

# NATIONAL PROSECUTION OFFICE BILL 2015

## SAMOA

### Explanatory Memorandum

#### **Introduction**

The National Prosecution Office Bill 2015 seeks to establish the National Prosecution Office (Office) and provides for the Director of Public Prosecutions (Director) functions, duties, powers and other related purposes. This Bill accompanies the Constitution Amendment Bill (No. 2) 2015.

This Bill is an important milestone for Samoa in establishing an independent National Prosecution Office. The independence of this Office ensures that no arm of Government influences the duties of the Director. The duty and role of the prosecution is currently vested in the Attorney General under Article 41 of the Constitution which has been the case since Samoa gained independence. However with the development of the prosecutorial capacity of legal officers within Government dealing with prosecutions, Government has seen that it is now timely for the National Prosecution Office to be established as Samoa is firmly committed to ensuring the promotion and maintenance of the rule of law, good governance and transparency.

This Bill therefore sets out the terms of appointment, removal and suspension of the Director. It also sets out the Offices values, principles and code of conduct. The Bill also sets out the appointment of staff and secondment of officers to the Office, subject to terms and conditions of secondment, as well as the remuneration of the staff to be determined under the Remuneration Tribunal Act 2003. The Bill further provides protection of the Director and staff from personal liability for acts done in good faith under the Bill, and other miscellaneous matters.

#### **Clauses:**

### **PART 1 PRELIMINARY**

- Clause 1:** - provides for the short title and commencement of the same which will be on a date nominated by the Prime Minister.
- Clause 2:** - provides for the definitions of terms used within the Bill.
- Clause 3:** - provides that the Bill is binding on the Government.

**PART 2  
NATIONAL PROSECUTION OFFICE**

- Clause 4:** - provides for the establishment and Minister responsible of the Office.
- Clause 5:** - provides for the independence of the Director when carrying out the functions under Article 41A of the Constitution (including statutory or common law function).
- Clause 6:** - provides for the functions of the Office.
- Clause 7:** - provides for the duty of the prosecutors when undertaking any prosecution or proceeding relating to the functions of the Office or of the Director.
- Clause 8:** - provides for the directions of the Director.

**PART 3  
DIRECTOR OF PUBLIC PROSECUTIONS**

- Clause 9:** - provides for the functions, powers and independence of the Director.
- Clause 10:** - provides for the terms of appointment of the Director.
- Clause 11:** - provides for the removal and suspension of the Director.
- Clause 12:** - provides for the power of the Director to designate an Acting Director to act if the Director is unable to carry out his or her functions, duties and powers under this Bill.
- Clause 13:** - provides for the power of the Director to delegate any functions, duties and powers of the Office or the Director under this Bill or any other enactment to any officer subordinate to the Director.
- Clause 14:** - provides for the power of the Director to consult with the Attorney General, if requested by the Attorney General, on matters relating to the functions, duties and powers of the Director and the Office.

**PART 4  
ADMINISTRATION AND FINANCE**

- Clause 15:** - provides for the values, principles and code of conduct pursuant to Part IV of the Public Service Act 2004 which applies to this Bill.

- Clause 16:** - provides for the responsibilities of the Director.  
**Clause 17:** - sets out the appointments of staff and secondment of officers to the Office.  
**Clause 18:** - provides for the remuneration of the staff determined under the Remuneration Tribunal Act 2003.  
**Clause 19:** - empowers the Director to prepare the Corporate plan and annual reports to be sent to the Prime Minister to be presented to the Legislative Assembly pursuant to its Standing Orders.  
**Clause 20:** - provides for the auditing requirements of funds of the Office appropriated by Parliament and other sources.

**PART 5  
MISCELLANEOUS**

- Clause 21:** - provides exemption from personal liability.  
**Clause 22:** - empowers the Director to issue manuals and guidelines for prosecutions.  
**Clause 23:** - empowers the Head of State to make regulations acting on the advice of the Cabinet.  
**Clause 24:** - provides for consequential amendments set out in the Schedule.  
**Clause 25:** - provides for transition and savings provisions.  
**Schedule:** - sets out the consequential amendments to other Acts.



