombudsman Commission established under Part IV of the Leadership Code Act continues in this Act.

7 Creation of the office of the Ombudsman Commissioner (Human Rights)

The office of the Ombudsman Commissioner (Human Rights) is established under Part IV of the Leadership Code. The Ombudsman Commissioner (Human Rights) has primary responsibility to discharge the functions under Part IV of this Act.

8 Relationship between this Act and the Leadership Code Act

- (1) The machinery provisions in Part IV of the Leadership Code Act govern:

- (a) the functions, powers, appointment, term, qualifications, removal and salary of the Ombudsman;
- (b) the appointment of an Acting Chief Ombudsman and Acting Ombudsman Commissioners; and
- (c) the independence of the Ombudsman:

when carrying out their functions, duties and powers under this Act.

- (2) The complaint-handling and inquiry powers in Part V of this Act govern the Ombudsman when carrying out functions and duties under this Act to the exclusion of Part VI of the Leadership Code Act.
- (3) The offences provision in Part V of this Act govern the Ombudsman when carrying out functions and duties under this Act to the exclusion of the offences provisions in the Leadership Code Act.
- (4) The Ombudsman's obligation to annually report on the administration of functions under this Act are governed by the provisions governing reporting by the Ombudsman in s.58 of the Leadership Code Act.

9 Oath of Office

- (1) Before entering upon the exercise of the duties of his or her office the Ombudsman Commissioner (Human Rights) shall take an oath that he or she will faithfully and impartially perform the duties of his or her office, and that he or she will not, except as permitted by this Act, divulge any information received by him or her under this Act.
- (2) The oath shall be administered by the Speaker.

PART IV - HUMAN RIGHTS DUTIES AND FUNCTIONS OF THE OMBUDSMAN

DIVISION 1 – DUTIES AND FUNCTIONS OF THE OMBUDSMAN REGARDING HUMAN RIGHTS

10 Duties

- (1) It is the duty of the Ombudsman to ensure that the functions under this Act are performed:
 - (a) with regard for:
 - (i) the indivisibility and universality of human rights; and
 - (ii) the principle that every person is free and equal in dignity and rights; and

- (b) efficiently and with the greatest possible benefit to the people of Tuvalu and those covered under the Act.
- (2) Nothing in this section imposes a duty on the National Human Rights Institution of Tuvalu that is enforceable by proceedings in a court.

11 Functions

- (1) The primary functions of the National Human Rights Institution of Tuvalu are:
 - (a) to advocate and promote respect for, and an understanding and appreciation of, human rights in Tuvaluan society; and
 - (b) to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in Tuvaluan society.
- (2) The National Human Rights Institution of Tuvalu has, in order to carry out its primary functions under subsection (1), the following functions:
 - (a) to inquire into alleged violations of human rights including by:
 - (i) investigating oral or written complaints of acts or practices, whether governmental or non-governmental, which allegedly violate human rights in Tuvalu and endeavouring to effect a settlement of matters giving rise to the complaint;
 - (ii) inquiring into, and reporting on, widespread, systemic or entrenched acts or practices which allegedly violate human rights in Tuvalu where the Ombudsman is of the opinion that the act or practice is inconsistent with or contrary to any human right;
 - (b) to visit all public and private places of voluntary and involuntary confinement or detention and where the Ombudsman is of the opinion that any act or practice related to confinement or detention is inconsistent with or contrary to any human right, to report to the Minister for Police and Prisons and to Parliament accordingly;
 - (c) where judicial proceedings involve human right issues, and the Ombudsman considers it appropriate to do so, to intervene in proceedings or seek leave to participate as a friend of the court with the leave of the court hearing proceedings and subject to any conditions imposed by the court;
 - (d) to receive and inquire into matters referred by a Court;
 - (e) to appear in or bring proceedings under this Act before a Court;
 - (f) to advocate and promote respect for, and an understanding and acceptance, in the public discussion, of human rights in Tuvalu including through undertaking research and the provision of information and education;
 - (g) to receive and invite representations from members of the public on any matter affecting human rights;

