

CONSTITUTION AMENDMENT BILL (No.2) 2014

SAMOA

Explanatory Memorandum

Introduction

The purposes of the Bill are:

- (a) to allow the party in Government to nominate a person to be appointed Head of State (instead of the current mechanism of election) by the Legislative Assembly;
- (b) to allow the Members of Parliament nominated by the majority party or party in Government to be treated to have been duly elected and endorsed by the Legislative Assembly as Speaker and Deputy Speaker, respectively;
- (c) to implement the recommendations of the 2012 Commission of Inquiry into Electoral Matters to change individual voters constituency to two (2) urban constituencies;
- (d) to create the position and functions of the Ombudsman under the Constitution, as he now has the function of dealing with human rights breaches, which may connect to the fundamental rights under Part II of the Constitution; and
- (e) to deal with other minor and consequential amendments.

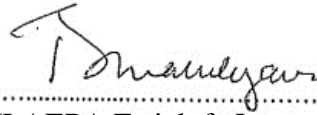
Clauses:

- Clause 1:** - states that when enacted, the Bill will be called the Constitution Amendment Act (No.2) 2014. It will commence on the

date it is assented to by the Head of State. However, the amendment relating to the changes from individual voters constituency to the two (2) urban constituencies will come into operation during the next general elections.

- Clause 2:** - amends Article 6(4) to change “Deputy Registrar” to “Assistant Registrar”, as a consequence of the Government policy of removing designations of “Deputy Chief Executive Officers” and using the existing designations of “Assistant Chief Executive Officers”.
- Clause 3:** - amends Article 18 to alter the current process of election of Head of State to appointment by the Legislative Assembly acting on the recommendation of the party in Government.
- Clause 4:** - amends Article 19, as a consequence of the amendment to Article 18.
- Clause 5:** - amends Article 25, as a consequence of the amendment to Article 18.
- Clause 6:** - amends Article 44 to change the individual voters roll to urban constituency, as recommended by the 2012 Commission of Inquiry into Electoral Matters.
- Clause 7:** - amends Article 49 so that the Member of Parliament nominated by the majority party after a general election or the party or parties in Government is treated to have been duly elected and endorsed by the Legislative Assembly as Speaker.
- Clause 8:** - amends Article 50 so that the Member of Parliament nominated by the majority party after a general election or the party or parties in Government is treated to have been duly elected and endorsed by the Legislative Assembly as Deputy Speaker.

- Clause 9:** - inserts a new Part VIA to establish the position Ombudsman (*Komesina o Sulufaiga*) and to provide for his or her functions under the Constitution.
- Clause 10:** - amends Article 83 to change “Pulenuu” to “sui o le nuu”.
- Clause 11:** - repeals the First and Second Schedules of the Constitution, as a result of the amendments to Articles 18 and 44.
- Clause 12:** - provides for general amendments to use gender neutral terms in the Constitution.
- Clause 13:** - provides for consequential amendments.



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(Hon TUILAEPA Fatialofa Lupesoliai Aiono
Neioti Sailele Malielegaoi)

PRIME MINISTER

CONSTITUTION AMENDMENT BILL (No.2) 2014

SAMOA

Arrangement of Provisions

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| 1. Short title and commencement | 8. Article 50 amended |
| 2. Article 6 amended | 9. New Part VIA inserted |
| 3. Article 18 amended | 10. Article 83 amended |
| 4. Article 19 amended | 11. First and Second Schedules repealed |
| 5. Article 25 amended | 12. General amendments |
| 6. Article 44 amended | 13. Consequential amendments |
| 7. Article 49 amended | |

2014, No.

A BILL INTITULED

AN ACT to amend the 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.2) 2014.

(2) This Act commences on the date of assent by the Head of State, subject to subsections (3) and (4).

(3) However, Article 44(1)(b) of the Constitution amended by this Act comes into operation on the date appointed by the Head of State under Article 63(4) of the Constitution to dissolve the Legislative Assembly.

(4) Despite subsection (3), nothing affects the carrying out of any duties or powers under Electoral Act 1963 or any other enactment in relation to the registration of voters under the urban voters roll or any other matter necessary for the preparation of urban constituencies in the next general elections for Members of Parliament.

2. Article 6 amended - In Article 6(4), for “Deputy Registrar”, substitute “Assistant Registrar”.

3. Article 18 amended - In Article 18 of the Constitution:

(a) for clause (1), substitute:

“18. Appointment of Head of State-(1) The Head of State shall be appointed by the Legislative Assembly acting on the recommendation of the party or parties in Government.”; and

(b) in clause (2), for “elected”, substitute “appointed”;
and

(c) in clause (3), for “election”, substitute
“appointment”; and

(d) after clause (3), insert:

“(4) Within 60 days before expiry of the term of appointment of the Head of State or as soon as practicable when there is a vacancy in the office of Head of State, the party or parties in Government shall submit to the Speaker a written Notice recommending the name of only one (1) person to be appointed as Head of State.

