



Tuvalu

**LEADERSHIP CODE (AMENDMENT) ACT
2017**



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Tuvalu

LEADERSHIP CODE (AMENDMENT) ACT 2017

AN ACT TO THE PROVISIONS OF THE LEADERSHIP CODE TO REFLECT THE NATIONAL HUMAN RIGHTS INSTITUTION ACT OF TUVALU AND TO PROVIDE EXPRESS POWERS TO THE OMBUDSMAN FOR THE PERFORMANCE OF HIS DUTY

Commencement [24th November, 2017]

1 Short Title

This Act may be cited as the Leadership Code (Amendment) Act 2017.

2 Amendment to section 3

Section 3 is amended by inserting;

“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”

as an additional statement to the purpose.

3 Amendment to section 4

Section 4 is amended by inserting this new definition;

“**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 Amendment to section 25

Section 25 is repealed in its entirety and substituted with the following;

“25.

- (1) A Leader who 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.”

5 Amendment to section 37

Section 37 (b) is amended with the insertion thereto two new sub-paragraphs to become as of paragraph (b);

- (i) one with responsibilities under this Act (Leadership Code Ombudsman); and
- (ii) one with responsibilities for discharging the functions under the Tuvalu National Human Rights Institution Act (Human Rights Ombudsman).

6 Amendment to section 38

Section 38 is amended by insertion of subsections (1) and (2) with additional paragraphs as follows;

38(1) “(f) the human rights functions set out in part IV of the Tuvalu National Human Rights Institution Act.”

- (2) The Ombudsman Commissioners have primary responsibility for their assigned function under section 37(1)(b) but the Ombudsman Commissioners and Chief Ombudsman together have cooperative 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.

7 Amendment to section 40

Section 40 is repealed in its entirety and substituted with new section as follows;

40 Appointment and term of Chief Ombudsman and Ombudsman Commissioners

- (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 Chief Justice, the chairman of the Public Service Commission and a senior representative of the Tuvaluan Civil Society.
- (2) The Ombudsman Commissioner 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 soon 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.

8 Amendment to section 41

Section 41 is repealed in its entirety as substituted with the new section as follows;

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 Amendment to section 42

Section 42 is repealed in its entirety and substituted with the new section as follows;

42 Qualifications of the Chief Ombudsman and Ombudsman Commissioners

- (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.

10 Amendment to section 43

Section 43 is repealed and substituted with the new section;

43 Removal of Chief Ombudsman and Ombudsman Commissioners

- (1) 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 Tuvalu National Human Rights Institution 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);
 - (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.

11 Amendment to section 44

Section 44 is repealed in its entirety and substituted with the new section as follows;

44 Appointment of Acting Chief Ombudsman and Ombudsman Commissioners

- (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 Commissioner 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 or 41 whichever the case may be.
- (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.

12 Amendment to section 45

Section 45 is repealed in its entirety and substituted with as follows;

45 Salary and benefits

- (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 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.

13 Amendment to section 47

Section 47 is repealed in its entirety and substituted with as follows;

47 Independence of the Ombudsman

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

14 Amendment to section 48 and 49

Section 48 and 49 are repealed in their entirety.

15 Amendment to section 57

Section 57 is repealed in its entirety as substituted as follows;

57 Ombudsman not to be used

- (1) Neither the Ombudsman nor a person acting under his or her 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

- (1) 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 subpoena

- (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 review

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.

16 Amendment to section 62

Insert new section after section 62 and to become section 62A

62A Power to obtain information

- (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 and 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 and fails to show himself or herself as required in the notice, shall be guilty in breach of this code.

(17) Amendment to section 66

Section 66 is repealed in its entirety and substituted with a new section 66 as follows;

66 Prosecution for breaches of the code.

- (1) The ombudsman shall prosecute any leader who breaches this code.
- (2) Prosecution for breaches of this code shall ordinary 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.

18 Amendment to section 74

Section 74 is amended by deleting the word “Leadership Tribunal” as it appears and insert “High Court”.

19 Amendment to section 77

Section 77 is repealed in its entirety and substituted with a new section as follows;

77 Appeals

- (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.

20 Amendments to Part VIII

Part VIII is inserted as a whole new part with subsequent additional provisions:

PART VIII DOCUMENTS OF OMBUDSMAN**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 the Part “document” includes a recording by any means.

21 Amendment – Part IX

The code is amended by inserting a new Part IX as follows:

PART IX – BREACHES OF THE LEADERSHIP CODE ACT

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 LEAFERS

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 \$200.00, 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 \$1000; or
 - (b) Imprisonment not exceeding 5 years imprisonment.
- (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 \$500.00; 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 \$100.00; and
 - (b) if the breach is a continuing one to a fine not exceeding \$20.00 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 \$2,000.00.