- (h) to consult, engage and cooperate with relevant civil society organisations, including business and labour organisations, ethnic and minority organisations, and academic institutions;
- (i) to consult, engage and cooperate with other national, regional and international human rights bodies;
- (j) to monitor and promote compliance with international and domestic human rights law, on its own initiative and when requested by the Minister, including by:
 - (i) reporting to Parliament:
 - (A) making recommendations as to the desirability of Tuvalu becoming a party to an international human rights instrument;
 - (B) reviewing existing and proposed legislation or reviewing other laws for consistency with international human rights law and recommending additional legislative and other measures to protect human rights;
 - (ii) advising the Government on its reporting obligations under international human rights instruments and on the content of those reports;
 - (iii) providing information to the international human rights system, including the Human Rights Council and its mechanisms and the human rights treaty monitoring bodies;
 - (iv) advocating for Tuvalu to become a party to an International human rights instrument; and
 - (v) to promote the development of new international instruments on human rights.
- (k) to advise on any matter referred to the Ombudsman by the Government, having regards to the available resources and priorities of the Ombudsman;
- (l) to produce and publicise reports on any of the functions in this section;
- (m) to do anything incidental or conducive to the performance of any of the functions in this section or carry out any other human rights function under this Act.

DIVISION 2 - DUTIES AND FUNCTIONS OF THE OMBUDSMAN REGARDING INQUIRIES

12 Ombudsman to investigate complaints

- (1) An oral or written complaint alleging a violation of human rights in Tuvalu, must be brought to or immediately referred to the Ombudsman, and subject to

section 13, the investigation must be carried out, and any decisions relating to that complaint must be made, by the Ombudsman

- (2) When the Ombudsman receives an oral or written complaint alleging a violation of human rights in Tuvalu, the Ombudsman must subject to subsection (3):
 - (a) receive and assess the complaint;
 - (b) determine whether further information is required in relation to a complaint; and
 - (c) facilitate a resolution of any complaint in the most efficient, informal, and cost effective manner possible including, where appropriate, by referring the complaint to mediation or to a more appropriate agency or body.
- (3) The Ombudsman may decide not to inquire into an act or practice, or, if the Ombudsman has commenced to inquire into an act or practice, may decide not to continue to inquire into the act or practice, if:
 - (a) the Ombudsman is satisfied that the act or practice is not inconsistent with or contrary to any human right; or
 - (b) the Ombudsman is satisfied that the person aggrieved by the act or practice does not want the Ombudsman to inquire, or to continue to inquire, into the act or practice; or
 - (c) in a case where a complaint has been made to the Ombudsman in relation to the act or practice:
 - (i) the complaint was made more than 12 months after the act was done or after the last occasion when an act was done pursuant to the practice; or
 - (ii) the Ombudsman is of the opinion that the complaint is frivolous, vexatious, misconceived or lacking in substance; or
 - (iii) where some other remedy has been sought in relation to the subject matter of the complaint—the Ombudsman is of the opinion that the subject matter of the complaint has been adequately dealt with; or
 - (iv) the Ombudsman is of the opinion that some other more appropriate remedy in relation to the subject matter of the complaint is reasonably available to the person aggrieved by the act or practice; or
 - (v) where the subject matter of the complaint has already been dealt with by the Ombudsman or by another statutory authority—the Ombudsman is of the opinion that the subject matter of the complaint has been adequately dealt with; or
 - (vi) the Ombudsman is of the opinion that the subject matter of the complaint could be more effectively or conveniently dealt with by another statutory authority; or

- (vii) the Ombudsman is satisfied that the complaint has been settled or resolved.
- (4) The Ombudsman shall, before the expiration of the period of 12 months commencing when a complaint is made to the Ombudsman in respect of an act or practice, decide whether or not to inquire into the act or practice.
- (5) Where the Ombudsman decides not to inquire into, or not to continue to inquire into, an act or practice in respect of which a complaint was made to the Ombudsman, the Ombudsman shall give notice in writing to the complainant of that decision and of the reasons for that decision.
- (6) If the Ombudsman decides not to commence an investigation, or decides to suspend or terminate an investigation already commenced, this does not prevent the Ombudsman from later investigating that matter, or any related matter(s), on its own initiative.

13 Complaints of human rights violations by the Ombudsman

- (1) If the Ombudsman receives a written complaint alleging a violation of human rights under this Act and a person named in the complaint is the Ombudsman then the investigation into the complaint must be conducted in accordance with the procedure set out in this Act but by the Committee provided for in s.40(1) of the Leadership Code Act.
- (2) If the Chief Ombudsman or an Ombudsman Commissioner are found to have breached a provision of this Act by the Committee then they may be removed from office pursuant to s.43 of the Leadership Code Act.

