

## 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.

## TULAFONO TAU FAAOFI O TEUTEUGA O LE FAAVAE (Nu. 2) 2015

### SAMOA

#### Faamatalaga e Faamalamalama ai

#### **Faatomuaga**

Ua taumafai lenei Tulafono Tau Faaofi e teuteu le Faavae o le Malo Tutoatasi o Samoa 1960 ina ia faavae ai le tulaga tofi o se Faatonu e Faafoeina Moliaga Faaletulafono a le Atunuu ma ia aiaia ai ana galuega tauave ma malosiaga e faatuina ai, taitai po o le faagataina o so o se taulumaga mo se soligatulafono e faapea ua uma ona faia. Ua faapea foi ona aiaia i le Tulafono Tau Faaofi ni aiaiga ma tuutuuga o le tofiaina o le Faatonu e ao ona aiaia e le Tulafono Tau Faaofi faapea ai ma aiaiga tau soloaiga ma aiaiga faasoina.

O lenei teuteuga ua tuuina atu faatasi ma le Tulafono Tau Faaofi o le Ofisa Tutotonu e Faafoeina Moliaga Faaletulafono 2015, lea ua faamoemoe e faavaeina ai le Tofi o le Ofisa Tutotonu e faafoeina moliaga faaletulafono. O sea Tofiga e tutusa lava ma Tofiga o le Faatonu e Faafoeina Moliaga Faaletulafono a le Atunuu i totonu o isi puleaga faa-faamasinoga. O ia Tofiga e tutoatasi mai le Pulega Faatonu o le Malo, i le tulaga e faapea, e latou te lē galulue i luga o so o se faatonuga e faatino ai a latou galuega.

E pei ona o le a vaaia ai i totonu o lenei teuteuga, o matafaioi ma tiute tauave o le faafoeina o moliaga faaletulafono o le a aveesea lea mai le Loia Sili, o ia lea o lo o galue i luga o Faatonuga a le Malo ina ia tusia tulafono e faapea foi pe a oo ina tagofia taulumaga faa-faamasinoga o mataupu tau le va o tagata. O lenei tulaga o le a fesoasoani lea i le Loia Sili i le tuuina atu o le faatulagaga manino o galuega o lo o ia faatinoina ma faamautinoa ai e faapea o le a lē aafia ai i so o se itu o matafaioi ma tiute e faia ai moliaga faaletulafono i le Pulega Faatonu o le Malo.

O lenei teuteuga ua faapea ona uunaia ai pulega Malo lelei lea e naunau i ai lo tatou Malo e ausia ma faatumauiina.

**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.

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 (Hon TUILAEPFA Fatialofa Lupesoliai  
 Aiono Neioti Sailele Malielegaoi)  
**PRIME MINISTER**

**Fu'aiupu:**

- Fu'aiupu 1:** - ua aiaia ai mo le igoa puupuu o le Tulafono Tau Faaofi lea o le a taua o le Tulafono o Teuteuga o le Faavae (Nu. 2) 2015. O le a amata faamamaluina le Tulafono Tau Faaofi i se aso e filifilia e le Palemia.
- Fu'aiupu 2:** - ua teuteu ai le Mataupu 41 fuaiupu (2) o le Faavae.
- Fu'aiupu 3:** - ua faaofi ai se Mataupu 41A fou ina ia faavae ai le tofiga o le Faatonu e Faafoeina Moliaga Faaletulafono a le Atunuu ma ia aiaia ai mo le vaitaimi o le tofi ma galuega tauave ma malosiaga o le Faatonu i lalo o le Faavae.
- Fu'aiupu 4:** - ua faaofiina ai se parakalafa (ga) fou i le tuanai ai o le parakalafa (g) o le Mataupu 83.
- Fu'aiupu 5:** - ua aiaia ai mo aiaiga tau soloaiga ma aiaiga faasaoia.

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 (Hon TUILAEPFA Fatialofa Lupesoliai  
 Aiono Neioti Sailele Malielegaoi)  
**PALEMIA**