



Tonga

TONGA POLICE REGULATIONS 2019



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Arrangement of Sections

Regulation

PART 1 - PRELIMINARY		7
1	Short title.....	7
2	Definitions	7
PART 2 - POLICE EMPLOYMENT COMMITTEE		8
DIVISION 1- CONVENING MEETINGS		8
3	Definition	8
4	Chair	8
5	Frequency of meetings.....	8
6	Agenda	8
DIVISION 2 - CONDUCT OF MEETINGS		8
7	Quorum	8
8	Substitute members.....	8
9	Voting	9
10	Disclosure of interest by a member other than the Chair.....	9
11	Disclosure of interest by the Chair.....	9
12	Committee may seek information.....	10
13	Time limit to make decision	11
14	Minutes	11
15	Confidentiality	11
16	Other procedures may be decided by the Committee	12
DIVISION 3 - MISCELLANEOUS		12
17	Annual report	12
18	Secretariat	12

PART 3 - MINOR BREACHES OF DISCIPLINE 12

19	Definitions.....	12
20	Procedure in minor breaches of discipline	16
21	Commissioner may propose new breaches of discipline.....	16
22	Penalties for minor breaches	16
23	Record of minor breaches	16
24	Conflict of interest.....	16
25	Appeal	16
26	Powers of next level supervisor	16

PART 4 - FORENSIC SAMPLES 17

27	Definitions.....	17
28	Taking a forensic sample.....	18
29	General rules for carrying out forensic procedures	18
30	Use of force in carrying out forensic procedures	18
31	Admissibility of forensic sample.....	19
32	Samples	19
33	Refusing to allow forensic procedure.....	19
34	Approved testing facility.....	19

PART 5 - SURVEILLANCE REGULATIONS 20

35	Definitions.....	20
36	Application for a surveillance warrant	21
37	Purpose of surveillance warrants.....	21
38	Remote Application.....	22
39	Renewal of warrant	22
40	Emergency permit	22
41	Minor defect in connection with surveillance warrant or permit	23
42	Prohibition on disclosure of private communications etc. lawfully intercepted or recorded.....	23
43	Prohibition on unauthorized use of surveillance device.....	24
44	Assistance to police executing a warrant or a permit	24
45	Commissioner of Police to give information to Legislative Assembly.....	24

PART 6- POLICE CLEARANCE 24

46	Definitions.....	24
47	Police Commissioner is to authorize police officers to issue Police Record Certificate	25
48	Person is entitled for Police Record Certificate	25
49	Application procedures	25
50	Validity of Police Record Certificate	25
51	Processing time and emergency fees.....	26
52	Police officer may take fingerprints	26
53	Application Forms.....	26

PART 7 - TONGA POLICE BAND	26
54	Definitions 26
55	The Commissioner may grant approval for Band to perform 26
PART 8- INSIGNIA AND UNIFORM	27
56	Definitions 27
57	Issue of uniform and equipment 27
58	Insignia of rank 27
59	Responsibility for loss or damage 27
PART 9 - TONGA POLICE MEDALS AND COMMENDATIONS	28
60	Definitions 28
DIVISION 1- MEDAL OF VALOUR, AWARDS AND COMMENDATIONS 28	
61	Definitions 28
62	Style 28
63	Description 28
64	Ribbon 28
65	Eligibility 28
66	Registration 29
67	Order of Wear 29
68	Miniatures 29
69	Patterns 29
70	Powers of conferral, cancellation, forfeiture, and restoration 29
71	Delegated powers 29
72	Tonga Police Medal of Valour 29
DIVISION 2 TONGA POLICE CIVILIAN LONG SERVICE AWARD 30	
73	Definition 30
74	Style 30
75	Description 30
76	Eligibility 30
77	Qualifying Service 31
78	Reckoning of Service 31
79	Registration 31
80	Patterns 31
81	Powers of conferral, cancellation, forfeiture, and restoration 31
82	Delegated powers 31
83	Tonga Police Civilian Long Service Award 31
84	Certificates of commendation and appreciation 32
85	Foreign Orders, Decorations and Medals 32
86	Tonga Police Badge 32
87	Tonga Police Flag 32
88	Repeal and Savings 32

SCHEDULE I	33
POLICE CLEARANCE FEES	33
SCHEDULE II	34
INSIGNIA OF RANK	34
SCHEDULE III	35
TONGA POLICE MEDAL OF VALOUR	35
SCHEDULE IV	36
TONGA POLICE CIVILIAN LONG SERVICE AWARD	36
SCHEDULE V	37
TONGA POLICE BADGE	37
SCHEDULE VI	38
TONGA POLICE FLAG	38
SCHEDULE VII	39
FORM 1	39
FORM 2	41
FORM 3	43
FORM 4	44
SCHEDULE VIII	46
FORM	46



TONGA POLICE REGULATIONS 2019

TONGA POLICE ACT 2010

IN EXERCISE of the powers conferred by section 180 of the Tonga Police Act 2010, the Minister with the consent of the Cabinet, makes the following Regulations —

PART 1 - PRELIMINARY

1 Short title

These Regulations may be cited as the Tonga Police Regulations 2019.

2 Definitions

- (1) In these Regulations, unless the context otherwise requires—
“**Act**” means the Tonga Police Act 2010; and
“**Minister**” means the Minister of Police.
- (2) An expression used in these Regulations has the same meaning as in the Act.

PART 2 - POLICE EMPLOYMENT COMMITTEE

DIVISION 1- CONVENING MEETINGS

3 Definition

For the purposes of this Part of the Regulations –

“**Committee**” means the Police Employment Committee.

4 Chair

- (1) The Commissioner is the Chair of the Committee.
- (2) At a meeting of the Committee, the Chair shall preside.

5 Frequency of meetings

The Committee -

- (a) shall meet once each month; and
- (b) may meet at such other times as the Chair considers appropriate.

6 Agenda

- (1) The Chair shall ensure that an agenda is prepared for each meeting.
- (2) The agenda shall contain an item relating to the adoption of the minutes of the previous meeting.

DIVISION 2 - CONDUCT OF MEETINGS

7 Quorum

At a meeting of the Committee, a quorum is constituted by 3 members.

