

CONSTITUTION AMENDMENT BILL (No.1) 2016

SAMOA

Explanatory Memorandum

Objects and reasons:

The object of the Bill is to repeal Article 41A of the Constitution of the Independent State of Samoa 1960 in order to remove the constitutional appointment of the Director of Public Prosecutions. The Bill will also amend Article 41 to reinstate the Attorney General's prosecutorial powers. This decision has been made on the premise that Government had thought at the time the new National Prosecution Office was set up, that Samoa was ready to set up this new Office. However there were no issues in the past with the Attorney General carrying out prosecutorial duties independently. Given recent developments with the set-up of the National Prosecution Office, Government has decided to return to the way things were i.e. for the Attorney General to once again assume the role of prosecution which will be done as before, with independence and without influence.

Clauses:

- Clause 1:** - provides the short title and commencement provisions.
- Clause 2:** - repeals Article 41A to remove the appointment of a person as the Director of Public Prosecutions.
- Clause 3:** - amends Article 41 to reinstate the Attorney General's prosecutorial powers.

- Clause 4:** - consequentially amends:
- (1) the National Prosecution Office Act 2015 is repealed.
 - (2) the Acts set out in the Schedule of the National Prosecution Office Act 2015 are amended.

Schedule: - sets out the consequential amendments to other Acts.



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(Hon TUILAEPA Auelua Fatialofa Lupesoliai Lolofietele
Neioti Aiono Galumalemana Dr. Sailele Malielegaoi)

PRIME MINISTER AND MINISTER RESPONSIBLE
FOR THE OFFICE OF THE ATTORNEY-GENERAL
AND THE NATIONAL PROSECUTION OFFICE

CONSTITUTION AMENDMENT BILL (No.1) 2016

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Article 41A repealed
3. Article 41 amended
4. Consequential amendments
5. Transitional Provision

Schedule

2016, No.

A BILL INTITULED

**AN ACT to amend the Constitution of the Independent State of Samoa 1960
("Constitution").**

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.1) 2016.
- (2) This Act commences on the date of assent by the Head of State.

2. Article 41A repealed:

Article 41A of the Constitution is repealed.

3. Article 41 amended:

For Article 41 of the Constitution, substitute:

“41. Attorney-General:

- (1) The Head of State, acting on the advice of the Prime Minister, shall appoint an Attorney-General, who shall be a person qualified to be a Judge of the Supreme Court.
- (2) The Attorney-General shall advise on legal matters referred to him by the Head of State, Cabinet, the Prime Minister or a Minister and shall have power, exercisable in his discretion, to institute, conduct or discontinue any proceedings for an offence alleged to have been committed.
- (3) The Attorney-General shall have a right of audience in, and shall take precedence over any other person appearing before, any Court or tribunal.
- (4) The powers of the Attorney-General may be exercised by him in person or by officers subordinate to him, acting under and in accordance with his general or special instructions.

- (5) The Attorney-General shall hold office for such term or terms and under such conditions as may be determined by the Head of State, acting on the advice of the Prime Minister.”.

4. Consequential amendments:

- (1) The National Prosecution Office Act 2015 is repealed.
- (2) The Acts set out in the Schedule are amended.
- (3) Upon the commencement of the Evidence Act 2015, the Criminal Procedure Act 2016 and the Sentencing Act 2016, all references to the Director of Public Prosecutions is to be omitted and substituted with the Attorney General.

SCHEDULE

(4(2))

CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

No.	Act amended	Section amended	amendment
	Attorney General’s Office Act 2013	s5	for subsection (2), after paragraph (a), insert: “(b) a Prosecution Division to carry out the following functions - (i) to institute and conduct criminal proceedings; (ii) to provide legal opinions on criminal matters;

No.	Act amended	Section amended	amendment
		s7	<p>(iii) to carry out other functions assigned to it by the Attorney General or other prescribed functions;”</p> <p>for subsection (5), insert “Prosecution Division”</p> <p>after subsection (1) insert:</p> <p>“(2) The Attorney General and prosecutors in the Prosecution Division (including other persons authorised by the Attorney General) are not subject to the direction of any other person (except any direction of a court) when carrying out the functions under Article 41 of the Constitution (including statutory or common law function):</p> <p>(a) to institute, conduct or discontinue any proceedings for an offence alleged to have been committed; or</p>

