



Tonga

LEGAL AID BILL 2012



LEGAL AID BILL 2012

Arrangement of Sections

Section

PART 1 - PRELIMINARY	5
1 Short title.....	5
2 Interpretation.....	5
PART 2 - THE BOARD	6
3 Establishment of Board.....	6
4 Board and Legal Aid Office a component of Good Governance Commission	6
5 Members of Board	6
6 Board Members' terms	6
7 Meetings of Board	7
8 Delegation.....	7
9 Funding of Board.....	7
PART 3 – ROLE OF THE BOARD	8
10 Role of Legal Aid Board.....	8
11 Regulations	8
12 Director of Legal Aid Office.....	9
13 Officers	9
14 Directions of Government.....	9
15 Protection of Board, powers and procedures	9
16 Annual report, audit	10
EXPLANATORY NOTES	11



LEGAL AID BILL 2012

A BILL FOR AN ACT TO ESTABLISH A LEGAL AID OFFICE TO ADMINISTER A SCHEME TO PROVIDE LEGAL ASSISTANCE IN CIVIL, DOMESTIC AND CRIMINAL MATTERS IN WORTHWHILE CASES TO NEEDY PEOPLE IN TONGA AND FOR RELATED MATTERS

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

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Legal Aid Bill 2012.

2 Interpretation

“**Board**” means the Legal Aid Board established by this Act;

“**Commission**” means the Good Governance Commission established by the Good Governance Commission Act 2012;

“**Director**” means the Director of the Legal Aid Office appointed under this Act;

“**Minister**” means the Minister of Justice.

PART 2 - THE BOARD

3 Establishment of Board

- (1) There is hereby established a Board, to be called the Legal Aid Board.
- (2) The Board is deemed to be a body corporate with the capacity, rights and duties of a body corporate.

4 Board and Legal Aid Office a component of Good Governance Commission

- (1) The Board and the Legal Aid Office established by the Board under section 10(1) shall be organised, supervised and administered as a component of the Good Governance Commission as provided in the Good Governance Commission Act 2012.
- (2) The Board shall comply with directions made under section 11(1)(b) of the Good Governance Commission Act 2012.
- (3) This Act shall be read subject to the Good Governance Commission Act 2012.

5 Members of Board

The Board shall consist of five members as follows —

- (a) the Attorney General, who shall be Chairman;
- (b) the Director of the Legal Aid Office;
- (c) a person nominated by the Cabinet;
- (d) a person nominated by the President of the Tonga Law Society;
- (e) a person nominated by the Good Governance Commission.

6 Board Members' terms

- (1) The members referred to in section 5(a) and (b) and *ex officio* nominees in full time government employment shall be appointed by the Minister to be members of the Board for the term they hold that other office; and all other Board members nominated under section 5(c), (d) and (e) shall be appointed by the Minister for a period not exceeding three years on such terms as is specified in their instruments of appointment.
- (2) Members of the Board shall (subject to section 12(2)) be employed on a part-time basis; *ex officio* members in full time government employment shall not

be paid any additional remuneration but other members shall be paid such remuneration or allowances, or both, as may be determined by the Minister.

- (3) The Minister may, with the consent of Cabinet and the nominator, remove a member of the Board appointed under section 5(1)(c), (d) or (e) from office and appoint a successor, likewise nominated, for the balance of the term.
- (4) A member who is not appointed *ex officio* may resign by giving the Minister one month's written notice.
- (5) The Chairman, Board members and any person appointed under section 13(2) shall not be subject to the Public Service Act 2002 in respect of such appointment.

7 Meetings of Board

- (1) The quorum of the Board shall be 3 members, one of whom shall be the Chairman who shall in the event of equality have a casting vote.
- (2) If the Chairman is unable to attend a meeting of the Board the other members in attendance may convene the meeting and appoint an acting Chairman (if none can be agreed, then the Director) who shall have all the powers of the Chairman for the purposes of that meeting.
- (3) The Chairman shall —
 - (a) call and attend regular meetings of the Board;
 - (b) preside over the meetings of the Board; and
 - (c) co-opt any person from the public or specialist to any meeting of the Board if he considers it advisable.
- (4) Subject to this Act, the Board shall determine its own procedure and be properly constituted notwithstanding that there is a vacancy in the membership at any time.

8 Delegation

The Board may delegate to a member, officer or committee of the Board the exercise of any of its functions but such delegation shall not prevent the exercise of the function by the Board.

9 Funding of Board

- (1) The funds available to the Board shall be —
 - (a) moneys allocated by the Legislative Assembly for that purpose;
 - (b) moneys that are donated to the Board by external aid or benevolent organizations;
 - (c) funds raised by the Board from fees levied or costs recovered.

- (2) Moneys may be paid to the Board generally or for any specific purpose, including for the provision of legal aid to certain persons or classes of persons.

PART 3 – ROLE OF THE BOARD

10 Role of Legal Aid Board

- (1) The role of the Legal Aid Board is to establish and direct the Legal Aid Office to provide legal assistance to people in Tonga who cannot otherwise afford the cost of such assistance.
- (2) The Board shall, in accordance with this Act, decide how best to use available resources to provide legal assistance to the most worthy people and cases.
- (3) Legal assistance may be provided –
 - (a) directly by the Director, Public Defender or other officers of the Legal Aid Office through advice, counselling, representation or otherwise;
 - (b) by the payment by the Board to Law Practitioners or others who are providing the legal aid to an applicant or legally aided person;
 - (c) by referring applicants to other relevant offices; and
 - (d) by such other means as the Board decides.

