

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.

TULAFONO TAU FAAOFI O LE OFISA E FAAFOEINA MOLIAGA TAU SOLITULAFONO 2015

SAMOA

Faamatalaga e Faamalamalama ai

Faatomuaga

Ua taumafai le Tulafono Tau Faaofi o le Ofisa e Faafoeina Moliaga Tau Solitulafono 2015 e faavaeina le Ofisa e Faafoeina Moliaga Tau Solitulafono (Ofisa) ma aiaia ai mo galuega tauave, tiute, ma malosiaga o le Faatonu Faafoe Moliaga (Faatonu) ma isi faamoemoega e fesootai i ai. O lenei Tulafono Tau Faaofi ua tuuina atu faatasi ma le Tulafono Tau Faaofi o Teuteuga o le Faavae (Nu.2) 2015.

O se matatia taua le Tulafono Tau Faaofi lenei, mo Samoa, i le faavaeina lea o se Ofisa Tumaoti e Faafoeina Moliaga Tau Solitulafono. O le tulaga tumaoti o lenei Ofisa, o le faamautinoa ai le leai o se vaega o le pulega faatonu o le Malo, e aia i tiute tauave o le Faatonu. I le taimi, nei, o tiute ma le matafai o le faafoeina o moliaga tau solitulafono, o lo o faaee atu i le Loia Sili i lalo o le Mataupu 41 o le Faavae, ma o le tulaga lava lea na sau ai talu ona tutoatasi Samoa. Peitai ane, o le atiaeina o le mafaigafatia o loia i totonu o le Malo o lo o tauaveina moliaga tau solitulafono, ua faapea ona manatu ai le Malo, ua talafeagai i le taimi nei, ona faatuina se Ofisa e Faafoeina Moliaga Tau Solitulafono aua le atunuu lautele, talu ai ona ua mautu ma atoatoa le agaga naunautai o Samoa e faamautinoa le uunaia ma le faamautuina o le pulega o tulafono, pulega malo lelei ma le manino atoatoa.

O lenei la Tulafono Tau Faaofi ua faatulaga atu ai o tuutuuga o le tofiga, aveesea ma le faamalolō lē tumau mai le galuega o le Faatonu. Ua faapea foi ona faatulaga atu ai o aga tausili a le Ofisa, o taiala faavae ma le tulafono laitiiti o amioga pulea. Ua faatulagaina foi i le Tulafono Tau Faaofi le tofiaina o le afaigaluega ma le tofia o tagata faigaluega mai isi ofisa e galulue lē tumau i le Ofisa, i le noatia ma le fai fuafua i tuutuuga ma aiaiga o le faafaigaluegaina lē tumau i se isi ofisa, ae faapena foi i le totogi o le afaigaluega o le a fuafuaina i lalo o le Tulafono o le Komiti Faufautua mo Totogi 2003. Ua aiaia foi e le Tulafono Tau Faaofi le puipuga o le Faatonu ma le afaigaluega mai noataga tau le tagata lava ia mo gaoioga e faia i le agaga lelei i lalo o le Tulafono Tau Faaofi, ma isi lava mataupu eseese.

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.

Fuaiupu:**VAEGA 1
FAATOMUAGA**

- Fuaiupu 1:** - ua aiaia ai mo le igoa puupuu ma le aso e amata faamamaluina ai le Tulafono, lea o le a faatino i se aso o le a filifilia e le Palemia.
- Fuaiupu 2:** - ua aiaia ai mo faamatalaga o fuaitau o faaaogāina i totonu o le Tulafono Tau Faaofi.
- Fuaiupu 3:** - ua aiaia ai e faapea o le Tulafono Tau Faaofi e noatia ai le Malo.

**VAEGA 2
OFISA E FAAFOEINA MOLIAGA
TAU SOLITULAFONO**

- Fuaiupu 4:** - ua aiaia ai mo le faavaeina o le Ofisa ma le Minisita e fitoitonu i ai.
- Fuaiupu 5:** - ua aiaia ai mo le tulaga tumaoti o le Faatonu pe a tauaveina ana galuega tauave i lalo o le Mataupu 41A o le Faavae (e aofia ai galuega tauave faaletulafono po o galuega tauave i lalo o tulafono o faaaogāina faalauaitele).
- Fuaiupu 6:** - ua aiaia ai mo galuega tauave a le Ofisa.
- Fuaiupu 7:** - ua aiaia ai mo le tiute o tagata faafoe moliaga pe a faatinoina o so o se moliaga faaletulafono po o so o se tualumaga e faasino i galuega tauave a le Ofisa po o le Faatonu.
- Fuaiupu 8:** - ua aiaia ai mo faatonuga a le Faatonu.