8 Substitute members

- (1) The Senior Executive Committee shall appoint at least 2 senior police officers as substitute members.
- (2) The Minister shall approve each appointment before it is made.
- (3) A substitute member shall, at the request of the Chair, attend a meeting of the Committee, if -
 - (a) a member other than the Chair is unable to attend a meeting; or

- (b) a person acting in the position of the member is unable to attend the meeting.
- (4) If a substitute member attends a meeting, the substitute member may perform the functions and exercise the powers of the member for whom the substitute member is a substitute.

9 Voting

A question is decided at a meeting if 2 members vote in favour of the question.

10 Disclosure of interest by a member other than the Chair

- (1) If a member has a material interest in a matter that is being considered, or is about to be considered, by the Committee, the member shall disclose the nature of the interest to the other members.
- (2) The disclosure shall also be made to the Senior Executive Committee in writing and as soon as possible after the relevant facts have come to the member's knowledge.
- (3) Where a member has a material interest in a matter, consideration of that matter is to be adjourned until-
 - (a) the Minister has determined under sub-regulation (4) that the member may take part in deliberations on the matter; or
 - (b) the Minister has determined under sub-regulation (4) that the member may not take part in deliberations on the matter and a substitute member has been requested in accordance with sub regulation (6) to attend Committee meetings at which the matter will be considered.
- (4) The Minister shall, on the recommendation of the Senior Executive Committee, determine, in writing, whether the member may take part in deliberations on the matter.
- (5) The Minister shall provide reasons, in writing, for making a determination under sub-regulation (4).
- (6) If the Minister has determined under sub regulation (4) that the member may not take part in deliberations on the matter, the Chair shall request a substitute member in accordance with regulation 8 to attend Committee meetings at which the matter will be considered for that matter only.

11 Disclosure of interest by the Chair

- (1) If the Chair has a material interest in a matter that is being considered, or is about to be considered, by the Committee, the Chair shall disclose the nature of the interest to the other members.

- (2) The disclosure shall also be made to the Senior Executive Committee in writing and as soon as possible after the relevant facts have come to the Chair's knowledge.
- (3) Where the Chair has a material interest in a matter, consideration of that matter is to be adjourned until-
 - (a) the Minister has determined under sub- regulation (4) that the Chair may take part in deliberations on the matter; or
 - (b) the Minister has determined under sub- regulation (4) that the Chair may not take part in deliberations on the matter and a substitute member has been requested in accordance with sub regulation (6) to attend Committee meetings at which the matter will be considered.
- (4) The Minister shall, on the recommendation of the Senior Executive Committee, determine, in writing, whether the Chair may take part in deliberations on the matter.
- (5) The Minister shall provide reasons, in writing, for making a determination under sub-regulation (4).
- (6) If the Minister has determined under sub- regulation (4) that the Chair may not take part in deliberations on the matter, the Commissioner may delegate his function as chair for deliberations on the matter, in accordance with section 15 of the Act.
- (7) The Chair shall not take part in making a recommendation to the Minister under sub-regulation (4).

12 Committee may seek information

- (1) The Committee may inform itself on any matter before it in such manner as the Committee thinks fit.
- (2) The Committee is not bound to observe the rules of evidence.
- (3) The Committee may-
 - (a) require a member to produce anything that is relevant to a matter before the Committee; or
 - (b) require a member -
 - (i) to attend before the Committee at a specified time and place; and
 - (ii) answer a question that is relevant to a matter before the Committee.
- (4) A member commits serious breach of discipline if -
 - (a) the member is required to comply with sub-regulation (3);
 - (b) the member fails to do so; and
 - (c) the member does not have a lawful excuse for failing to do so.

- (5) A member who commits serious breach of discipline under sub-regulation (4) shall be liable to pay a fine not exceeding \$1,000.

13 Time limit to make decision

The Committee shall decide on a matter no more than 28 days after-

- (a) where the matter relates to an alleged breach of discipline under Division 4, Subdivision 2 of the Act, the Committee receives the internal investigator's report under section 58(1) of the Act;
- (b) where the matter relates to the proposed termination of an officer's appointment under section 74(2) of the Act, the day that the period ends for the member to make a written response to the Committee's notice under section 75 of the Act; and
- (c) for all other matters considered by the Committee--
 - (i) where there is a closing date for applications, the day that applications close; or
 - (ii) where there is no closing date for applications, the day that the Committee receives the application.

14 Minutes

- (1) The Chair shall ensure that minutes of each meeting are kept.
- (2) The Chair shall ensure that the minutes of a meeting are made available to the members at least 24 hours before the next meeting.

15 Confidentiality

- (1) A member commits an offence if -
 - (a) the member discloses or uses information;
 - (b) the member obtained the information in the course of performing functions as a member; and
 - (c) the use or disclosure is not necessary for the performance of those functions.
- (2) A member does not commit an offence under sub-regulation (1) if the person —
 - (a) uses or discloses the confidential information to a court in the course of criminal proceedings or proceedings under the Act;
 - (b) uses or discloses the confidential information in accordance with the written authority of the Minister or the person to whom the information relates; or
 - (c) uses or discloses the information in accordance with the requirements of law.

- (3) A person who commits an offence under sub -regulation (1) shall be liable upon conviction to a fine not exceeding \$2,000, or imprisonment for 2 years.

16 Other procedures may be decided by the Committee

If a matter in relation to the convening or conduct of the meetings of the Committee is not covered by these regulations, the Committee may determine the matter as the Committee considers appropriate.

DIVISION 3 - MISCELLANEOUS

17 Annual report

- (1) The Chair shall ensure that a written report about the operation of the Committee is prepared for the Tonga Police Annual Report.
- (2) The report shall include the following -
 - (a) the number of matters brought before the Committee;
 - (b) the number of decisions made;
 - (c) the number of decisions in relation to which the Committee did not comply with regulation 13.
- (3) The report shall be provided to the Minister as part of the Tonga Police Annual Report.
- (4) The Minister shall ensure that the report is laid before the Legislative Assembly during that session or at the commencement of the next session.

18 Secretariat

The Tonga Police shall provide secretariat services to the Committee to enable the Committee to convene and conduct meetings in an efficient and effective manner.