14 Resolution of complaints

- (1) Where the Ombudsman is unable to resolve, or effect a settlement of the complaint, or determined that it was inappropriate to do so, and is of the opinion that the act or practice is inconsistent with or contrary to any human right, the Ombudsman:
 - (a) shall serve notice in writing on the person setting out its findings and the reasons for those findings;
 - (b) may include in the notice any recommendations by the Ombudsman for preventing a repetition of the act or a continuation of the practice;
 - (c) may include in the notice any recommendation by the Ombudsman for either or both of the following:
 - (i) the payment of compensation to, or in respect of, a person who has suffered loss or damage as a result of the act or practice;
 - (ii) the taking of other action to remedy or reduce loss or damage suffered by a person as a result of the act or practice;

- (d) shall include in any report to the Minister relating to the results of the inquiry particulars of any recommendations that it has made pursuant to paragraph(b) or (c);
 - (e) shall state in that report whether, to the knowledge of the Ombudsman, the person has taken or is taking any action as a result of the findings, and recommendations if any, of the Ombudsman and, if the person has taken or is taking any such action, the nature of that action; and
 - (f) shall serve a copy of that report on the person and, if a complaint was made to the Ombudsman in relation to the act or practice:
 - (i) where the complaint was made by a person affected by the act or practice—shall serve a copy of that report on the complainant; or
 - (ii) if the complaint was made by another person—may serve a copy of that report on the complainant.
- (2) Where:
- (a) a complaint is made to the Ombudsman in relation to an act or practice; and
 - (b) after an inquiry into the act or practice, the Ombudsman finds that:
 - (i) the existence of the act or practice has not been established; or
 - (ii) the act or practice is not inconsistent with or contrary to any human right;
- the Ombudsman shall give a copy of a report setting out its findings, and the reasons for those findings, to the complainant and:
- (c) in a case to which subparagraph(b)(i) applies—to the person alleged to have done the act or engaged in the practice; or
 - (d) in a case to which subparagraph(b)(ii) applies—to the person who did the act or engaged in the practice.
- (3) In setting out findings and reasons in a notice to be served or a report to be given under this section the Ombudsman may exclude any matter if the Ombudsman considers it desirable to do so having regard to the obligations of the Commission.
- (4) Where, under subsection(3), the Ombudsman excludes any matter from a report, the Ombudsman shall prepare a report setting out the excluded matter and its reasons for excluding the matter and shall furnish the report to the Minister responsible for Justice or Legal Affairs.

15 Initiating inquiries

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

16 No inquiry on matters before the courts

The Ombudsman may not inquire into a matter that is the subject of any proceedings pending in any court, unless the court proceedings have been unreasonably delayed and where a court invites the Ombudsman to investigate a matter.

17 Inquiry reports

- (1) If an inquiry finds evidence of human rights violations, the report may include any or all of the following:
 - (a) a determination that a violation of human rights has occurred and should not be repeated or continued;
 - (b) a recommendation that a person should perform reasonable acts to redress the violation of human rights; and
 - (c) a recommendation that victims of violations are entitled to compensation for any loss or damage suffered;
 - (d) a recommendation for action to any person and require the person to report to the Ombudsman on the steps that the person has taken to give effect to the recommendations.
- (2) The Ombudsman shall:
 - (a) make public the report, findings and recommendations; and
 - (b) provide Parliament with a copy of the report, findings and recommendations.
- (3) The Speaker shall cause the report to be tabled in Parliament in its earliest sitting pursuant to its Standing Orders for debate or referral to the relevant parliamentary committee.

18 Parliamentary scrutiny

- (1) The parliamentary committee must scrutinise the report referred to it under section 17 under the Standing Orders and may require the Government or person(s) the subject of findings and/or recommendations to make formal responses to the report.
- (2) The parliamentary committee must table its report, including any formal response, in Parliament for debate at its current or next meeting pursuant to its Standing Orders.

DIVISION 3 – OTHER MATTERS**19 Advisory groups and experts**

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

PART V - GENERAL POWERS**20 Application**

This Part applies to the functions of the Ombudsman under section 11 (1) and (2)(a), (b), (d).

