

SAMOA

Arrangement of Provisions

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2014, No. 2

AN ACT to amend the Constitution for the purposes of strengthening the office, appointment, functions and powers of the Controller and Auditor General, and for related purposes. *[27th January 2014]*

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 2014 and is to be read with and forms part of the Constitution.

(2) This Act commences on the date of assent by the Head of State.

2. Article 83 amended - For Article 83(h) of the Constitution, substitute:

“(h) Controller and Auditor General, and other officers and employees of the Audit Office specified under Article 97; or”.

3. Article 97 substituted - For Article 97 of the Constitution, substitute:

“97. Controller and Auditor General-(1) There shall be a Controller and Auditor General:

(a) Who shall be appointed by the Head of State, acting on the advice of the Prime Minister; and

(b) Whose office shall be called the Audit Office.

(2) Before advising the Head of State, the Prime Minister shall consult the parliamentary committee responsible for Officers of Parliament on the proposed appointment of the Controller and Auditor General.

(3) No person shall be appointed as Controller and Auditor General unless the person satisfies the eligibility criteria provided by Act.

(4) A person shall not be appointed as Controller and Auditor General if the person has previously been appointed as Controller and Auditor General or as Controller and Chief Auditor under this Part.

(5) Subject to Article 97A(4), the Controller and Auditor General is an independent officer of Parliament.

(6) There are no implied functions, powers, rights, immunities or obligations of the Controller and Auditor General arising from the Controller and Auditor General’s status as an independent officer of Parliament.

(7) There are no implied powers of the Legislative Assembly arising from the Controller and Auditor General’s status as an independent officer of Parliament and the powers of the Legislative Assembly to act in respect of the Controller and Auditor General are only those provided under or by this Part or Act.

(8) Except as provided by Act, the Controller and Auditor General is not subject to the Act regulating the Public Service.

(9) Other terms of the appointment of the Controller and Auditor General and the establishment and composition and functions of the Audit Office are provided by Act.”.

4. New Article 97A added - After Article 97 of the Constitution, add:

“97A. Responsibilities of Controller and Auditor

General-(1) The Controller and Auditor General is responsible for auditing public assets, liabilities and equity including public money.

(2) Without limiting clause (1), the Controller and Auditor General shall audit the Treasury Fund, other public funds and public accounts as may be established by law, funds and accounts of all Ministries and other Government and State Offices (including departments of Ministries, and overseas missions), and funds and accounts of other public, statutory authorities, local authorities and other bodies as may be provided by Act.

(3) For the purpose of exercising functions under this Part, the Controller and Auditor General has other functions, powers, immunities and independence provided by Act.

(4) Except as provided by Act, the Controller and Auditor General has complete discretion in carrying out his functions, duties and powers and is not subject to any direction from any person as to:

- (a) Whether or not to conduct a particular audit;
or
- (b) The way in which the Controller and Auditor General is to conduct a particular audit; or
- (c) The priority to be given to any particular audit or other matter.”.

5. Article 98 substituted - For Article 98 of the Constitution substitute:

“98. Duty of Controller and Auditor General to report to Legislative Assembly-(1) Subject to clause

(2), the Controller and Auditor General shall:

- (a) Report, at least once annually and at such other times as may be provided by Act, to the Legislative Assembly -
 - (i) On the results of all audits conducted under this Part or by Act;
and

(ii) Draw attention to any irregularities in the accounts, transactions, processes, systems or operations of the Treasury Fund or of a public fund, public account, Ministry, office or body audited by the Controller and Auditor General under Article 97A(2); and

(b) Report generally and at least once annually to the Legislative Assembly on the performance of his functions, duties and powers under this Part or by Act and the operations of the Audit Office.

(2) A report under clause (1) shall be presented by the Speaker to the Legislative Assembly.”.

6. Article 99 substituted - For Article 99 of the Constitution, substitute:

“99. Term of office-(1) Subject to this Part, a person appointed as Controller and Auditor General holds office for a term of 12 years.

(2) If the term for which a person who has been appointed as Controller and Auditor General expires, that person continues to hold office until a successor to that person is appointed unless removed or suspended during the period of expiry.”.