PART 3 - MINOR BREACHES OF DISCIPLINE

19 Definitions

For the purposes of this Part-

“**Minor breaches of discipline**” includes –

- (a) absence from duty without leave or good cause;
- (b) idles or sleeps while on duty;

- (c) fails to carry out any specified duty imposed on the member by the Act or any other Act or Regulation;
- (d) does not promptly and diligently attend to and carry out anything which it is the member's duty to attend to or carry out;
- (e) is insubordinate or disrespectful either by word, or act or demeanour to any member senior in rank;
- (f) lateness to duty;
- (g) while on duty is improperly dressed or untidy;
- (h) when wearing uniform, is dirty or untidy in his person, clothing or equipment;
- (i) behaves towards another member in an oppressive, offensive, abusive or insulting manner;
- (j) makes a false or frivolous complaint against another member;
- (k) fails to exercise proper supervision over a member under his control;
- (l) negligently omits to record or report a fact or incident which is required of the member through Commissioners orders, Police manual, these regulations, the Act or any other Act or regulations;
- (m) fails to report promptly to his supervisor the loss of or damage to any property of the Tonga Police issued to or used by the member or entrusted to his care;
- (n) without lawful authority uses Government property for a purpose other than the execution of the member's duty;
- (o) aids or abets an offence against these regulations or connives or knowingly aids, abets, counsels or procures the commission of an offence against the regulations;
- (p) acts in any manner, whether by word, conduct or omission which is prejudicial to good order and discipline in the Tonga Police, or which reflects discredit on the Tonga Police.

“Next level supervisor” means-

- (a) A member who the supervisor reports to or who commands the district, station or functional area that the supervisor and member work in;
- (b) A member who is lawfully acting as an officer in charge of the district, station or functional area that the supervisor and member work in;

“Serious breaches of discipline” includes -

- (a) wilfully disobeys or disregards an order made by the Commissioner, or any lawful order given to the member orally or in writing by a member, or whose directions the member is required to obey, or fails to carry out such order as soon as practicable;

- (b) While on duty, consumes, or receives from any person, any intoxicating liquor or drug, or is incapable of performing his duties by reason of intoxication caused by alcohol or drugs;
- (c) While on duty acts offensively towards members of the public;
- (d) Unreasonably exercises his powers of arrest or search;
- (e) Uses unnecessary force on any person in the execution of his duty;
- (f) assaults another member of the Tonga Police;
- (g) negligently makes a false or misleading or inaccurate written statement, or entry in any official document or record;
- (h) Knowingly makes a false or misleading or inaccurate oral statement relating to his duties;
- (i) Without good and sufficient cause, destroys or mutilates an official book, document or record, or alters, erases or adds to an entry therein;
- (j) finds a subordinate unfit to perform his duty on his shift by reason of being under the influence of alcohol or a drug and having authority to suspend such subordinate from duty for that shift or the remainder of that shift fails to do so;
- (k) withholds a complaint or report against a member of the Tonga Police;
- (l) by carelessness or neglect, permits a prisoner to escape;
- (m) knowingly fails to disclose the existence of any relevant evidence which is within his knowledge in relation to a criminal charge;
- (n) without the consent of the Commissioner or a member authorized by the Commissioner, communicates to a person information which has come to his knowledge as a member of the Tonga Police, or shows or gives to a person a book or document prepared, used or kept in connection with the work of the Tonga Police, or publicly comments on administrative action by, or the administration of the Tonga Police, provided that this offence shall not apply to information given in good faith by a member in accordance with Standing or Special Orders; or
- (o) obtains or attempts to obtain the influence or interest of a person for the purpose of advantage or transfer or promotion in the Tonga Police; or
- (p) in his capacity as a member of the Tonga Police and without the consent of the Commissioner, directly or indirectly solicits or receives a fee, gratuity, present, benefit, subscription, reward or testimonial;
- (q) through an intentional act or omission places himself under an obligation to a person which is likely to affect the proper discharge of his duties as a member of the Tonga Police;
- (r) improperly uses, or attempts to improperly use his appointment as a member of the Tonga Police for his advantage or the advantage of any other person;

- (s) misappropriates or improperly deals with property which comes into his possession or control by virtue of his office;
- (t) fails to account for or fails to make prompt and true return of money or property received by the member in his official capacity;
- (u) sexually harasses another member;
- (v) fails to comply with a direction for remedial training imposed under the Act or these regulations;
- (w) fails to comply with a direction by the Police Employment Committee;
- (x) being a member of the Tonga Police, carries on a trade, business or profession for remuneration, or accepts any remunerative employment outside of the Tonga Police without the consent of the Cabinet;
- (y) knowingly omits to record or report a fact or incident which is required of the member by the Police manual, this Act or any other Act or Regulations; or
- (z) aids or abets an offence against these regulations or connives knowingly aids, abets, counsels or procures the commission of an offence against these regulations.

“Sexual harassment” For the purpose of this regulation, a member is sexually harassed where a person by the use of words (whether written or spoken) of a sexual nature or physical behaviour of a sexual nature—

- (a) subjects the member to behaviour that is embarrassing, unwelcome or offensive to the member and which is either repeated or of such a significant nature that it has a detrimental effect on that member’s employment, job performance, or job satisfaction; or
- (b) Makes a request of that member for sexual intercourse or sexual contact or other form of sexual activity and the request contains—
 - (i) an implied or overt promise of preferential treatment in that member’s employment; or
 - (ii) an implied or overt threat of detrimental treatment in that member’s employment; or
 - (iii) an implied or overt threat about the future employment status of that member.

“Supervisor” for a member (the subordinate officer), means -

- (a) a member who holds a supervisory position in relation to the subordinate officer; or
- (b) Aa member who is lawfully acting as a supervisor of the subordinate officer.

20 Procedure in minor breaches of discipline

The supervisor shall arrange a meeting and inform the member prior to the meeting of the breach of discipline and the purpose of the meeting and ensure that the member is given an opportunity to arrange for representation or support to be present. At the meeting the supervisor shall allow the member to provide an explanation before making a decision subject to regulation 22.

21 Commissioner may propose new breaches of discipline

Commissioner may propose new breaches of discipline and shall decide whether a breach of discipline is serious or minor for approval by the Minister.

22 Penalties for minor breaches

In a minor breach of discipline, the Supervisor may admonish, counsel or reprimand the member and such reprimand may include variation of hours on duty and tasks.

