

Community Law Centre Act 2015

SAMOA

COMMUNITY LAW CENTRE ACT 2015

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2015, No. 24

AN ACT to establish the Community Law Centre and to provide for its functions, duties and powers and for related purposes.

[Assent date: 9 July 2015]

[Commencement date: 1 February 2016]

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BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

**PART 1
PRELIMINARY**

1. Short title and commencement - (1) This Act may be cited as the Community Law Centre Act 2015.

(2) This Act commences on a date nominated by the Minister.

2. Interpretation - (1) In this Act, unless the context otherwise requires:

“Centre” means the Community Law Centre established by section 3;

“child” means a person aged 18 years or under;

“lawyer” has the meaning in the Lawyers and Legal Practice Act 2014;

“legal aid” means legal aid provided by the Ministry;

“legal assistance” means assistance in a form of legal aid granted under this Act, and includes legal aid transferred to the Centre under section 21;

“legal service” means any legal advice or service provided by the Centre, other than legal assistance;

“Minister” means the Minister for Justice and Courts Administration;

“Ministry” means the Ministry of Justice and Courts Administration;

“Oversight Committee” or “Committee” means the Oversight Committee of the Centre established under section 5.

(2) The power to make appointment under this Act, includes the power to confirm, suspend or terminate the appointment, to promote, to take disciplinary proceedings or to impose terms and conditions of appointment.

**PART 2
COMMUNITY LAW CENTRE
AND OVERSIGHT COMMITTEE**

3. Establishment of the Centre - The Community Law Centre is established as a body corporate with perpetual succession and a common seal and may:

(a) own and dispose of property and other assets; and

(b) enter into contracts; and

(c) sue and be sued; and

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(d) do any other thing that a body corporate may do under law.

4. Functions of the Centre - (1) Subject to section 6, the function of the Centre is to provide legal assistance to persons entitled to it in a Court, for criminal matters.

(2) The Public Defender is responsible for carrying out the functions of the Centre under this Act, subject to the duties and powers of the Committee.

5 Oversight Committee - (1) The Oversight Committee of the Centre is established comprising the following members:

- (a) the Chief Executive Officer of the Ministry, as Chairperson;
- (b) a member nominated by the Minister;
- (c) the President of the Samoa Law Society or a nominee of the President from the Council of the Samoa Law Society.

(2) The Oversight Committee may:

- (a) advise the Public Defender on matters relating to the operation and administration of the Centre; and
- (b) approve any fees that the Centre may charge in offering legal assistance; and
- (c) carry out other functions, duties and powers given to it as prescribed under this Act or any other enactment.

(3) The following rules apply to any meeting of the Oversight Committee:

- (a) the Committee must meet at least 3 times in a year to be convened by the Chairperson;
- (b) the Chairperson determines the date, time and venue of the meeting;
- (c) 2 members constitute a quorum;
- (d) the Chairperson or, in his or her absence, a member designated by the Chairperson, presides;
- (e) any question before a meeting is to be determined by a majority of valid votes of the members present;
- (f) the presiding member has an ordinary vote and a casting vote;
- (g) a member who has an interest in any matter before the Committee -
 - (i) must declare the interest to the Committee; and
 - (ii) must not take part in the deliberation and voting on that matter without affecting the quorum of the Committee.

(4) The Committee may require the Public Defender to attend its meeting but has no right to vote.

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(5) Subject to this section, the Committee may regulate its own procedures.

PART 3
LEGAL ASSISTANCE

6. Legal assistance - (1) The Centre may, through the Public Defender, provide legal assistance under section 4 to a person entitled to it.

(2) *Repealed by Community Law Centre Amendment Act 2019, No.3*

(3) Legal assistance provided under this Act does not affect legal aid provided by the Ministry.

(4) This Act does not limit the power of a court to order legal assistance to be undertaken by the Centre or legal aid by the Ministry.

7. Prescribed requirements for legal assistance - (1) Without limiting section 9(2), the Public Defender may grant legal assistance pursuant to prescribed requirements.