(Hon TUILAEPA Fatialofa Auelua Lupesoliai  
Neioti Aiono Sailele Malielegaoi)

**PRIME MINISTER**

**NATIONAL PROSECUTION OFFICE BILL 2015**

**SAMOA**

Arrangement of Provisions

**PART 1  
PRELIMINARY**

1. Short title and commencement
2. Interpretation
3. Act binds Government

**PART 2  
NATIONAL PROSECUTION OFFICE**

4. Establishment and Minister responsible
5. Independence
6. Functions
7. Duty of prosecutors
8. Directions

**PART 3  
DIRECTOR OF PUBLIC PROSECUTIONS**

9. Functions, powers and independence
10. Terms
11. Removal and suspension
12. Acting Director
13. Delegation
14. Consultation with Attorney General

**PART 4  
ADMINISTRATION AND FINANCE**

15. Values, principles and code of conduct
16. Responsibilities of Director
17. Appointments of staff and secondment
18. Remuneration
19. Corporate plan and annual reports
20. Funds and audit

**PART 5  
MISCELLANEOUS**

21. Protection from personal liability
22. Manuals and guidelines
23. Regulations
24. Consequential amendments
25. Transition and savings

Schedule

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**2015, No.**

**A BILL INTITULED**

**AN ACT to establish the National Prosecution Office and to provide for its functions, duties and powers and for related purposes.**

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

**PART 1  
PRELIMINARY**

**1. Short title and commencement-**(1) This Act may be cited as the National Prosecution Office Act 2015.

(2) The Prime Minister may nominate a date of commencement of this Act, and may nominate different commencement dates for certain sections or Parts.

**2. Interpretation** - In this Act, unless the contrary intention appears:

- “Assistant Director of Public Prosecutions” or “Assistant Director” means a person appointed as such under section 17;
- “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;
- “Director of Public Prosecutions” or “Director” means the person appointed as such under Article 41A of the Constitution, and includes the person acting as the Director;
- “function of the Director” means the function of the Director under Article 41A(3) of the Constitution, and includes any function under this Act or any other enactment relating to an offence or criminal proceeding;
- “National Prosecution Office” or “Office” means the Office established as such by section 4;
- “offence” means any act or omission for which a person can be punished under the Crimes Act 2013 or under any other enactment;
- “prosecutor” means a person appointed as such under section 17(1)(a)(i), and includes the Director;
- “staff” means persons engaged under this Act pursuant to section 4(2)(b) to (d).

**3. Act binds Government** - This Act binds the Government.

## **PART 2 NATIONAL PROSECUTION OFFICE**

**4. Establishment and Minister responsible**-(1) The National Prosecution Office is established.

(2) The Office comprises the following:

- (a) the Director of Public Prosecutions;
- (b) Assistant Directors of Public Prosecutions;
- (c) other legally or non-legally qualified persons as prosecutors, including legal advisers and legal consultants;
- (d) administrative officers and other employees.

(3) The Director may determine divisions of the Office.

(4) The Prime Minister or a Minister appointed in writing by the Prime Minister is responsible for the administration of this Act.

**5. Independence** - The Director of Public Prosecutions and other prosecutors (including other persons authorised by the Director) are not subject to the direction of any other person when carrying out the functions under Article 41A of the Constitution (including statutory or common law function):

- (a) to institute, conduct or discontinue any proceedings for an offence alleged to have been committed; or
- (b) in relation to any matter relating to an offence or a criminal matter.

**6. Functions** - Without limiting Article 41A(3) of the Constitution, the Office has the following functions:

- (a) to institute and conduct prosecution of offences in any court;
- (b) to institute and conduct (including to conduct as respondent) any appeals relating to prosecution of offences;
- (c) to review and advise on criminal matters;
- (d) to advise the Attorney General on matters relating to application for parole by prisoners under the Prisons Parole Board established under the Prisons Parole Board Act 1977;
- (e) to institute and conduct proceedings relating to proceeds of crime matters under the Proceeds of Crime Act 2007 or any other enactment;
- (f) to institute and conduct any ancillary proceedings, including case stated relating to criminal proceedings or the functions of the Office under this Act or any other enactment;
- (g) to assist the coroner in any coronial inquiries or inquests;
- (h) to carry out other functions conferred under this Act or any other enactment or as are prescribed by regulations.

**7. Duty of prosecutors** - When undertaking any prosecution or proceeding relating to the functions of the Office or of the Director, a prosecutor must:

- (a) be fair, independent and objective;
- (b) act without fear or favour; and
- (c) not be influenced by any personal opinion or view about race, gender, religion or politics.

- 8. Directions-**(1) The Director may give written directions to:
- (a) the police or any other person who institutes or conducts prosecution; or
  - (b) the police or any other person on matters relating to the investigation or for the further investigation of an offence.
- (2) The police or the person must comply with the directive.