23 Record of minor breaches

Subject to regulation 20, the Supervisor shall forthwith write a written report of the incident as a record to be kept in the member's personal file and if any member receives 3 such notices within a 12 month period, this shall constitute a serious breach and Part 3 Division 2 of the Act shall apply.

24 Conflict of interest

A supervisor may elect to have the matter heard by the next level supervisor if there is a conflict of interest.

25 Appeal

Any member has the right to appeal in writing a supervisor's decision under this regulation to the next level supervisor within 24 hours of being notified by the supervisor of his decision.

26 Powers of next level supervisor

- (1) After considering the report from the supervisor and the written response from the member the next level supervisor may-
 - (a) confirm or annul the decision; or
 - (b) confirm, vary or annul the penalty; and
 - (c) notify the supervisor and the member of the decision within seven days.

- (2) The next level supervisor shall forward a record of the decision to the Human Resource team to be kept on the member's file.
- (3) The next level supervisors' decision shall be final.

PART 4 - FORENSIC SAMPLES

27 Definitions

For the purposes of this Part –

“forensic investigation” means the application of forensic procedures approved by the Commissioner of Police to criminal investigations;

“forensic procedure” for these regulations means -

- (a) an examination of a part of the body that requires touching of the body or removal of clothing;
- (b) The taking of a sample of hair;
- (c) The taking of a sample from or under a fingernail or toenail;
- (d) The taking of a sample of saliva or a sample by a swab;
- (e) The taking of a sample by swab or washing from any external part of the body;
- (f) The taking of a sample by vacuum suction, by scraping or by lifting by tape from any external part of the body;
- (g) The taking of a handprint, fingerprint, footprint or toe print;
- (h) The taking of a photograph of, or an impression or cast of a wound from, a part of the body;
- (i) The taking of a sample for breathalyser analysis;
- (j) The taking of a sample of blood or other bodily fluid;
- (k) Any other forensic procedures authorised and prescribed by the Commissioner of Police in policy.

“forensic sample” means material obtained from a forensic procedure;

“suspect” means -

- (a) A person suspected by a police officer, on reasonable grounds, to have committed a serious offence;
- (b) A person charged with a serious offence;
- (c) A person who has been summoned to appear before a court for a serious offence.

28 Taking a forensic sample

- (1) Where there are reasonable grounds for suspecting that a person is planning, participating in, or committing, or has planned, participated in, or committed a serious offence and a forensic sample may provide evidence in relation to that serious offence, the Commissioner may authorize a police officer to conduct a forensic investigation using forensic procedures to obtain that forensic sample.
- (2) Where a police officer carries out a forensic procedure on a person, the police officer shall make and sign a record of the carrying out of that procedure as soon as practicable afterwards.
- (3) The police officer may, with the approval of the Commissioner, also request a doctor or a nurse to take a body sample from the person.
- (4) The police officer shall ensure that a copy of the record is made available to the person as soon as practicable after the record is made.

29 General rules for carrying out forensic procedures

- (1) A forensic procedure -
 - (a) Shall be carried out in circumstances providing reasonable privacy to the suspect; and
 - (b) Except if permitted by the person who is the subject of the procedure, wherever possible shall not be carried out in the presence or view of anyone who is of the opposite sex to the suspect; and
 - (c) Shall not be carried out in the presence or view of a person whose presence is not necessary for the forensic procedure or required or permitted under another provision of this Regulation; and
 - (d) Shall not involve the removal of more clothing than is necessary for carrying out the procedure; and
 - (e) Shall not involve more visual inspection than is necessary for carrying out the procedure.
- (2) Where a forensic procedure is carried out on a minor, wherever possible a relative of that minor shall be present during the carrying out of that forensic procedure.

30 Use of force in carrying out forensic procedures

- (1) A police officer when carrying out a forensic procedure on a person may use reasonable force -
 - (a) to enable a forensic procedure to be carried out; or
 - (b) to prevent loss, destruction or contamination of any sample.
- (2) A forensic procedure shall be carried out in a way consistent with appropriate medical or other relevant professional standards.

- (3) A forensic procedure shall not be carried out in a cruel, inhuman or degrading way.

31 Admissibility of forensic sample

A forensic sample obtained under these regulations is admissible as evidence in any proceedings for prosecution of a serious offence.

32 Samples

- (1) This regulation applies to a forensic sample taken from a suspect under these regulations if there is sufficient material for an analysis to be carried out by not only the police officers investigating the offence concerned but also by or on behalf of the suspect.
- (2) The investigating police officer shall ensure that -
 - (a) a part of the material sufficient for analysis is made available to the suspect as soon as practicable; and
 - (b) reasonable care is taken to ensure that the suspect's part of the material is protected and preserved until the suspect receives it; and
 - (c) reasonable assistance is given to the suspect to ensure that the material is protected and preserved until it is analysed.

33 Refusing to allow forensic procedure

A person who -

- (a) refuses to comply with any reasonable direction in connection with the carrying out of the forensic procedure; or
- (b) obstructs, resists, hinders, uses violence against, threatens or intimidates a person in connection with the carrying out of the forensic procedure commits an offence and is liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$2,000 or to both.

34 Approved testing facility

- (1) The Minister may in writing approve a laboratory or other facility in Tonga or elsewhere as an approved testing facility for forensic samples.
- (2) Information provided by an approved testing facility referred to in sub-regulation (1) as to matters such as the chemical composition of a forensic sample is admissible as evidence in any proceedings for prosecution of a serious offence.