(2) The prescribed requirements must comply with the following:

- (a) cover persons who cannot financially afford lawyers to represent them in courts; and
- (b) for criminal cases, to take into account the number of previous convictions of applicants for legal assistance; and
- (c) deal with matters relating to ascertaining the financial affordability of a lawyer by the applicant; and
- (d) deal with any other prescribed requirements for legal assistance.

8. Application for legal assistance - A person entitled to legal assistance must apply in the approved form to the Public Defender.

9. Granting of legal assistance - (1) When determining an application for legal assistance, the Public Defender may grant (with or without condition) or refuse to grant, legal assistance.

(2) A court may, in special circumstances, order that legal assistance be provided to a person by the Centre.

10. Revocation of legal assistance - The Public Defender may revoke legal assistance if:

- (a) the person granted legal assistance has instructed a private lawyer to act on the person's behalf; or
- (b) the matter no longer requires any legal assistance; or

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- (c) the person had provided false or misleading information in the application for legal assistance; or
- (d) the Public Defender or a lawyer of the Centre has a conflict of interest in a matter that is handled by the Centre; or
- (e) it is in the interests of justice to revoke the legal assistance; or
- (f) the person withdraws in writing from legal assistance.

**PART 4
ADMINISTRATION AND FINANCE**

11. Public Defender - (1) The Head of State, acting on the advice of Cabinet, may appoint a lawyer with at least 7 years of litigation experience or legal practice, as the Public Defender.

(2) Before advising the Head of State to appoint the Public Defender under subsection (1), Cabinet shall instruct the Oversight Committee:

- (a) to interview applicants for the Public Defender; and
 - (b) to prepare a report and recommendation to Cabinet on the suitable candidate.
- (3) The Public Defender:
- (a) holds office for a term not exceeding 3 years, subject to the terms set out in the contract of employment; and
 - (b) is eligible for reappointment; and
 - (c) on expiry of the term, continues in office until reappointed or a successor is appointed.

(4) If for any reason the Public Defender is unable to carry out his or her functions under this Act, the most senior Assistant Public Defender must act as the Public Defender, or otherwise an Assistant Public Defender designated in writing by the Public Defender.

12. Resignation, termination and vacancy - (1) The Public Defender may resign by delivering to the Head of State a signed notice of resignation.

(2) The Head of State acting on the advice of Cabinet may terminate the appointment of the Public Defender by reason of misbehaviour or physical or mental incapacity.

(3) The appointment of the Public Defender is automatically terminated if the Public Defender:

- (a) is convicted of an offence in Samoa or another country carrying a minimum penalty of 20 penalty units or 2 years imprisonment; or
- (b) has been subject to an order under the Mental Health Act 2007.

(4) The office of the Public Defender is vacant if:

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- (a) the Public Defender resigns, retires or dies; or
- (b) the appointment is terminated.

(5) In this section, “misbehaviour” means neglecting performance of the duty, function or power of the office or misconducting himself or herself in office without reasonable excuse or justification.

13. Duties and powers of Public Defender - The Public Defender:

- (a) is the administrative head of the Centre; and
- (b) is primarily responsible for conducting all legal matters of the Centre; and
- (c) may provide or approve any legal advice that the Centre provides; and
- (d) may provide legal assistance for persons entitled to it in a Court; and
- (e) reports to the Minister through the Committee; and
- (f) may carry out other functions under this Act or any other enactment; and
- (g) may carry out other prescribed functions for the purpose of this Act.

14. Independence - Except as provided in this Act, the Public Defender, Assistant Public Defenders (including any other persons authorised by the Public Defender) and legal officers are not subject to the direction of any other person (except any direction of a court) when dealing with or conducting legal assistance cases under this Act.

15. Staff - (1) The staff of the Centre comprise the following:

- (a) the Public Defender; and
- (b) 1 or more Assistant Public Defenders; and
- (c) legal officers; and
- (d) the Office Manager and other officers and employees of the Centre.

(2) A lawyer with at least 5 years litigation experience is eligible to be appointed as an Assistant Public Defender.