**PART 3**  
**DIRECTOR OF PUBLIC PROSECUTIONS**

- 9. Functions, powers and independence-**(1) 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) at any stage before judgment is delivered or sentence is imposed after the trial of an offence, discontinue 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 paragraph (a); and
  - (c) must carry out the functions of the Office, including -
    - (i) advising other prosecutors on matters relating to offences and criminal proceedings;
    - (ii) issuing of code of conduct for prosecutors;
    - (iii) assisting the Attorney General on matters relating to extradition and mutual assistance in criminal matters;
  - (d) has other functions, duties and powers conferred under any enactment.
- (2) The powers of the Director may be exercised by him or her in person or by officers subordinate to him or her, acting under and pursuant to his or her general or special instructions.

- 10. Terms-**(1) The Director:
- (a) is eligible for re-appointment;
  - (b) is entitled to remuneration fixed pursuant to the Remuneration Tribunal Act 2003;



- (c) on expiry of term, continues in office until re-appointed or a successor is appointed; and
  - (d) may, in writing to the Prime Minister, resign from office.
- (2) The salary, allowances and other benefits of the Director are not to be reduced during the term of office of the Director, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries, allowances and other benefits are determined under the Remuneration Tribunal Act 2003.

**11. Removal and suspension-**(1) The Head of State may, acting on the advice of the Prime Minister given pursuant to subsection (3), remove the Director only in accordance with this section and only under any of the grounds set out under subsection (2).

(2) The Director may only be removed if the Director:

- (a) has been convicted of an offence;
- (b) has become bankrupt or commits an act of bankruptcy under an Act regulating bankruptcy;
- (c) has become, by reason of physical or mental disability, incapable of performing the functions of the Director;
- (d) has, without any lawful or reasonable justification, failed to discharge any function of the Director;
- (e) has engaged in any conduct which places the Director in conflict with the performance of the functions of the Director.

(3) The Prime Minister must act on the recommendation of a tribunal appointed under subsection (4) when advising the Head of State under subsection (1).

(4) The Head of State may, acting on the advice of the Prime Minister, appoint a tribunal comprising a chairperson and two (2) other members.

(5) A person is eligible to be appointed as chairperson if the person holds or has held office of a Judge of the Supreme Court in Samoa or a similar superior court in a Commonwealth country that has a legal system similar to that existing in Samoa.

(6) The tribunal:

- (a) must enquire into the matter, subject to the rules of natural justice; and
- (b) must provide a written report to the Prime Minister setting out the following -
  - (i) the facts of the matter; and
  - (ii) the recommendations of the tribunal on whether or not the Director should be removed from office; and

- (c) may regulate its own procedures.
- (7) The Head of State may, acting on the advice of the Prime Minister suspend the Director if:
  - (a) the Director is being investigated for an offence punishable by imprisonment for at least 12 months;
  - or
  - (b) if a tribunal is appointed under subsection (4).
- (8) Until a final decision for removal is made, the Director is deemed to be suspended from office from the earlier of either of the following dates:
  - (a) a date determined by the Prime Minister; or
  - (b) the date the tribunal is appointed.

**12. Acting Director** - The Director may, in writing, designate an Assistant Director to act as Director if the Director is unable to carry out his or her functions, duties and powers under this Act or any other enactment or law because of illness, absence on leave or from Samoa or for any other reason.

**13. Delegation**-(1) The Director may delegate any functions, duties and powers of the Office or Director under this Act or any other enactment to any officer subordinate to the Director.

- (2) The delegation:
  - (a) does not include delegating the power under this section;
  - (b) may be given with or without terms and conditions;
  - (c) may be varied, suspended or revoked;
  - (d) does not prevent the Office or the Director from carrying out any power or duty so delegated.

**14. Consultation with Attorney General**-(1) The Director may, if requested by the Attorney General, consult with the Attorney General on matters relating to the functions, duties and powers of the Director and the Office.

(2) The Attorney General may, if requested by the Director, consult with the Director on matters relating to the functions, duties and powers of the Attorney General.

#### **PART 4 ADMINISTRATION AND FINANCE**

**15. Values, principles and code of conduct**-(1) Part IV of the Public Service Act 2004 applies, with necessary adaptations, to this Act.

(2) A breach of Part IV of the Public Service Act 2004 is to be dealt with pursuant to this Act.