PART 5 - SURVEILLANCE REGULATIONS

35 Definitions

For the purposes of this Part –

“data surveillance device” means any device or program capable of being used to record or monitor the input of information into, or the output of information from, a computer, but does not include an optical surveillance device;

“Device” includes instrument, apparatus and equipment;

“Install” includes attach;

“interception device” means any electronic, mechanical, or electromagnetic instrument, apparatus, equipment, or other device that is used or is capable of being used to intercept a private conversation words spoken to or by any person in private conversation;

“listening device” means a device capable of being used to overhear, record, monitor or listen to a private conversation;

“Optical surveillance device” means a device, such as a camera, capable of being used to record visually or observe an activity;

“Premises” includes an aircraft, vehicle, boat or ship and any structure such as a cooking *fale* that, although not connected to another premises, is used by the occupants of that other premises;

“Private communication” means a communication (whether in oral or written form or otherwise) made under circumstances that may reasonably be taken to indicate that any party to the communication desires it to be confined to the parties to the communication;

“Serious offence” means an offence against any law of Tonga punishable by imprisonment for a period of 3 years or more or a fine of \$2,000 or more;

“Surveillance device” means -

- (a) a data surveillance device, a listening device, an optical surveillance device or a tracking device;
- (b) a device that is a combination of any 2 or more of the devices referred to in paragraph (a); or
- (c) a device of a kind prescribed by the Commissioner in policies;

“Surveillance warrant” means a warrant referred to in regulation 36;

“Tracking device” means a device capable of transmitting a signal to a receiver for the purpose of indicating the location of the device;

“Judge” means a Judge of the Supreme Court.

36 Application for a surveillance warrant

- (1) An application for a warrant may be made by the Commissioner in accordance with section 111 of the Act to a Judge for a warrant for any member of the police to -
 - (a) Intercept a private communication by means of an interception device;
 - (b) to record visually or observe an activity of a person by means of an optical surveillance device; or
 - (c) to use both an interception device and an optical surveillance device,
 - (d) to use a tracking device;in any case where there are reasonable grounds for suspecting that a person is planning, participating in, or committing, or has planned, participated in, or committed a serious offence.
- (2) An application under sub-regulation (1) shall be in writing and on oath, and set out the following particulars-
 - (a) the facts relied upon to show that there are reasonable grounds for suspecting that a person is planning, participating in, or committing, or has planned, participated in, or committed a serious offence;
 - (b) a description of the manner in which it is proposed to intercept private communications, record or observe activities or track activities;
 - (c) the name and address, if known, of the person whose private communications or a record or observations of whose activities there are reasonable grounds for suspecting will assist the police investigation of the case or if the name and address of the suspect are not known, a general description of the premises, place, thing, or type of facility in respect of which it is proposed to intercept private communications or record or observe activities;
 - (d) the retrieval of the surveillance device;
 - (e) entry (with such force as necessary) to any premises for the purpose of placing, servicing or retrieving a surveillance device;
 - (f) the connection of the surveillance device to any source of electricity and the use of electricity from that source to operate the surveillance device;
 - (g) the provision of assistance or technical expertise to the police officer primarily responsible for the execution of the warrant in the installation, use, maintenance or retrieval of the surveillance device; and
 - (h) the period for which a warrant is requested.

37 Purpose of surveillance warrants

The purpose of a surveillance warrant is to allow police to gather information and evidence that will assist them in the performance of their functions under the Act.

38 Remote Application

If the Commissioner believes that it is impracticable for an application for a surveillance to be made in person, the application may be made by email, fax, telephone or any other means of communication.

39 Renewal of warrant

- (1) A Judge may grant a renewal of a surveillance warrant upon application made at any time before the warrant (or any current renewal of the warrant) has expired.
- (2) An application for a renewal of a warrant shall -
 - (a) give the reason and period for which the renewal is required;
 - (b) be accompanied by full particulars, together with times and dates, of any interceptions made or attempted under the warrant and an indication of the nature of the information that has been obtained by every such interception; and
 - (c) be supported by such other information as the Judge may require.
- (3) A renewal of a surveillance warrant may be granted under this regulation if the Judge is satisfied that the circumstances described in regulation 36 still apply.
- (4) A renewal of a surveillance warrant is valid for the period specified in the renewal.
- (5) A renewal of a surveillance warrant may be granted upon an application made within the time prescribed by sub-regulation (1) notwithstanding that the warrant (or any renewal of the warrant) has expired before the application is determined.
- (6) Nothing in this regulation prevents a Judge from granting a second or subsequent renewal of a surveillance warrant upon an application duly made.

40 Emergency permit

- (1) In any case where a Judge is satisfied that circumstances exist that would justify the grant of a surveillance warrant but the urgency of the situation requires that the interception or recording or observing should begin before a warrant could with all practicable diligence be obtained, the Judge may, orally or in writing, grant an emergency permit for the interception of private communications or the recording or observing of activities in respect of particular premises or person or a particular place or a particular thing or particular type of facility and in a particular manner.
- (2) An application for an emergency permit may be made orally.
- (3) So far as it is capable of applying, regulation 36 applies to emergency permits in the same manner as it applies to surveillance warrants.

- (4) An emergency permit is valid for 48 hours from the time when it is given, and then expires.
- (5) An officer shall record the decision and make a formal application for renewal of the warrant before the emergency permit expires.
- (6) Material obtained pursuant to a surveillance warrant is admissible as evidence in any proceedings for prosecution of a serious offence.

41 Minor defect in connection with surveillance warrant or permit

- (1) If information or a record is purportedly obtained through the use of a surveillance device authorised by a surveillance warrant granted under regulation 36 or a permit granted under regulation 40 and there is a minor defect or irregularity in relation to the surveillance warrant or permit and but for that defect or irregularity the warrant or permit would have been sufficient authority for the action taken, then -
 - (a) the use of that surveillance device is to be treated as being valid; and
 - (b) the information or record obtained pursuant to that surveillance warrant or permit is admissible as evidence, as if the surveillance warrant or permit did not have that defect or irregularity.
- (2) A reference in sub-regulation (1) to a defect or irregularity in relation to a surveillance warrant or permit is a reference to a defect or irregularity (other than a substantial defect or irregularity)-
 - (a) in, or in connection with, the issue of, a document purporting to be that surveillance warrant or permit; or
 - (b) in connection with the execution of that surveillance warrant or permit or the purported execution of a document purporting to be that surveillance warrant or permit.

42 Prohibition on disclosure of private communications etc. lawfully intercepted or recorded

A person who-

- (a) intercepts or assists in the interception of a private communication in pursuance to a surveillance warrant or emergency permit; or
- (b) acquires knowledge of a private communication as a direct or indirect result of that interception; or
- (c) makes a record of the activities of a person, and knowingly discloses the substance, meaning, or purport of that communication or recording, or any part of that communication or recording otherwise than in the performance of that person's duty commits an offence and is liable to imprisonment for a term not exceeding two years or to a fine not exceeding \$2,000.

