

## **BROADCASTING AMENDMENT BILL 2015**

### **SAMOA**

#### Explanatory Memorandum

#### **Introduction**

The Broadcasting Amendment Bill 2015 (“Bill”) aims to improve the framework for administration of the broadcasting sector. This is reflected in the Bill by recognising that not all provisions applying to the telecommunications sector apply to broadcasting, given the difference in services provided or characteristics for each sector. The following are the main amendments to be made to the Broadcasting Act 2010 (“the Act”):

- (1) Clarifying the extent of services that qualify as broadcasting (rather than telecommunication services in general);
- (2) Removing ex ante references that are not relevant to the broadcasting sector; and
- (3) Removing Part III of the Act which establishes a separate Broadcasting Tribunal and replacing with the Tribunal under the Telecommunications Act 2005 (“Telecommunications Act”);
- (4) Extension of objectives under the Act; and
- (5) Clearly merging the responsibilities of the Regulator under the Telecommunications Act and the Act.

## **TULAFONO TAU FAAOFI O TEUTEUGA O LE TULAFONO O FAASALALAUGA 2015**

### **SAMOA**

#### Faamatalaga e Faamalamalama ai

#### **Faatomuaga**

Ua faamoemoe le Tulafono Tau Faaofi o Teuteuga o le Tulafono o Faasalalauga 2015 (“Tulafono Tau Faaofi”) ina ia faaleleia le taiala faavae mo le faafoega o le vaega tau faasalalauga. Ua atagia leni tulaga i totonu o le Tulafono Tau Faaofi, e ala i le amanaia ai e faapea, e le o aiaiga uma e faasino i le vaega tau fesootaiga e faaaogā i le vaega tau faasalalauga, pe a faatusatusa i le eseese o auaunaga o tuuina atu po o faatinoga masani a vaega taitasi. O teuteuga autu nei e ao ona faia i le Tulafono o Faasalalauga 2010 (“o le Tulafono”):

- (1) Ia faamanino le tulaga lautele o auaunaga ia ē agavaa e aveia ma auaunaga tau faasalalauga (na i lo auaunaga tau fesootaiga i lona tulaga lautele);
- (2) Ia aveese uluai faasinomaga na faia, ia e lē talafeagai i le vaega tau faasalalauga; ma
- (3) Ia aveese le Vaega III o le Tulafono lea o lo o faavaeina ai se Komisi Faamasino o Faasalalauga e ese ai, ma suia i le Komisi Faamasino o lo o i lalo o le Tulafono o Fesootaiga 2005 (“Tulafono o Fesootaiga”);
- (4) Ia faalautele atu sini autu i lalo o le Tulafono; ma
- (5) Ia manino le tuufaatasiga o matafaioi a le Pule Faatonu i lalo o le Tulafono o Fesootaiga faapea ma le Tulafono.

**Clauses:**

- Clause 1:** - states that, when enacted, the Bill will be called the Broadcasting Amendment Act 2015, and will commence on the date of assent by the Head of State.
- Clause 2:** - amends section 2 of the Act with provisions for the new definition of “broadcasting service” and the inclusion of new definition “Broadcasting Tribunal”.
- Clause 3:** - amends section 3 by removing objectives related to services beyond ‘broadcasting’. New paragraphs inserted to extend the objectives of the Act to encourage preservation of cultural diversity and establish measures for control of broadcasting content to protect the public.
- Clause 4:** - new provision to clarify that the Regulator and Office of the Regulator under the Telecommunications Act is also the Broadcasting Regulator and the Office for Broadcasting, respectively.
- Clause 5:** - amends section 5 of the Act on the appointment of the Regulator.
- Clause 6:** - repeals section 8(15) of the Act since the Office of the Broadcasting Regulator is the same as the Office for the Telecommunications Regulator.
- Clause 7:** - repeals provisions for a Broadcasting Tribunal under Part III of the Act.

**Fuaiupu:**

- Fuaiupu 1:** - ua taua ai e faapea, afai e pasia, o le a taua loa le Tuafono Tau Faaofi o le Tulafono o Teuteuga o le Tulafono o Faasalalauga 2015, ma o le a amata faamamaluina i le aso e tuuina i ai le maliega a Le Ao o le Malo.
- Fuaiupu 2:** - ua teuteuina ai le fuaiupu 2 o le Tulafono faatasi ai ma aiaiga mo le faamatalaga manino fou o “galuega tau faasalalauga” ma le aofia ai i totonu o le faamatalaga manino fou o le “Komisi Faamasino o Faasalalauga”.
- Fuaiupu 3:** - ua teuteuina ai le fuaiupu 3, e ala i le aveeseina o sini o lo o faasino i auaunaga i tua atu o galuega ‘tau faasalalauga’. Ua faaofiina foi i totonu parakalafa fou mo le faalateleina o sini autu o le Tulafono, ina ia faamalosi ai faiga tau puipuiga i tu ma aga eseese faaleaganuu, ma faamautuina ai faiga e faatonutonu ai mataupu e aofia i faasalalauga mo le puipuiga o tagata lautele.
- Fuaiupu 4:** - ua taua ai se aiaiga fou e faamanino ai e faapea, o le Pule Faatonu ma le Ofisa o le Pule Faatonu, o lo o i lalo o le Tulafono o Fesootaiga, o le Pule Faatonu foi lena o Faasalalauga ma le Ofisa o Faasalalauga i lena faatulagaga.
- Fuaiupu 5:** - ua teuteuina ai le fuaiupu 5 o le Tulafono mo le tofiaina o le Pule Faatonu.
- Fuaiupu 6:** - ua soloia ai le fuaiupu 8(15) o le Tulafono ona o le Tofiga o le Pule Faatonu o Faasalalauga o le Pule foi lea o Fesootaiga.
- Fuaiupu 7:** - ua soloia ai aiaiga mo se Komisi Faamasino o Faasalalauga i lalo o le Vaega III o le Tulafono.

