



Tonga

PUBLIC AUDIT (AMENDMENT) ACT 2012

Act No. 10 of 2012



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AN ACT TO AMEND THE PUBLIC AUDIT ACT

I assent,
GEORGE TUPOU VI,
17th September 2012.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1 Short Title

- (1) This Act may be cited as the Public Audit (Amendment) Act 2012.
- (2) In this Act, the Public Audit Act is referred to as the Principal Act.

2 Section 2 - Interpretation amended

Section 2 of the Principal Act is amended by -

- (1) deleting the words “**Head of Department**” and its definition and replacing it with the following:

“**Chief Executive Officer**” means any person in charge of the administration of a Ministry, who is employed under a fixed contract of employment under the Public Service Act, as amended.”
- (2) adding the following definitions where appropriate:

“**performance audit**” means to determine whether a Government agency, Ministry or public enterprise is achieving its performance

outcomes and managing its resources in an effective, economical and efficient manner;

“**review**” in relation to the Auditor General's duties under section 10, shall include the inspection and examination of all audit work papers of a private auditor or private firm of auditors in relation to any audit conducted by such private auditor or private firm of auditors on the financial statements of any Ministry, government agency or public enterprise;

- (3) in the definition of “**Ministry**” by inserting after the figure “2002” a coma and words, “, as amended”;

3 Section 5 - Appointment and Qualification amended:

Subsection 5(1) of the Principal Act is repealed and replaced with the following:

- “5 (1) The Auditor General shall be appointed after due process of recruitment by the Speaker with the consent of the Legislative Assembly”.

4 Section 7 - Salary amended

The section heading and the provision of Section 7 of the Principal Act are repealed and replaced with the following:

“7 Remuneration and other monetary benefits

The remuneration and other monetary benefits of the Auditor General shall be fixed by a Remuneration Commission set up by law.”.

5 Section 8 - Employees of the Auditor General amended

The provisions of subsections 8(1) and (2) of the Principal Act are repealed and replaced with the following new provisions -

- “(1) The Auditor General may employ such persons as are necessary for the performance of the Auditor General's functions, duties and powers under such terms and conditions of employment that the Auditor General may determine.
- (2) The provisions of section 34(2), as amended shall apply to the employees of the Auditor General who hold office immediately before the commencement of this Act”.

6 New Section 10A added - Performance Auditing

The Principal Act is amended by adding a new Section 10A at the end of subsection 10(4) as follows:

“10A Performance Audit

- (1) The Auditor-General may at any time examine—
 - (a) the extent to which a Government agency, Ministry or public enterprise is carrying out its activities effectively and efficiently;
 - (b) any act or omission in order to determine whether waste has resulted or may have resulted or may result; and
 - (c) any act or omission showing or appearing to show a lack of probity or financial prudence by a Government agency, Ministry or public enterprise or one or more of its members, office holders, and employees.
- (2) Any audit under this section may relate to one or more Government agencies, Ministries or public enterprises.
- (3) Subsection (I) (a) does not apply to the National Reserve Bank of Tonga and any financial institution as defined in section 2 of the National Reserve Bank Act, as amended.
- (4) If subsection (I)(a) applies and there is an applicable Government policy to which the Government agent, Ministry or public enterprise is required to adhere, the examination is to be limited to the extent to which activities are being carried out effectively and efficiently in a manner consistent with that policy.
- (5) The Auditor General shall provide the Government agency, Ministry or public enterprise with a copy of the draft performance audit report for comment which may be included in full or in summarized form in the final report. “

7 Section 19- Establishment amended

Section 19 of the Principal Act is amended -

- (a) by deleting 19(2) and replacing it with the following:
 - “(2) The Committee shall comprise three competent and independent audit advisers one of whom shall be a qualified law practitioner, and the Auditor General “
- (b) in subsection 19 (3).by deleting the words “Prime Minister” and replacing them with the word “Speaker”.

8 Section 20- Procedures of the Committee amended

Section 20 of the Principal Act is amended by-

- (a) deleting subsection 20(1) and replacing it with the following -

- “(1) The Chairman shall be appointed by the Speaker from the amongst the members of the Committee except the Auditor General who is not eligible to be Chairman at any time “.
- (b) inserting new subsection (7) as follows -
- “(7) Where there is a draw in the number of votes cast, the decision of the Chairman shall be final. “

9 New section 21A added - Costs of the Committee

The Principal Act is amended by adding a new section 21A at the end of subsection 21(2) as follows:

“21A Costs of the Committee

The cost of the Audit Advisory Committee shall be charged to a separate appropriation under the Auditor General's Vote.”

10 Section 23 - Reporting amended

Subsection 23(1) of the Principal Act is amended by replacing the words “Head of Department” with “Chief Executive Officer”.

11 Section 25 - Communication amended

Subsection 25(1) of the Principal Act is amended by deleting the words “Head of Department” and replacing them with “Chief Executive Officer”.

12 Section 32- Fee amended

Subsection 32(1) of the Principal Act is amended by deleting the words “Minister of Finance” and replacing them with “Speaker”.

13 Section 33 - External Audit amended

Subsection 33(1) of the Principal Act is amended by deleting the words “Prime Minister after consultation with the Speaker and” and replacing them with the words “Speaker after consultation with”.

14 Section 34 - Transition amended

Subsection 34(2) of the Principal Act is amended by deleting the words “same terms and conditions of employment, in accordance with the provisions of this Act” and replacing them with the words “terms and conditions of employment no less favourable than those applied to them immediately before the commencement of this Act as determined by the Auditor General”.

15 Section 35 - Regulations amended

Section 35 of the Principal Act is amended by -

- (a) re-numbering that provision as subsection (1);
- (b) deleting the word “Cabinet” and replacing them with the words “the Speaker “; and
- (c) adding new subsections (2) and (3) as follows:
 - “(2) Every Regulation made under this section shall have full force and remain effective until rescinded by the originating authority or the Legislative Assembly;
 - (3) Such Regulations shall be placed before that session of the Legislative Assembly immediately succeeding the promulgation of the Regulations for confirmation, amendment or rescission.”

Passed in the Legislative Assembly this 3rd day of September 2012.