43 Prohibition on unauthorized use of surveillance device

Any person who uses a surveillance device under these Regulations without a warrant issued by a Judge is guilty of an offence and is liable to a fine not exceeding \$2,000 or to imprisonment for a term not exceeding two years or both.

44 Assistance to police executing a warrant or a permit

It is a condition of a license issued under Communications Act that the licensee provides such assistance to police executing a warrant granted under regulation 36 or a permit granted under regulation 40 in respect of an interception device as is required by the police.

45 Commissioner of Police to give information to Legislative Assembly

The Commissioner shall include in his annual report to the Legislative Assembly a report stating -

- (a) the number of applications for warrants made under regulation 36; and
- (b) the number of applications for renewals of warrants made under regulation 39;
- (c) the number of applications for emergency permits made under regulation 40;
- (d) the number of applications referred to in each of paragraphs (a) to (c) that were granted, and the number that were refused;
- (e) the number of prosecutions that have been instituted in which evidence obtained directly or indirectly from an interception or optical surveillance carried out pursuant to a warrant or permit has been adduced, and the result of those prosecutions; and
- (f) the number of warrants that did not result in any charges being laid within 90 days of the date on which the warrant expired.

PART 6- POLICE CLEARANCE

46 Definitions

For the purposes of this Part –

“**Applicant**” means the person that is the subject of the Police Record Check;

“**Police Record Certificate**” means a certificate issued under these regulations, recording the outcomes of the Police Record Check; and

“**Criminal Record Check**” means a check of the applicant’s criminal record, carried out in accordance with section 140 of the Act.

47 Police Commissioner is to authorize police officers to issue Police Record Certificate

Police Commissioner may authorize a police officer to issue a Police Record Certificate, after the police officer has conducted a Criminal Record Check under section 140 of the Act.

48 Person is entitled for Police Record Certificate

A Police Record Certificate shall only be issued for and to a person who is 16 years of age or older.

49 Application procedures

- (1) Every application for a Police Record Certificate shall be in the prescribed form and accompanied by the following documents-
 - (a) Birth certificate or current passport of the applicant;
 - (b) National Identity Card of the applicant [if any];
 - (c) Recent photo of the applicant;
 - (d) Complete set of applicant's fingerprints;
 - (e) Payment of the prescribed fee as prescribed in Schedule I; and
 - (f) If the application is being made by a person other than the applicant, a completed consent form.
- (2) An applicant from another country shall provide all documents mentioned in sub regulation (1) and his fingerprints shall be taken at the nearest police station to his residence in the overseas country.
- (3) Overseas applicants shall enclose a bank draft or other means of payment but not cash.

50 Validity of Police Record Certificate

- (1) The Police Record Certificate shall be valid for three months commencing from date of issue.
- (2) The Police Record Certificate shall not include -
 - (a) any cases which are still pending in court, under investigation or under appeal;
 - (b) any convictions for which the applicant has received a pardon from the Privy Council under clause 37 of the Constitution; or
 - (c) any person who has been ordered to discharge without conviction under section 204 of the Criminal Offences Act.

51 Processing time and emergency fees

- (1) All applications for a Police Record Check will be processed within two business days of being lodged.
- (2) In the case where a Police Record Certificate is required to be issued earlier than the routine processing time, the applicant may apply to have their certificate issued earlier upon payment of the emergency fee.

52 Police officer may take fingerprints

Any police officer may take fingerprints of any person who is required to have his fingerprints taken to support an application in a foreign country.

53 Application Forms

All applications shall be made in the prescribed forms Form 1-3 as set out in Schedule IX.

PART 7 - TONGA POLICE BAND

54 Definitions

For the purposes of this Part –

“Private engagement” means engagement which is not of an official nature and which is organized by private persons or persons for private entertainment or profit;

“The Band” means the Tonga Police Band.

55 The Commissioner may grant approval for Band to perform

- (1) The Commissioner may grant approval for the Band to perform at private engagements for a fee prescribed by these regulations.
- (2) Any fee payable by any person in these regulations shall be paid into the Police Special Purposes Fund and shall be recorded in a register maintained for that purpose.
- (3) The fee charged by the Band for performing at private engagements will be \$138.00 an hour (includes Consumption Tax).

PART 8- INSIGNIA AND UNIFORM

56 Definitions

For the purposes of this Part –

“Police insignia of rank” means -

- (a) any items that are generally recognised as pertaining to the Tonga Police prescribed by these regulations; or
- (b) any parts of any such items, but does not include any thing or class of thing prescribed by the regulations as being outside this definition.

“police uniform” means the uniform of a police officer, and includes any parts of such a uniform (or any accoutrements of a police officer) that are generally recognized as parts of the uniform or accoutrements of a police officer.

57 Issue of uniform and equipment

- (1) The Commissioner shall determine the circumstances in which and the conditions subject to which uniform and equipment is to be issued to a member and in making such a determination the Commissioner shall also —
 - (a) specify the type of uniform and equipment to be issued; and
 - (b) issue uniform and equipment to all members.
- (2) Uniform shall be worn at all times by police officers when on duty or when proceeding to and from their police stations, unless otherwise authorised by the Commissioner.
- (3) The Commissioner may from time to time approve of police officers performing certain types of duty being permitted to wear other clothing.
- (4) The pattern and cut of the uniform shall not be altered in any way and badges, service numbers and insignia of rank shall be worn in such manner as the Commissioner may from time to time direct.

58 Insignia of rank

- (1) Insignia of rank shall be worn on epaulettes.
- (2) The details of insignia of rank are as shown in Schedule II.

59 Responsibility for loss or damage

A police officer -

- (a) is responsible for all articles of uniform and equipment issued to the officer; and

- (b) is responsible for any damage to uniform or equipment through neglect and may be required to meet its replacement cost.

PART 9 - TONGA POLICE MEDALS AND COMMENDATIONS

60 Definitions

- (1) For the purpose of this Part, unless the context otherwise requires—
“**Member**” includes a Police Officer, administrative staff and the Police Commissioner.
- (2) Unless expressly stated an expression used in these Regulations has the same meaning as in the Act.