21 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 —

- (a) to the Ombudsman; or
- (b) as permitted or required by an order of a court.

22 Right to access material for investigation and to compel attendance to give evidence

(1) When carrying out any function conferred by this Act, subject to sections. 24, 25, 27 and 28, the Ombudsman—

- (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) shall require any person having possession or control of any such material to deliver such material to the Ombudsman at a reasonable time and place specified in the notice; and
- (c) shall take extracts or make copies from any such material, without paying any fee for it; and

A time and place specified in a notice requiring delivery of material is 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) When carrying out any function conferred by this Act, the Ombudsman Commissioner shall: —
 - (a) summon and examine on oath a person who is able to give information regarding the investigation; and
 - (b) administer oaths.
- (3) The offence of perjury under the Penal Code applies to an examination under subsection (2) of this section.
- (4) Where a person fails to comply with a notice, summons, or any other requirement under this section without reasonable grounds, the Ombudsman may request the court to make an order compelling that person to comply.

23 Conduct of proceedings

- (1) The Ombudsman may:
 - (a) summon and examine on oath a person who is able to give information regarding the complaint, inquiry or matter being investigated;
 - (b) administer oaths.
- (2) The offence of perjury under the Penal Code applies to an examination under subsection (1) of this section.
- (3) In conducting an investigation or inquiry, the Ombudsman:
 - (a) is not bound by strict rules of evidence or procedures; but
 - (b) must, at all times, conform to the principles of natural justice.

24 Secrecy protected

- (1) Subject to subsection (2), a person who is bound by an enactment, to maintain secrecy on a matter is not required:
 - (a) to provide any information to or answer a question put by the Ombudsman on that matter; or
 - (b) to produce a document or thing relating to the matter,if complying with the requirement would breach the enactment.
- (2) The Ombudsman may require the person, with the prior written consent of a complainant, to provide information or answer a question or produce a document or thing relating only to the complainant.
- (3) The person must comply with subsection (2).

25 Privileges and immunities

- (1) A person has the same privileges and immunities in the giving of information, answering of questions, and production of documents and things as witnesses have in a court.
- (2) Except on the trial of a person for perjury on the person's sworn testimony:
 - (a) no statement made or answer given by the person or another person in an inquiry by or proceedings before the Ombudsman is admissible in evidence against a person in a court or at an inquiry or in any other proceedings; and
 - (b) no evidence in any proceedings or inquiry before the Ombudsman must be given against a person.
- (3) No person is liable to prosecution for an offence against an enactment, other than this Act, by reason of the person's compliance with a requirement of the Ombudsman under this Division.

26 Allowances and fees

- (1) A person who is required to attend before the Ombudsman under Part IV is entitled to the witnesses' fees, allowances, and expenses fixed under regulations made under s.40 of this Act.
- (2) For the purpose of subsection (1), the Ombudsman has the powers of a court under the regulations to fix or disallow, in whole or in part, or increase the amounts payable under the regulations.

27 Disclosure of certain matters not to be required

Subject to section 28, any enactment or other law which authorises or requires the withholding of a document, or the refusal to answer any question, on the ground that the disclosure of the document or the answering of the question would be injurious to the public interest does not apply to an investigation, proceedings or inquiry under this Act.

28 National interest matters

- (1) If the Attorney General certifies that the exercise of the powers under Part V:
 - (a) would prejudice the security, defence or International relations of Tuvalu or the investigation or detection of offences; or
 - (b) would involve the disclosure of the deliberations of Cabinet; or
 - (c) would involve the disclosure of proceedings of Cabinet, or of a committee of Cabinet, on any matter of a secret or confidential nature,

the Attorney General must not require the information or answer to be given or the document or thing to be produced for the purposes of Part IV.

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

29 Confidentiality of information

The Ombudsman and staff must maintain confidentiality on matters that come to their knowledge under this Act.

30 Directives for non-disclosure of information

- (1) The Ombudsman may direct the following not to be published or disclosed to another person:
 - (a) the name and identifying information concerning a person appearing before the Ombudsman;
 - (b) any evidence given to the Ombudsman;
 - (c) a document or thing produced to the Ombudsman.
- (2) A person who contravenes a direction given under subsection (1) commits an offence and is liable on conviction to a fine not exceeding \$6,000 or imprisonment of 5 years or both.