**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.

**VAEGA 3
FAATONU FAAFOE MOLIAGA**

- Fuaiupu 9:** - ua aiaia ai mo galuega tauave, malosiaga ma le tulaga tumaoti o le Faatonu.
- Fuaiupu 10:** - ua aiaia ai mo tuutuuga o le tofiaina o le Faatonu.
- Fuaiupu 11:** - ua aiaia ai mo le aveesea ma le faamalolo lē tumau o le Faatonu.
- Fuaiupu 12:** - ua aiaia ai mo le malosiaga o le Faatonu e tofia ai se Sui Faatonu e galue ai pe afai ua lē mafaia e le Faatonu ona ia tauaveina o ana galuega tauave, tiute ma malosiaga i lalo o lenei Tulafono Tau Faaofi.
- Fuaiupu 13:** - ua aiaia ai mo le malosiaga o le Faatonu e tuuina atu ai so o se galuega tauave, tiute ma malosiaga o le Ofisa po o le Faatonu i lalo o lenei Tulafono Tau Faaofi po o so o se isi lava tulafono, i so o se tagata ofisa o galue i lalo ifo o le tofiga Faatonu.
- Fuaiupu 14:** - ua aiaia ai mo le malosiaga o le Faatonu e feutagai ai ma le Loia Sili, pe afai e talosagaina e le Loia Sili, i mataupu e faasino i galuega tauave, tiute ma malosiaga o le Faatonu ma le Ofisa.

**VAEGA 4
PULEGA MA TUPE**

- Fuaiupu 15:** - ua aiaia ai mo agatausili, taiala faavae ma le tulafono laitiiti o amioga pulea e tusa ai ma le Vaega IV o le Tulafono o Galuega a le Malo 2004 lea e faaaogā i lenei Tulafono Tau Faaofi.

- 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.

- Fuaiupu 16:** - ua aiaia ai mo matafaioi a le Faatonu.
- Fuaiupu 17:** - ua faatulagaina ai tofiga o le aufaigaluega ma le faafaigaluegaina lē tumau o tagata ofisa mai isi galuega i le Ofisa.
- Fuaiupu 18:** - ua aiaia ai mo tofogi o le aufaigaluega ua fuafuaina i lalo o le Tulafono o le Komiti Faufautua mo Totogi 2003.
- Fuaiupu 19:** - ua tuuina atu ai malosiaga i le Faatonu e saunia ai le Fuafuaga Autasi ma lipoti faaletausaga e ao ona auina atu i le Palemia ina ia faataatia i luma o le Fono Aoaofaitulafono e tusa ai ma ana Tulafono Tumau.
- Fuaiupu 20:** - ua aiaia ai mo manaoga tau le sueina faasuetusi o tupe a le Ofisa ua faatatauina e le Palemene ma isi alaoa.

**VAEGA 5
AIAIGA ESEESE**

- Fuaiupu 21:** - ua aiaia ai tuusaunoaga mai noataga tau le tagata lava ia.
- Fuaiupu 22:** - ua tuuina atu ai malosiaga i le Faatonu e tuuina atu ai tusi taiala ma taiala mo le faafoeina o moliaga faaletulafono.
- Fuaiupu 23:** - ua tuuina atu ai malosiaga i Le Ao o le Malo e faia ai o tulafono faatonutonu, i le faia i luga o le fautuaga a le Kapeneta.
- Fuaiupu 24:** - ua aiaia ai mo teuteuga faatupulaia ua faatulagaina i totonu o le Faamatalaga.

Clause 25: - provides for transition and savings provisions.

Schedule: - sets out the consequential amendments to other Acts.

Fuaiupu 25: - ua aiaia ai mo aiaiga tau soloaiga ma aiaiga faasaoina.

Faamatalaga: - ua faatulagaina ai o teuteuga faatupulaia i isi Tulafono.

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

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