No.	Act amended	Section amended	amendment
			(b) in relation to any matter relating to an offence or a criminal matter.”.
	Audit Act 2013	s26	For subsection (8), for “Director of Public Prosecutions to prosecute or to the Attorney General to institute civil proceedings” substitute “Attorney-General to prosecute or institute civil proceedings”
	Chemical Weapons Act 2010	s3	For subsection (4), omit “Director of Public Prosecutions” and substitute “Attorney General” For subsection (5), omit “Director of Public Prosecutions” and substitute “Attorney General’s”
	Civil Aviation Act 1998	s119	omit “Director of Public Prosecutions” and “Director of Public Prosecutions” and substitute “Attorney General’s” and “Attorney General” respectively.
	Cluster Munitions Prohibition Act 2012	s4	For subsection (4), omit “Director of Public Prosecutions” and substitute “Attorney General”

No.	Act amended	Section amended	amendment
			For subsection (5), omit "Director of Public Prosecutions" and substitute "Attorney General's"
	Copyright Act 1998	s27	For subsection (4), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Coroners Ordinance 1959	s7	omit "Director of Public Prosecutions" and substitute "Attorney General" appearing 3 times
		s24	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Counter Terrorism Act 2014	s60	For heading and subsection (1), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Crimes Act 2013	s2	For definition of "prosecutor" omit "Director of Public Prosecutions" and "Director of Public Prosecutions" and substitute "Attorney General" and "Attorney General's" respectively"
		s81	For subsection (5), omit "Director of Public Prosecutions" and substitute "Attorney General"

No.	Act amended	Section amended	amendment
		s82	For subsection (4) omit "Director of Public Prosecutions" and substitute "Attorney General"
		s135	For the heading and subsections (3), omit "Director of Public Prosecutions" and substitute "Attorney General's"
		s136(3)	omit "Director of Public Prosecutions" and substitute "Attorney General of Samoa"
		s158	omit "Director of Public Prosecutions" and substitute "Attorney General"
		s221	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Criminal Procedure Act 1972	s14	omit "Director of Public Prosecutions" and substitute "Attorney General"
		s171	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Excise Tax (Domestic Administration) Act 1984	s95	omit "Director of Public Prosecutions" and substitute "Attorney General"

No.	Act amended	Section amended	amendment
	Extradition Act 1974	whole Act	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Financial Institutions Act 1996	s26	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Indecent Publications Ordinance 1960	s10	Omit "Director of Public Prosecutions" and substitute "Attorney General"
	International Criminal Court Act 2007	s16	<p>For subsections (1), (2) and (3) omit "Director of Public Prosecutions" and substitute "Attorney General"</p> <p>For the heading and subsections (1) and (2), omit "Director of Public Prosecutions" and "Director of Public Prosecutions" and substitute "Attorney General's" and "Attorney General" respectively</p>
	International Insurance Act 1988	s40	For subsection (6), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Land Titles Registration Act 2008	s91	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Money Laundering Prevention Act 2007	s5(1)	For paragraph (ga) is repealed

No.	Act amended	Section amended	amendment
	Mutual Assistance in Criminal Matters Act 2007	whole Act	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Occupational Safety and Health Act 2002	s39	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Plebiscite Act 1990	s71	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Plumbers Act 2014	s17	For subsection (1)(e), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Police Offences Ordinance 1961	s9	For paragraph (a), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Police Service Act 2009	s68	For subsection (7), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Scientific Research Organisation of Samoa Act 2008	s16	For subsection (4), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Secret Commissions Act 1975	s13	For subsection (1), omit "Director of Public Prosecutions" and substitute "Attorney General"

No.	Act amended	Section amended	amendment
	Tax Administration Act 2012	s9A	For subsections (1) and (3), after "Attorney General" omit "or the Director of Public Prosecutions in the case of an offence"
	Telecommunications Act 2005	s69	For subsection (3), after "may," omit "after consulting the Director of Public Prosecutions on matters relating, relating to prosecution)"
	Waste Management Act 2010	23	For subsection (1), omit "National Prosecution Office" and substitute "Office of the Attorney General, police officers"
	Water Resources Management Act 2008	40	For subsection (2), omit "Director of Public Prosecutions" and substitute "Attorney General"

5. Transitional Provision:

At the commencement of this Act:

- (a) any current criminal proceedings instituted and conducted for and on behalf of the Director of Public Prosecutions or the Police are to continue as if they were instituted and conducted by the Attorney General;
- (b) any current proceedings for other statutory offences or traffic offences continue to be dealt with under their respective enactments until they are transferred by Order of the Minister;

- (c) any current staff of the National Prosecution Office are considered as part of the Prosecution Division of the Attorney General's Office;
- (d) a Tribunal appointed pursuant to section 11(4) of the National Prosecution Office Act 2015 may continue and its recommendation is valid as if the National Prosecution Office Act 2015 had not been repealed.