(3) The staff mentioned in subsection (1)(b) to (d) are to be appointed by the Public Defender.

(4) The functions of the Office Manager are:

- (a) to assist the Public Defender in the daily operation and administration of the Centre; and
- (b) to ensure that proper records of the Centre are kept; and
- (c) to manage the finances of the Centre; and
- (d) to carry out any other functions assigned by the Public Defender.

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16. Volunteers - (1) The Public Defender may approve a lawyer or any other person who wishes to undertake part-time or full-time volunteer work, such as duty solicitor, at the Centre to undertake volunteer work for the Centre.

(2) A volunteer is subject to any directions given by the Public Defender.

(3) The Committee may, after consulting the Samoa Law Society, set the number of hours that a member of the Society (“member”) may undertake in any month or year for legal service at the Centre, as a condition for rewarding of legal aid to the member.

(4) A member who does not undertake any voluntary legal services at the Centre pursuant to subsection (3) is not entitled to be given any legal aid work.

17. Values, principles and code of conduct - Part 4 of the Public Service Act 2004 applies to the staff of the Centre.

18. Funds and audit-(1) The funds for the Centre comprise:

- (a) money appropriated by Parliament for the purpose of this Act; and
- (b) any donations, contribution or other money or fund received by or on behalf of the Centre; and
- (c) fees collected by the Centre under this Act.

(2) The Controller and Auditor General must audit the funds of the Centre annually and prepare an Auditor’s report on it.

19. Corporate plan and annual reports - (1) The Public Defender must ensure that:

- (a) a corporate plan of the Centre is prepared pursuant to the same requirements applying to Ministries; and
- (b) an annual report is prepared setting out the operations of the Centre in the previous year.

(2) The annual report and Auditor’s report must be sent to the Minister who must as soon as practicable present it to the Legislative Assembly under its Standing Orders.

**PART 5
MISCELLANEOUS**

20. Exemption from personal liability - A member of the Committee or staff or any other person who carries out any function, duty or power under this Act is not personally liable for any act done in good faith in carrying out the function, duty or power.

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21. Power of Minister - (1) The Minister, acting on the advice of the Chief Executive Officer, may transfer legal aid funds handled by the Ministry to be allocated and administered by the Centre.

(2) When the transfer is made under subsection (1), references to legal assistance under this Act are to be read as references to legal aid.

22. Confidentiality - (1) Any information given to the Centre under this Act for the purposes of legal advice or legal assistance must remain with the Centre and has the same privilege as solicitor and client privileged information.

(2) A person who discloses any information under subsection (1) without the permission of the Public Defender commits an offence and is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 3 months, or both.

23. Guidelines and manuals - (1) The Public Defender may:

- (a) issue guidelines on all matters relating to employment under this Act; and
- (b) manuals for legal services and legal assistance provided under this Act.

(2) If there are no guidelines issued under subsection (1)(a), the procedures for employment in the Public Service are to be adopted.

24 Regulations and forms - (1) The Head of State, acting on the advice of Cabinet, may make regulations to give effect to the provisions or for the purposes of this Act, and in particular to make the following regulations:

- (a) matters relating to employment of the Public Defender;
- (b) duties and powers of the Oversight Committee;
- (c) procedures and requirements required under this Act.

(2) The Public Defender may approve forms for the purpose of this Act.

REVISION NOTES 2015 – 2020/3 March 2021

This is the official version of this Act as at 3 March 2021.

This Act has been revised by the Legislative Drafting Division in 2015 – 2020/3 March 2021 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement date
- (b) Numbers in words deleted;
- (c) Roman numerals changed to decimal numbers.

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By the *Community Law Centre Amendment Act 2019, No.3, commenced on 15 February 2021.*

Section 4	amended by substituting subsection (1)
Section 6	amended by repealing subsection (2)
Section 11	amended by substituting references of “Advocate” with “Defender”
General Amendments	All references in the principal Act to “Advocate” or “Advocates” substituted with “Defender” or “Defenders” respectively.



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*This Act is administered
by the Ministry of Justice and Courts Administration.*