31 Delegation of powers

- (1) The Ombudsman Commissioner may delegate to a member of staff any of the Ombudsman's functions, duties and powers under this Act ("delegation") except this power of delegation and the power to make any report under this Act.
- (2) A delegation:
 - (a) may be made to a member of staff or an office or a class of staff or offices;
 - (b) may be made to a case or class of cases;
 - (c) may be subject to conditions;
 - (d) does not prevent the carrying out of delegated functions, duties or powers by the Ombudsman Commissioner ;
 - (e) may be amended, suspended or revoked;
 - (f) continues until revoked;
 - (g) if the Ombudsman Commissioner ceases to hold office, continues as if the delegation were made by the successor.

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

PART VI - OFFENCES

32 Offences of obstruction, non-compliance, false statements, etc.

- (1) A person commits an offence who:
- (a) without lawful justification or excuse, wilfully obstructs, hinders, threatens, intimidates, interferes with or resists the Ombudsman, staff or any other person when carrying out a function, duty or power under this Act; or
 - (b) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or
 - (c) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise of the Ombudsman's powers, duties or functions under this Act.
- (2) A person convicted under subsection (1) is liable:
- (a) for an individual, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six years;
 - (b) for a body corporate, to a fine not exceeding \$60,000 penalty units.

33 Offence of failure to attend or provide documents

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

- (a) for an individual, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six years; and
- (b) for a body corporate, to a fine not exceeding \$60,000.

34 Offence of refusal to give evidence

A person appearing as a witness before the Ombudsman commits an offence who refuses to be sworn or to make an affirmation or to answer a question relevant to the inquiry put to the witness, and is liable on conviction:

- (a) for an individual, to a fine not exceeding \$12,000 or to imprisonment for a term not exceeding three years; and
- (b) for a body corporate, to a fine not exceeding \$60,000.

35 Perjury

A witness before the Ombudsman who knowingly gives evidence that is false commits the offence of perjury under the Penal Code.

36 Contempt

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

- (a) for an individual, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six years; and
- (b) for a body corporate, to a fine not exceeding \$60,000.

37 Victimisation

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

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

(2) A person convicted under subsection (1) is liable:

- (a) for an individual, to a fine not exceeding \$25,000 or to imprisonment for a term not exceeding six (6) months; and
- (b) for a body corporate, to a fine not exceeding \$60,000.

PART VII - MISCELLANEOUS**38 Funding**

(1) The funds of the National Human Rights Institution of Tuvalu comprise the following:

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

- (2) Parliament must ensure that the National Human Rights Institution of Tuvalu has sufficient funds for the purposes of this Act.
- (3) The National Human Rights Institution of Tuvalu may seek and receive additional funding from any person or organisation in Tuvalu or elsewhere, without compromising the independence of the Ombudsman or the objectives set out in section 3 of this Act.
- (4) The National Human Rights Institution of Tuvalu has the sole responsibility for the allocation of its funds.
- (5) The Public Finance Act and the Audit Act apply to the funds of the Ombudsman Commissioner (Human Rights).

39 Immunity for Ombudsman

The Ombudsman or any other officer provided under this Act is not personally liable to any civil or criminal proceeding or under any administrative process for an act or omission done or made by him or her while acting in good faith, and without malice or negligence, for the purposes of this Act.

40 Exemption from fees

The Ombudsman is exempted from paying fees for any court or tribunal proceedings.

41 Non-derogation

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

42 Regulations

- (1) The Minister responsible 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.

43 Repeals, savings and transitional

- (1) At the commencement of this Act:
 - (a) the current Chief Ombudsman continues in office under this Act for a term of five (5) years from the commencement of this Act unless he resigns or is removed from office pursuant to s. 43 Leadership Code Act 2006 before the expiry of five (5) years;
 - (b) the current staff of the Ombudsman continue as if they were appointed under this Act as staff of the Office, subject to their current terms of employment;
 - (c) any pending complaint or investigation continues as if it were made under this Act;
 - (d) any property of the Government under the control or possession of the Ombudsman continues to be under the control or possession of the Ombudsman, subject to any agreement between the Government and the Ombudsman as to the ownership and transfer of the property.
- (2) Regulations may be made under section 42 within two (2) years of commencement of this Act to deal with any other transitional or saving matter.

ENDNOTES

¹ Act 12 of 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