7. New Articles 99A to 99F added - After Article 99 of the Constitution add:

“99A. Conditions of service-(1) The Controller and Auditor General is entitled to salary, allowances and other benefits provided by Act.

(2) The salary of the Controller and Auditor General shall not be reduced during the period of office of the Controller and Auditor General, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by Act.

(3) The allowances and other benefits of the Controller and Auditor General’s service are not to be altered in any way which reduces any allowance and

benefit conferred on the Controller and Auditor General arising from the appointment.

(4) The salary, allowances and other benefits under this Part shall be charged on the Treasury Fund.

99B. Other employment - Except as provided by Act or authorised by resolution of the Legislative Assembly, the Controller and Auditor General shall not:

- (a) Hold any appointment in the Public Service (including in any of the other capacities under Article 83), other than that of Controller and Auditor General; or
- (b) Be a member of any authority or body mentioned under Article 97A(2); or
- (c) Engage in any paid employment outside the functions of his office.

99C. Rights preserved-(1) A person who was an officer or employee in the Public Service and who is appointed as Controller and Auditor General is entitled to retain all existing and accruing rights as if the service of that person as Controller and Auditor General were a continuation of service as an officer or employee in the Public Service.

(2) During the term of appointment as Controller and Auditor General, the Controller and Auditor General is entitled to retain existing and accruing rights as if the Controller and Auditor General had continued in service as an officer or employee in the Public Service.

(3) If a person ceases to hold office as Controller and Auditor General and becomes an officer in another capacity or an employee in the Public Service, the service of that person as Controller and Auditor General is to be regarded as service in that other capacity or as an employee in the Public Service for the purpose of determining accruing rights.

99D. Absence of Controller and Auditor General-(1) If the Controller and Auditor General is unable to carry out his or her functions, duties and powers under this Constitution or any other Act or law because of illness, absence on leave or from Samoa or

any other reason, the person who is appointed by an Act as the Assistant Auditor must carry out those functions, duties and powers.

(2) If the Assistant Auditor is unable to carry out the functions, duties and powers of the office of the Controller under clause (1) because of illness, absence on leave or from Samoa or any other reason, the Controller must in writing appoint a senior officer of the Audit Office to carry out those functions, duties and powers.

99E. Resignation of Controller and Auditor General - The Controller and Auditor General may resign from office by giving the Head of State a signed letter of resignation.

99F. Removal from office of Controller and Auditor General-(1) The Head of State may, acting on the advice of the Prime Minister given pursuant to clause (3), remove the Controller and Auditor General only in accordance with this Article and only under any of the grounds set out under clause (2).

(2) The Controller and Auditor General may only be removed if he:

- (a) Has been convicted of an offence involving dishonesty punishable by imprisonment for 12 months or more, or of an offence under an Act involving evasion of tax;
- (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 office of Controller and Auditor General as provided by this Part or by Act;
- (d) Has, without any lawful or reasonable justification, failed to discharge any function of the Controller and Auditor General under or by this Part or by Act;

- (e) Has engaged in any conduct which places the Controller and Auditor General in conflict with the functions of the office of Controller and Auditor General.
- (3) Before advising the Head of State under clause (1), the Prime Minister shall:
 - (a) Consult the parliamentary committee responsible for Officers of Parliament on the proposed removal of the Controller and Auditor General; and
 - (b) Lay before the Legislative Assembly a full statement of the grounds for the removal of the Controller and Auditor General for a resolution of the Legislative Assembly to be passed by at least two-thirds of the total number of Members of Parliament (excluding any vacancy).
- (4) The Controller and Auditor General is deemed to be suspended from office from the date the Prime Minister consults the parliamentary committee responsible for Officers of Parliament under clause (3)(a), until a final decision for removal is made.”.

8. Saving - From the commencement of this Act, a person who holds the office of Controller and Chief Auditor (other than in an acting capacity) immediately before the commencement of this Act:

- (a) continues in office as Controller and Auditor General and is taken to have been appointed as Controller and Auditor General under this Part; and
- (b) retains salaries, allowances, other benefits, and any existing rights provided under the Constitution or by Act unless changed by Act.

**The Constitution Amendment Act 2014
is administered by the Ministry of the Prime Minister.**

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