DIVISION 1- MEDAL OF VALOUR, AWARDS AND COMMENDATIONS

61 Definitions

For the purpose of this Division –
“**Medal**” means the Tonga Police Medal of Valour.

62 Style

The Medal shall be designated and styled “The Tonga Police Medal of Valour”.

63 Description

The Medal shall be a gold Cross in shape, bearing on the obverse the Tonga Police Badge at the centre of the Cross, and on the reverse the inscription “For Valour”.

64 Ribbon

The Medal shall be worn from the left breast suspended from a ribbon 32 millimetres in width, of a central vertical narrow stripes of red, yellow, and red, flanked by two dark blue stripes having each a narrow gold stripe centre.

65 Eligibility

The Medal may be awarded to any member of the Tonga Police for service that, in the opinion of the Commissioner of Police, is outstanding and worthy of recognition because the service -

- (a) performed acts of exceptional courage and skill; or

- (b) exhibited conspicuous devotion to duty.

66 Registration

The names of all those to whom the Medal is awarded shall be recorded in a register kept by the Commissioner of Police.

67 Order of Wear

The Tonga Police Medal of Valour shall be placed immediately before any other awards issued for service with the Tonga Police.

68 Miniatures

Reproductions of the Medal in miniature, which may be worn on certain occasions by those to whom the Medal is awarded, shall be approximately half the size of The Tonga Police Medal of Valour.

69 Patterns

Patterns of the Medal, the miniature Medal shall be deposited with and kept by the Commissioner of Police.

70 Powers of conferral, cancellation, forfeiture, and restoration

- (1) Powers to confer the medal under the terms of these Regulations shall be vested in the Minister.
- (2) It shall be competent for the Minister to –
 - (a) cancel the conferral of a Medal on any member and alter the member's records accordingly;
 - (b) order the forfeiture of a Medal by any member and alter the member's records accordingly; and
 - (c) restore a medal to any Member and alter the member's records accordingly.

71 Delegated powers

The Minister may delegate powers under regulation 70 to the Commissioner of Police (or a person recommended by the Commissioner of Police).

72 Tonga Police Medal of Valour

The Tonga Police Medal of Valour is set out in Schedule III.

DIVISION 2 TONGA POLICE CIVILIAN LONG SERVICE AWARD

73 Definition

For the purpose of this Division –

“**Award**” means the Tonga Police Civilian Long Service Award consisting of three separate lapel badges signifying the period of employment of the civilian police member.

“**Bronze Badge**” means the Tonga Police Civilian Long Service Bronze Badge.

“**Civilian**” means a member of the Tonga Police employed in an administrative staff position and not a sworn police officer.

“**Gold Badge**” means the Tonga Police Civilian Long Service Gold Badge.

“**Silver Badge**” means the Tonga Police Civilian Long Service Silver Badge.

74 Style

The Award shall be designated and styled “The Tonga Police Civilian Long Service Award”.

75 Description

- (1) The Bronze Badge shall be bronze bearing on the obverse the Tonga Police Badge alone with the inscription “Long Service”, signifying 18 years of services.
- (2) The Silver Badge shall be silver bearing on the obverse the Tonga Police Badge alone with the inscription “Long Service”, signifying 28 years of service.
- (3) The Gold Badge shall be gold bearing on the obverse the Tonga Police Badge alone with the inscription “Long Service”, signifying 38 years of service.

76 Eligibility

- (1) The Award may be presented to any member –
 - (a) who is employed on or after 1 January 2015, as a civilian member of the Tonga Police;
 - (b) who has completed his qualifying service; and
 - (c) whose character and conduct is, in the opinion of the Commissioner of Police, of such good standard as to warrant the honour of the Award.

77 Qualifying Service

The minimum qualifying period required for the honour of the Award shall be 18 years of service.

78 Reckoning of Service

The following service may be reckoned towards qualifying service for the presentation of the Award thereto-

- (a) Service as an administrative staff with the Tonga Police;
- (b) Service as a Police administrative staff undergoing training.

79 Registration

The names of all those to whom the Award is presented shall be recorded in a register kept by the Commissioner of Police.

80 Patterns

Patterns of the Award shall be deposited with and kept by the Commissioner of Police.

81 Powers of conferral, cancellation, forfeiture, and restoration

- (1) Powers to confer the Award under the terms of these Regulations shall be vested in the Minister.
- (2) It shall be competent for the Minister to –
 - (a) cancel the conferral of the Award on any member and alter the member's records accordingly;
 - (b) order the forfeiture of the Award by any member and alter the member's records accordingly; and
 - (c) restore the Award to any member and alter the member's records accordingly.

82 Delegated powers

The Minister may delegate powers under regulation 81 to the Commissioner of Police (or a person recommended by the Commissioner of Police).

83 Tonga Police Civilian Long Service Award

The Tonga Police Civilian Long Service Award is set out in Schedule IV

84 Certificates of commendation and appreciation

- (1) The Commissioner may issue Certificates of Commendation to a member of the Tonga Police for conduct that is of special merit.
- (2) Certificates may be in the form and design as approved by the Commissioner.
- (3) Where the Commissioner is of the opinion that a person performed any act or acts or undertook any services which are of special assistance or value to the Tonga Police he may issue to that person a Certificate of Appreciation.

85 Foreign Orders, Decorations and Medals

- (1) Authority to wear and accept foreign awards resides with the Commonwealth or Commissioner of Police. A Register of Commonwealth Foreign Orders, Decorations and Medals authorized for wear shall be maintained by the Police Commissioner.
- (2) Order of wear of Foreign Orders, Decorations and Medals shall be in accordance with the Tonga Police Guidance on Wearing of Orders, Decorations and Medals.

86 Tonga Police Badge

The Tonga Police Badge is as set out in Schedule V.

87 Tonga Police Flag

The Tonga Police Flag is as set out in Schedule VI.

88 Repeal and Savings

- (1) The Police Rules No.8 of 1958 is repealed.
- (2) The repeal of the Police Rules does not affect the validity of anything done under the Rules which were in force immediately before the commencement of these regulations continue in force as if give, made or done under these regulation.

Made at Nuku'alofa this **15th** day of **May** 2019.