(5) The Speaker shall, as soon as possible after receiving the Notice:

(a) if the Legislative Assembly is sitting, lay the Notice before the Legislative Assembly to appoint the Head of State; or

(b) if the Legislative Assembly is not sitting, fix a date for a sitting of the Legislative Assembly to appoint the Head of State.

(6) The Speaker shall issue and sign the warrant of appointment of the Head of State.”.

4. Article 19 amended - In Article 19 of the Constitution:

- (a) for “Articles 17 and 21”, substitute “Article 21”; and
- (b) in clause (2), for “re-election”, substitute “re-appointment”;
- (c) for clause (3), substitute:

“(3) If a vacancy in the office of Head of State is caused by the death, resignation or removal of the Head of State or by the expiry of the term of office, Article 18 applies and the person appointed as Head of State holds office for a term of five (5) years from the date on which the person takes the oath of office.”.

5. Article 25 amended - In Article 25(2) of the Constitution, for “elected as Head of State”, substitute “appointed as Head of State”.

6. Article 44 amended - In Article 44 of the Constitution:

- (a) in clause (1), for sub-clause (b), substitute:

“(b) two (2) members respectively elected, under the two (2) urban constituencies provided by Act, by persons whose names appear on the urban constituency roll;”; and

- (b) repeal clause (2).

7. Article 49 amended - In Article 49 of the Constitution after clause (1), insert:

“(1A) As an exception to clause (1), the Member nominated, by the party that wins majority of all the seats in the Legislative Assembly after a general election, is taken to have been duly elected by the Legislative Assembly pursuant to clause (1) and shall be endorsed by the Legislative Assembly as Speaker.

(1B) For any vacancy under clause (1), the Member nominated, by the party or parties in Government, is taken to have been duly elected under clause (1) and shall be endorsed by the Legislative Assembly as Speaker.”.

8. Article 50 amended - In Article 50, after clause (1), insert:

“(1A) As an exception to clause (1), the Member nominated, by the party that wins majority of all the seats in the Legislative Assembly after a general election, is taken to have been duly elected by the Legislative Assembly pursuant to clause (1) and shall be endorsed by the Legislative Assembly as Deputy Speaker.

(1B) For any vacancy in the office of Deputy Speaker, the Member nominated, by the party or parties in Government, is taken to have been duly elected under clause (1) and shall be endorsed by the Legislative Assembly as Deputy Speaker.”.

9. New Part VIA inserted - After Article 82 of the Constitution, insert:

**“PART VIA
OMBUDSMAN (KOMESINA O SULUFAIGA)**

82A. Ombudsman-(1) There is to be an Ombudsman (*Komesina o Sulufaiga*) appointed by the Head of State acting on the recommendation of the Legislative Assembly.

(2) The Ombudsman is to be appointed pursuant to the selection and appointment criteria and other terms and conditions provided by Act.

(3)The Ombudsman:

- (a) is to be appointed for six (6) years; and
- (b) is eligible for re-appointment; and
- (c) on expiry of the term, continues in office until re-appointed or a successor assumes the function of the office.

(4) The salary, allowances and other benefits of the Ombudsman:

- (a) are to be determined by Act; and
- (b) are to be charged on the Treasury Fund, without further appropriation than this subclause; and
- (c) are not to be reduced during the term of office of the Ombudsman, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

(5) The Ombudsman may be removed from office pursuant to the grounds and procedures provided by Act.

82B. Functions of Ombudsman - The functions of the Ombudsman are:

- (a) to carry out the functions relating to promotion of good governance in public administration provided by Act; and
- (b) to carry out the functions relating to human rights provided by Act; and
- (c) to carry out any other functions provided by Act.”.

10. Article 83 amended - For Article 83(l) of the Constitution, substitute:

“(l) sui o le nuu;”.

11. First and Second Schedules repealed - The First and Second Schedules of the Constitution are repealed.

12. General amendments - In the Constitution:

- (a) for “His” in paragraph 1 of the Preamble, substitute “God’s”;
- (b) for “his”, substitute “his or her”;
- (c) for “him”, substitute “him or her”;
- (d) for “himself”, substitute “himself or herself”.

13. Consequential amendments-(1) Sections 7, 8(2) and 10 of the Ombudsman (*Komesina o Sulufaiga*) Act 2013 are repealed.

(2) In any other enactment:

- (a) for “Pulenu’u”, substitute “sui o le nuu”; and
 - (b) for any reference to “election” (including all other grammatical variations) of the Head of State, substitute “appointment” (including all other grammatical variations).
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