11 Regulations

The Board may make regulations for the purpose of better regulating the provision of legal aid under this Act, including –

- (a) procedures for the submission of legal aid applications, applicant financial statements, and required particulars of the applicant's case; and other related matters;
- (b) certification by legal practitioners of the merits of a cause and other matters;
- (c) prescribing quotas, proportions or other criteria whereby legal aid is to be made available to applicants with different categories of legal problems;
- (d) specifying fees that are to be paid by certain applicants to contribute towards the cost of legal assistance to them;
- (e) prescribing forms for the use of applicants and others who are involved with legal assistance being provided or considered by the Board;
- (f) prescribing guidelines in relation to applications and other dealings with the Legal Aid Office;
- (g) specifying the duties and functions of the Public Defender.

12 Director of Legal Aid Office

- (1) The Board shall appoint a Director of the Legal Aid Office who shall be responsible to the Board for the efficient and effective operation of the Legal Aid Office.
- (2) The Director may be part time or full time and he may hold another office or offices inside or outside the government of Tonga.
- (3) The Director shall be employed under a contract of employment with the Board and, subject to section 11 of the Good Governance Act 2012, such contract shall specify the agreed terms of employment and remuneration.
- (4) For the purposes of the appointment of the Director, the Board shall be comprised of the Chairman and other members then appointed.

13 Officers

- (1) The Board may, within the budget available to it, and subject to section 11 of the Good Governance Act 2012, appoint such officers, full-time or part-time, as may be required for the proper conduct of the business of the Legal Aid Office.
- (2) The Board may appoint a Law Practitioner to the office of Public Defender, with such duties and functions as they specify in the contract of employment or in regulations; and the Director appointed under section 12 may also be concurrently appointed to be the Public Defender.
- (3) The Board may arrange for the secondment of officers from within the public service of Tonga and may accept volunteers or secondees from external organisations.

14 Directions of Government

- (1) The Board shall, in the exercise of its functions, give effect to the policy of the Government in relation to those functions, so far as it relates to the expenditure of moneys made available by the Government, and as communicated to it in writing by the Minister of Justice.

Provided that such policy shall not be at variance with this Act.

- (2) A copy of every communication made under this section to the Board in any year shall be included in the annual report of the Board for that year laid before the Legislative Assembly under section 16.

15 Protection of Board, powers and procedures

- (1) Any persons appointed under this Act shall not be liable to any suit for any action done by them in carrying out their functions under this Act.

Explanatory Notes

(This note does not form part of the Bill, and is intended only to explain its purpose and effect.)

Section 2 defines certain of the terms used in the Act.

Section 3 establishes the Legal Aid Board as a separate entity.

Section 4 says that the Legal Aid Office is to be organised, supervised and administered as a component of the Good Governance Commission – it will operate semi-independently under the Legal Aid Act, but it will benefit from being better organised and can share resources (to save costs) with other related agencies.

Section 5 sets out who are the members of the Board – the Attorney General, The Director of the Legal Aid Office, one person nominated each by the Cabinet, the Law Society and the Good Governance Commission.

Section 6 says that members who hold office by virtue of them holding an existing office remain as Board members whilst they hold their primary office. Other members are appointed by (and removable by) the Minister for 3 years and they can resign giving 1 month's notice.

Section 6(2) also says all Board members are part time except for the Director; existing office-holders do not receive any extra salary but other members are to be paid amounts agreed by the Minister

Section 6(5) says that Commissioners are not public servants in this role.

Section 7 deals with meetings of the Board, which determines its own procedure.

Section 8 allows delegations of certain functions by the Board – to for example a committee that may e.g. decide individual applications for legal aid – this is important because it may be inappropriate for some Board members (e.g. the Attorney General) deciding legal aid applications relating to cases in which the Crown is involved.

Section 9 deals with funding of the Board – by government through the annual budget, or by donations or fees levied.

Section 10 sets out the role of the Legal Aid Board, which is primarily to establish and direct the Legal Aid Office to provide legal assistance to people in Tonga who cannot otherwise afford the cost of such assistance. This can be done in a number of ways including by employing lawyers or paying private lawyers etc. who provide the service to the public.

Section 11 says there is to be a full time or part time Director employed under contract to run the Legal Aid Office, and **Section 12** says there may be other employees, including officers from within the public service, and even volunteers and secondments.

Section 13 allows the Government to give policy directions to the Board on how government funds may be spent; and any such directions are to be made public and reported in the annual report to the Legislative Assembly.

Section 14 gives the usual personal protections to people acting under the Act and subsection (2) says that individual decisions to grant or refuse legal aid are not to be challenged in court – this would make the system unworkable but the Supreme Court may in any event have jurisdiction to review the system if there is excess of authority or illegality involved.

Section 15 deals with annual reports to Cabinet and Legislative Assembly, and with auditing of the Office.

Neil Adsett
Attorney General