

CONSTITUTION AMENDMENT BILL (No. 2) 2015

SAMOA

Explanatory Memorandum

Introduction

This Bill seeks to amend the Constitution of the Independent State of Samoa 1960 in order to create the position of a Director of Public Prosecutions and to provide for his or her functions and powers to institute, conduct or discontinue proceedings for an offence alleged to have been committed. The Bill also provides for the terms and conditions of the Director's appointment to be provided by the Bill and also for transition and savings provisions.

This amendment accompanies the National Prosecution Office Bill 2015 which intends to set up the Office of the National Prosecution Office. Such Office is similar to Offices of the Director of Public Prosecutions in other jurisdictions. Such Offices are independent of the Executive arm of Government in that they do not act on any instructions to carry out their work.

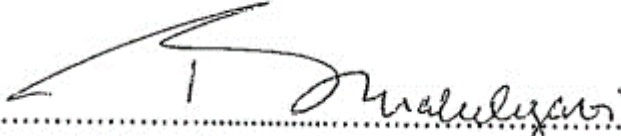
As will be seen in this amendment, the role and duty of the prosecution will be taken away from the Attorney General who acts on the instructions of Government to draft legislation as well when dealing with civil litigation proceedings. This will assist the Attorney General in providing a clear framework of the work he or she carries out and ensure that the role and the duty to prosecute criminal matters are not in any way affected by the Executive arm of Government.

This amendment therefore promotes good governance which our Government aspires to achieve and maintain.

Clauses:

- Clause 1** - provides for the short title of the Bill which will be called the Constitution Amendment Act (No. 2) 2015. The Bill is to commence on a date nominated by the Prime Minister.
- Clause 2** - amends Article 41 clause (2) of the Constitution.
- Clause 3** - inserts a new Article 41A to establish the appointment of the Director of Public Prosecutions and to provide for the term of appointment and functions and powers of the Director under the Constitution.

- Clause 4:** - inserts a new paragraph (ga) after paragraph (g) of Article 83.
- Clause 5:** - provides for transition and savings provisions.



(Hon TUILAEPA Fatialofa Lupesoliai
Aiono Neioti Sailele Malielegaoi)

PRIME MINISTER

CONSTITUTION AMENDMENT BILL (No. 2) 2015

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Arrangement of Provisions

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

2015, 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) 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 p

(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).