- Clause 8:** - amends section 10(1) of the Act to omit reference to section 11.
- Clause 9:** - amends section 29 of the Act by removing reference to procedural proposals by the Ministry, repealing subsection (4) on access policies relevant to services beyond the broadcasting sector and inserting an obligation on the Ministry to consult with the Regulator as well as other interested parties when preparing a broadcasting policy.
- Clause 10:** - repeals subsections related to anti-competition practices that do not apply in the broadcasting sector and amends the Act to clarify that where a conflict arises between provisions of the Act and other relevant legislation the Act prevails except in cases where the conflict is with the Telecommunications Act.
- Clause 11:** - repeals sections 32 and 33 of the Act about dominant service providers and abuse of dominance.
- Clause 12:** - substitutes section 35 of the Act to provide for determination of practices that are anti-competitive only.
- Clause 13:** - amends section 36 of the Act to remove references to ‘dominance’ and ‘dominant position’.
- Clause 14:** - amends section 37(2) of the Act in relation to transferring control of a license.

- Fuaiupu 8:** - ua teuteuina ai le fuaiupu 10(1) o le Tulafono e aveesea ai faasinomaga o lo o i le fuaiupu 11.
- Fuaiupu 9:** - ua teuteuina ai le fuaiupu 29 o le Tulafono e ala i le aveeseina o faasinomaga i talosaga tau tualumaga e faia e le Matagaluega, ua soloia ai le faafuaiupu (4) e faatatau i faiga faavae e avanoa i ai e talafeagai mo galuega i tua atu o auaunaga tau faasalalauga, ma faaofiina ai se noataga o le Matagaluega ina ia feutagai ma le Pule Faatonu aemaise isi vaega auai e i ai a latou aia i le saunia ai o se faiga faavae tau faasalalauga.
- Fuaiupu 10:** - ua soloia ai faafuaiupu e faasino i faiga e taofiofia ai faiga faatauva ia e lē faaaogāina i le vaega tau faasalalauga, ma teuteu ai le Tulafono e faamanino ai e faapea, afai e faatulai mai se feteenaiga i aiaiga o le Tulafono ma isi tulafono laiti talafeagai, e mausali pea le Tulafono seia vagana i ni mataupu ua tulai mai ai se feeseeseaiga ma le Tulafono o Fesootaiga.
- Fuaiupu 11:** - ua soloia ai le fuaiupu 32 ma le 33 o le Tulafono e uiga i kamupani iloga o lo o tuuina atu auaunaga ma le faaaogā sese o lea tulaga iloga.
- Fuaiupu 12:** - ua suia ai le fuaiupu 35 o le Tulafono ina ia aiaia ai mo le fuafuaina na o faatinoga ia e le o ni faiga faatauva.
- Fuaiupu 13:** - ua teuteuina ai le fuaiupu 36 o le Tulafono mo le aveesea o fuaitau o faasinomaga e faasino i upu ‘iloga’ ma ‘tulaga iloga’.
- Fuaiupu 14:** - ua teuteuina ai le fuaiupu 37(2) o le Tulafono e faasino i le faaliliuina atu o le faafoeina o se laisene.

**Clause 15:** - amends section 40(2) of the Act to omit reference to section 11.

**Clause 16:** - makes consequential amendments to the Act to remove “dominant” wherever occurring, “universal access policy” and meaning from interpretation and to repeal section 30(1)(a) of the Act.

**Fuaiupu 15:** - ua teuteuina ai le fuaiupu 40(2) o le Tulafono mo le aveeseina o faasinomaga o lo o i le fuaiupu 11.

**Fuaiupu 16:** - ua faia ai teuteuga faatupulaia i le Tulafono mo le aveeseina o le upu “iloga” o fea lava o aliali mai ai, “faiga faavae i avanoa lautele” ma lona faauigaina mai le faamatalaina o uiga o upu, ma soloia ai le fuaiupu 30(1)(a) o le Tulafono.

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(Hon TUILAEP A Fatialofa Auelua Lupesoliai  
Neioti Aiono Sailele Malielegaoi)

**ACTING MINISTER OF COMMUNICATIONS  
AND INFORMATION TECHNOLOGY**

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(Hon TUILAEP A Fatialofa Auelua Lupesoliai  
Neioti Aiono Sailele Malielegaoi)

**SUI MINISITA O FESOOTAIGA MA  
FAAMATALAGA TEKONOLOSI**