Hon. Mateni Tapueluelu
Minister of Police

SCHEDULE I

(Part 6)

POLICE CLEARANCE FEES

Police Record Certificate – Tongan applicant	\$30.00
Police Record Certificate – Non- Tongan applicant	\$60.00
Taking fingerprint	\$30.00
Emergency fee	\$40.00

[These fees are not including CT]

SCHEDULE II

(Part 9)

INSIGNIA OF RANK

The following ranks shall wear on their shoulder straps the insignia described as follows-

- (a) Commissioner - crown above two crossed batons and cap will be a silver double oak leaf on peak.
- (b) Deputy Commissioner - star above two crossed batons, cap will be silver single oak leaf on peak.
- (c) Chief Superintendent - crown above two stars, cap will be silver plain band on peak.
- (d) Superintendent - crown above one star, cap will be silver plain band on peak.
- (e) Chief Inspector - becomes crown only with plain cap.
- (f) Inspector - three stars with a plain cap.
- (g) Sergeant - three stripes. Note that the history of this insignia dictates that the stripes should be worn with the "V" pointing up, cap will be police cap with police emblem and word "POLICE" embroidered above the peak.
- (h) Senior Constable - two stripes with "V" pointing up, same as sergeants.
- (i) Constable 1st class - one stripe with "V" pointing up, cap same as sergeants.
- (j) Probationary Constable & Constable - no insignia visible on epaulette, same as sergeants.
- (k) Recruit – words "RECRUIT" embroidered on epaulette, same as sergeants.

SCHEDULE III

(Part 9) (Division I)

TONGA POLICE MEDAL OF VALOUR



SCHEDULE IV

(Part 9) (Division II)

TONGA POLICE CIVILIAN LONG SERVICE AWARD



SCHEDULE V

(PART 9) (Regulation 86)

TONGA POLICE BADGE



SCHEDULE VI

(PART 9) (Regulation 8)

TONGA POLICE FLAG



SCHEDULE VII

Forms

**TONGA POLICE ACT 2010
TONGA POLICE REGULATIONS 2019
REGULATION 49**



Passport
Photo

FORM 1**POLICE RECORD APPLICATION FORM**

*Applicants shall complete every field of this form in their own handwriting using **BLOCK** letters*

Birth Certificate/Passport No- _____ Country- _____

Applicants Surname- _____ First Name- _____

Middle Name- _____ Sex- _____

Date of Birth- _____ Place of Birth- _____

Nationality- _____ Father's Name- _____

Marital Status- Single Married Widowed Divorced

Occupation- _____ Applicant's Address- _____

Applicant's Phone- _____ Fax- _____ e-mail address- _____

Police Record Address To- _____

Police Clearance Purpose- _____

Applicant's Signature- _____

Date- _____

FINGERPRINT FORM

*This Fingerprint Form shall be completed by the applicant as part of the application for a Police Record Certificate from the Tonga Police National Criminal Record Office. The Fingerprint Form is for **IDENTIFICATION PURPOSES ONLY**.*

<u>Plain Impression of the Left Hand</u>	<u>Left Thumb</u>	<u>Right Thumb</u>	<u>Plain Impression of the Right Hand</u>

**TONGA POLICE ACT 2010
TONGA POLICE REGULATIONS 2019
REGULATION 49**

FORM 2



POLICE RECORD CERTIFICATE

1. Name In Full- _____
2. Father's Name- _____
3. **Alias-** _____
4. Nationality- _____
5. Date of Birth- _____ 6. Place of Birth- _____
7. Address/ Phone- _____
Business & Home- _____
8. Occupation- _____ 9. Marital Status- _____
10. Married Name- _____

<u>Police Use Only</u>	<u>Police Stamp</u>
<p>This is to certify that the above named subject <u>has no/ has a</u> criminal record or previous conviction filed in this office.</p> <p style="text-align: center;">Signed - _____</p> <p style="text-align: center;">Date - _____</p> <p style="text-align: center;">OIC National Criminal Record Office <i>for</i> <u>Commissioner of Police</u></p>	

Receipt No.- _____

***Tonga Police National Criminal Record Office
P.O.Box 8, Central Police Station, Nuku'alofa, TONGA
Office Phone No. & Fax No. - (676) 22 790***

**TONGA POLICE ACT 2010
TONGA POLICE REGULATIONS 2019
REGULATION 49**

FORM 3



POLICE RECORD CONSENT FORM

I _____ (m/f) of _____

hereby certify that I authorize *Mr/ Ms/ Mrs* _____

of _____ to act on my behalf and receive all information from the Tonga Police National Criminal Record Office regarding my Police Record application.

Applicant's Signature- _____

Date- _____

Agent's Signature- _____

Date- _____

**TONGA POLICE ACT 2010
TONGA POLICE REGULATIONS 2019
REGULATION 49**

FORM 4



APPLICANT REQUESTING FINGERPRINT

Male

Female

Date/ Stamp

Passport Number- _____

Country- _____

Issued In The Name Of- _____

Surname

First Name

Place of Birth-	
Date of Birth-	
Impression Taken By-	
Rank & Number-	
Date-	
Police Station-	
Receipt Number-	

Remarks *(including missing/injured fingers, nature and date of loss/injury)*

1. Right Thumb	2. Right Fore	3. Right Middle	4. Right Ring	5. Right Little
6. Left Thumb	7. Left Fore	8. Left Middle	9. Left Ring	10. Left Middle

Plain Impression of Thumbs

<i>Plain Impression of the Left Hand taken simultaneously</i>	<i>Left</i>	<i>Right</i>	<i>Plain Impression of the Right Hand taken simultaneously</i>

SCHEDULE VIII

FORM

TONGA POLICE ACT 2010
SECTION 130 (3)



APPLICATION FOR USE OF ROADS FOR ASSEMBLIES AND PROCESSIONS

(Application shall be lodged at least 7 working days prior to use of road)

Applicant's details

Full name-
Gender-
Date of birth-
Address-
Contact No.-
Position/Association with Group to use road-

Details for use of road

Group to use road-
Purpose of use-
.....
.....
Roads to use-
Period of use (date and times)-

Applicant's signature- Date-

For Official Use Only

This application is **approved.**
 refused.

Conditions for use/Reasons for refusal-

.....
.....
.....
.....

Commissioner's signature- Date-
(Commissioner's official seal to be affixed here.)