

**SAMOA**

## Arrangement of Provisions

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|---------------------------------|--------------------------|
| 1. Short title and commencement | 4. Article 83 amended    |
| 2. Article 41 amended           | 5. Transition and saving |
| 3. Article 41A inserted         |                          |

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**2015, No. 44**

**AN ACT to amend the Constitution.** [05<sup>th</sup> November 2015]

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

**1. Short title and commencement-**(1) This Act may be cited as the Constitution Amendment Act (No. 2) 2015.

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

**2. Article 41 amended** - In Article 41 of the Constitution:

- (a) for clause (2) omit “and shall have power, exercisable in his discretion, to institute, conduct or discontinue any proceedings for an offence alleged to have been committed”;
- (b) for clause (3) after “tribunal” add “on any proceedings other than criminal proceedings”.

**3. Article 41A inserted** - After Article 41 of the Constitution insert:

**“41A. Director of Public Prosecutions-**(1) The Head of State may, acting on the advice of the Prime Minister, appoint a person for a term of six (6) years who is qualified to be appointed as a judge of the Supreme Court as the Director of Public Prosecutions (“Director”).

(2) The terms and conditions of appointment are to be provided by Act.

(3) The Director:

(a) may -

(i) institute and conduct criminal proceedings;

(ii) take over criminal proceedings that have been instituted by another person or authority;

(iii) discontinue, at any stage before judgment is delivered, criminal proceedings instituted or conducted by the Director or another person or authority;

(b) is not subject to direction or control by any other person or authority when the Director is carrying out the powers under sub-clause (a); and

(c) shall have a right of audience in, and shall take precedence over any other person appearing before, any Court or tribunal in relation to criminal proceedings;

(d) has other functions, duties and powers conferred by Act.

(4) The powers of the Director may be exercised by the Director in person or by officers subordinate to the Director, acting under and in accordance with the Director’s general or special instructions.

(5) In this Article, “criminal proceedings” includes any proceedings or matter before a Court for an offence alleged to have been committed and includes any ancillary proceedings, an appeal, case stated or question of law.”.

**4. Article 83 amended** - For Article 83, after sub-clause (g) insert:

“(ga) Director of Public Prosecutions and other prosecutors and officers and employees of an office of prosecutions established by Act;”.

**5. Transition and saving-**(1) Any criminal proceedings instituted or conducted by or on behalf of the Attorney General before the commencement of this Act continue as if they were instituted or conducted by or on behalf of the Director of Public Prosecutions pursuant to Article 41A.

(2) Any current instructions issued pursuant to Article 41(4) in relation to criminal proceedings before the commencement of this Act continue as if they were issued by or on behalf of the Director of Public Prosecutions pursuant to Article 41A(4).

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**The Constitution Amendment Act (No. 2) 2015  
is administered by the Office of the Attorney General.**

**Printed by the Clerk of the Legislative Assembly,  
by authority of the Legislative Assembly.**