**16. Responsibilities of Director** - The Director:

- (a) is also the Chief Executive Officer of the National Prosecution Office; and
- (b) manages and administers the Office and the staff.

**17. Appointments of staff and secondment**-(1) The Director may:

- (a) appoint persons under section 4(2)(b) to (d) pursuant to the appointment guidelines as -
  - (i) Assistant Directors of Public Prosecutions or prosecutors; and
  - (ii) administrative officers and other employees; and
- (b) issue employment guidelines -
  - (i) setting out procedures for appointments or for appeals on disciplinary matters, demotion, suspension or termination; and
  - (ii) on other matters relating to employment under this Act.

(2) If there are no guidelines issued under subsection (1)(b), the Director may apply the employment practices and rules for the Public Service.

(3) The Director:

- (a) may employ persons under this Act under contracts of employment or pursuant to employment guidelines; and
- (b) must take into account the budget of the Office when appointing persons for the purpose of this Act.

(4) The staff members are responsible to the Director when carrying out the functions, duties and powers under this Act.

(5) For purposes of this Act, the Director may, subject to terms and conditions of secondment:

- (a) request to second an officer or employee, from any ministry, statutory body, public body or government agency, in Samoa or overseas, to the Office; or
- (b) request to second an officer or employee of the Office, to any ministry, statutory body, public body or government agency, in Samoa or overseas.

(6) In this Part:

“appoint” includes the power to confirm, promote, demote, transfer, second, re-grade, discipline, suspend or terminate or re-appoint staff;

“public body” has the meaning in the Public Finance Management Act 2001.

**18. Remuneration-**(1) The remuneration of the staff is to be determined under the Remuneration Tribunal Act 2003.

(2) If officers in the Public Service are given general increases in salaries or allowances, the salaries or allowances of persons appointed under this Act are to be increased accordingly.

**19. Corporate plan and annual reports-**(1) The Director must ensure that:

(a) a corporate plan is prepared for the Office pursuant to the same requirements applying to government agencies; and

(b) an annual report is prepared setting out the operations of the Office in a year.

(2) The Director must send the annual report to the Minister who must, as soon as practicable, present the report to the Legislative Assembly pursuant to its Standing Orders.

**20. Funds and audit-**(1) The funds of the Office comprise the following:

(a) monies appropriated by Parliament;

(b) monies from other sources.

(2) The Public Finance Management Act 2001 and the Audit Act 2013 apply to the funds of this section.

## **PART 5 MISCELLANEOUS**

**21. Protection from personal liability** - The Director, staff or any other person required to carry out the functions, duties and powers under this Act is not personally liable for any act done in good faith when carrying out the functions, duties and powers under this Act.

**22. Manuals and guidelines** - The Director may issue manuals or guidelines for prosecutions.

**23. Regulations** - The Head of State may, on the advice of Cabinet, make regulations to give effect to or for the purposes of this Act.

**24. Consequential amendments**-(1) The Acts set out in the Schedule are amended.

(2) Despite subsection (1), any other enactment relating to any consent or approval of the Attorney General relating to prosecution of an offence is amended and to be substituted as the consent or approval of the Director of Public Prosecutions.

**25. Transition and savings** - At the commencement of this Act:

- (a) any current criminal proceedings instituted and conducted for and on behalf of the Attorney General or the Police are to continue as if they were instituted and conducted by the Director of Public Prosecutions or the National Prosecution Office under this Act;
- (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, subject to their written consent, of the Prosecution Division of the Attorney General's Office are transferred to the National Prosecution Office by written approval of the Attorney General.

**SCHEDULE**  
(section 24)

**CONSEQUENTIAL AMENDMENTS TO OTHER ACTS**

<b>No.</b>	<b>Act amended</b>	<b>Section amended</b>	<b>amendment</b>
	Attorney General's Office Act 2013	s5	for subsection (2), omit paragraph (b)
		s7	repeal subsection (2)
	Audit Act 2013	s26	For subsection (8), for "Attorney-General to prosecute or take out legal proceedings" substitute "Director of Public Prosecutions to prosecute or to the Attorney General to institute civil proceedings"

	Chemical Weapons Act 2010	s3	<p>For subsection (4), omit “Attorney General” and substitute “Director of Public Prosecutions”</p> <p>For subsection (5), omit “Attorney General’s” and substitute “Director of Public Prosecutions”</p>
	Civil Aviation Act 1998	s119	omit “Attorney General’s” and “Attorney General” and substitute “Director of Public Prosecutions” and “Director of Public Prosecutions” respectively
	Cluster Munitions Prohibition Act 2012	s4	<p>For subsection (4), omit “Attorney General” and substitute “Director of Public Prosecutions”</p> <p>For subsection (5), omit “Attorney General’s” and substitute “Director of Public Prosecutions”</p>

	Copyright Act 1998	s27	For subsection (4), omit “Attorney General” and substitute “Director of Public Prosecutions”
	Coroners Ordinance 1959	s7  s24	omit “Attorney General” and substitute “Director of Public Prosecutions” appearing three (3) times  omit “Attorney General” and substitute “Director of Public Prosecutions”
	Counter Terrorism Act 2014	s60	For heading and subsection (1), omit “Attorney General” and substitute “Director of Public Prosecutions”
	Crimes Act 2013	s2	For definition of “prosecutor” omit “Attorney General” and “Attorney General’s” and substitute “Director of Public Prosecutions” and “Director of Public Prosecutions, respectively”



		s81	For subsection (5), omit “Attorney General” and substitute “Director of Public Prosecutions”
		s82	For subsection (4) omit “Attorney General” and substitute “Director of Public Prosecutions”
		s135	For the heading and subsections (3), omit “Attorney General’s” and substitute “Director of Public Prosecutions”
		s136(3)	omit “Attorney General of Samoa” and substitute “Director of Public Prosecutions”
		s158	omit “Attorney General” and substitute “Director of Public Prosecutions”

		s121	omit "Attorney General" and substitute "Director of Public Prosecutions"
	Criminal Procedure Act 1972	s14  s171	omit "Attorney General" and substitute "Director of Public Prosecutions"  omit "Attorney General" and substitute "Director of Public Prosecutions"
	Excise Tax (Domestic Administration) Act 1984	s95	omit "Attorney General" and substitute "Director of Public Prosecutions"
	Extradition Act 1974	whole Act	Omit "Attorney General" and substitute "Director of Public Prosecutions"
	Financial Institutions Act 1996	s26	omit "Attorney General" and substitute "Director of Public Prosecutions"

	Indecent Publications Ordinance 1960	s10	omit "Attorney General" and substitute "Director of Public Prosecutions"
	International Criminal Court Act 2007	s16	For subsections (1), (2) and (3) omit "Attorney General" and substitute "Director of Public Prosecutions"  For the heading and subsections (1) and (2), omit "Attorney General's" and "Attorney General" and substitute "Director of Public Prosecutions" and "Director of Public Prosecutions" respectively
	International Insurance Act 1988	s40	For subsection (6), omit "Attorney General" and substitute "Director of Public Prosecutions"

	Land Titles Registration Act 2008	s91	omit "Attorney General" and substitute "Director of Public Prosecutions"
	Money Laundering Prevention Act 2007	s5(1)	After paragraph (g), insert "(ga) the Director of the Public Prosecutions; and"
	Mutual Assistance in Criminal Matters Act 2007	whole Act	Omit "Attorney General" and substitute "Director of Public Prosecutions"
	Occupational Safety and Health Act 2002	s39	omit "Attorney General" and substitute "Director of Public Prosecutions"
	Plebiscite Act 1990	s71	omit "Attorney General" and substitute "Director of Public Prosecutions"
	Plumbers Act 2014	s17	For subsection (1)(e), omit "Attorney General" and substitute "Director of Public Prosecutions"

	Police Offences Ordinance 1961	s9	For paragraph (a), omit “Attorney General” and substitute “Director of Public Prosecutions”
	Police Service Act 2009	s68	For subsection (7), omit “Attorney General” and substitute “Director of Public Prosecutions”
	Scientific Research Organisation of Samoa Act 2008	s16	For subsection (4), omit “Attorney General” and substitute “Director of Public Prosecutions”
	Secret Commissions Act 1975	s13	For subsection (1), omit “Attorney General” and substitute “Director of Public Prosecutions”
	Tax Administration Act 2012	s9A	For subsections (1) and (3), after “Attorney General” add “or the Director of Public Prosecutions in the case of an offence”

	Telecommunications Act 2005	s69	For subsection (3), after “may” add “, after consulting the Director of Public Prosecutions on matters relating, relating to prosecution)”
	Waste Management Act 2010	23	For subsection (1), omit “Office of the Attorney General, police officers” and substitute “National Prosecution Office”
	Water Resources Management Act 2008	40	For subsection (2), omit “Attorney General” and substitute “Director of Public Prosecutions”

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