

SAMOA

Arrangement of Provisions

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Schedule

2017, No. 8

**AN ACT to amend the Constitution of the Independent
State of Samoa 1960 (“Constitution”).** *[06th June 2017]*

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

2 *Constitution Amendment Act (No.1)* 2017, No. 8

1. **Short title and commencement:**

- (1) This Act may be cited as the Constitution Amendment Act (No.1) 2017.
- (2) This Act commences on the date of assent by the Head of State.

2. **Article 41A repealed:**

Article 41A of the Constitution is repealed.

3. **Article 41 amended:**

For Article 41 of the Constitution, substitute:

“41. Attorney-General:

- (1) The Head of State, acting on the advice of the Prime Minister, shall appoint an Attorney-General, who shall be a person qualified to be a Judge of the Supreme Court.
- (2) The Attorney-General shall advise on legal matters referred to him by the Head of State, Cabinet, the Prime Minister or a Minister and shall have power, exercisable in his discretion, to institute, conduct or discontinue any proceedings for an offence alleged to have been committed.
- (3) The Attorney-General shall have a right of audience in, and shall take precedence over any other person appearing before, any Court or tribunal.

- (4) The powers of the Attorney-General may be exercised by him in person or by officers subordinate to him, acting under and in accordance with his general or special instructions.
- (5) The Attorney-General shall hold office for such term or terms and under such conditions as may be determined by the Head of State, acting on the advice of the Prime Minister.”.

4. Consequential amendments:

- (1) The National Prosecution Office Act 2015 is repealed.
- (2) The Acts set out in the Schedule are amended.
- (3) Upon the commencement of the Evidence Act 2015, the Criminal Procedure Act 2016 and the Sentencing Act 2016, all references to the Director of Public Prosecutions is to be omitted and substituted with the Attorney General.

SCHEDULE
(4(2))

**CONSEQUENTIAL AMENDMENTS TO OTHER
ACTS**

No.	Act amended	Section amended	amendment
	Attorney General's Office Act 2013	s5	for subsection (2), after paragraph (a), insert: “(b) a Prosecution Division to carry out the following functions - (i) to institute and conduct criminal proceedings; (ii) to provide legal opinions on criminal matters; (iii) to carry out other functions assigned to it by the Attorney General or other prescribed functions;”

No.	Act amended	Section amended	amendment
		s7	<p>for subsection (5), insert "Prosecution Division"</p> <p>after subsection (1) insert:</p> <p>"(2) The Attorney General and prosecutors in the Prosecution Division (including other persons authorised by the Attorney General) are not subject to the direction of any other person (except any direction of a court) when carrying out the functions under Article 41 of the Constitution (including statutory or common law function):</p> <p>(a) to institute, conduct or discontinue any</p>

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No.	Act amended	Section amended	amendment
			<p>proceedings for an offence alleged to have been committed; or (b) in relation to any matter relating to an offence or a criminal matter.”.</p>
	Audit Act 2013	s26	<p>For subsection (8), for “Director of Public Prosecutions to prosecute or to the Attorney General to institute civil proceedings” substitute “Attorney-General to prosecute or institute civil proceedings”</p>
	Chemical Weapons Act 2010	s3	<p>For subsection (4), omit “Director of Public Prosecutions” and substitute “Attorney General”</p> <p>For subsection (5), omit “Director of Public Prosecutions”</p>

No.	Act amended	Section amended	amendment
			and substitute "Attorney General's"
	Civil Aviation Act 1998	s119	omit "Director of Public Prosecutions" and "Director of Public Prosecutions" and substitute "Attorney General's" and "Attorney General" respectively.
	Cluster Munitions Prohibition Act 2012	s4	For subsection (4), omit "Director of Public Prosecutions" and substitute "Attorney General" For subsection (5), omit "Director of Public Prosecutions" and substitute "Attorney General's"
	Copyright Act 1998	s27	For subsection (4), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Coroners Ordinance 1959	s7	omit "Director of Public Prosecutions" and substitute

No.	Act amended	Section amended	amendment
		s82	For subsection (4) omit "Director of Public Prosecutions" and substitute "Attorney General"
		s135	For the heading and subsections (3), omit "Director of Public Prosecutions" and substitute "Attorney General's"
		s136(3)	omit "Director of Public Prosecutions" and substitute "Attorney General of Samoa"
		s158	omit "Director of Public Prosecutions" and substitute "Attorney General"
		s221	omit "Director of Public Prosecutions" and substitute "Attorney General"

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No.	Act amended	Section amended	amendment
	Criminal Procedure Act 1972	s14 s171	omit "Director of Public Prosecutions" and substitute "Attorney General" omit "Director of Public Prosecutions" and substitute "Attorney General"
	Excise Tax (Domestic Administration) Act 1984	s95	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Extradition Act 1974	whole Act	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Financial Institutions Act 1996	s26	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Indecent Publications Ordinance 1960	s10	Omit "Director of Public Prosecutions" and substitute "Attorney General"
	International Criminal Court Act 2007	s16	For subsections (1), (2) and (3) omit "Director of Public

No.	Act amended	Section amended	amendment
			<p>Prosecutions” and substitute “Attorney General”</p> <p>For the heading and subsections (1) and (2), omit “Director of Public Prosecutions” and “Director of Public Prosecutions” and substitute “Attorney General’s” and “Attorney General” respectively</p>
	International Insurance Act 1988	s40	For subsection (6), omit “Director of Public Prosecutions” and substitute “Attorney General”
	Land Titles Registration Act 2008	s91	omit “Director of Public Prosecutions” and substitute “Attorney General”
	Money Laundering Prevention Act 2007	s5(1)	For paragraph (ga) is repealed

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No.	Act amended	Section amended	amendment
	Mutual Assistance in Criminal Matters Act 2007	whole Act	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Occupational Safety and Health Act 2002	s39	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Plebiscite Act 1990	s71	omit "Director of Public Prosecutions" and substitute "Attorney General"
	Plumbers Act 2014	s17	For subsection (1)(e), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Police Offences Ordinance 1961	s9	For paragraph (a), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Police Service Act 2009	s68	For subsection (7), omit "Director of Public Prosecutions" and substitute "Attorney General"

No.	Act amended	Section amended	amendment
	Scientific Research Organisation of Samoa Act 2008	s16	For subsection (4), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Secret Commissions Act 1975	s13	For subsection (1), omit "Director of Public Prosecutions" and substitute "Attorney General"
	Tax Administration Act 2012	s9A	For subsections (1) and (3), after "Attorney General" omit "or the Director of Public Prosecutions in the case of an offence"
	Telecommunications Act 2005	s69	For subsection (3), after "may," omit "after consulting the Director of Public Prosecutions on matters relating, relating to prosecution)"
	Waste Management Act 2010	s23	For subsection (1), omit "National Prosecution Office" and substitute "Office

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No.	Act amended	Section amended	amendment
			of the Attorney General, police officers”
	Water Resources Management Act 2008	s40	For subsection (2), omit “Director of Public Prosecutions” and substitute “Attorney General”

5. Transitional Provision:

At the commencement of this Act:

- (a) any current criminal proceedings instituted and conducted for and on behalf of the Director of Public Prosecutions or the Police are to continue as if they were instituted and conducted by the Attorney General;
- (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 of the National Prosecution Office are considered as part of the Prosecution Division of the Attorney General’s Office;
- (d) a Tribunal appointed pursuant to section 11(4) of the National Prosecution Office Act 2015

may continue and its recommendation is valid as if the National Prosecution Office Act 2015 had not been repealed.

The Constitution Amendment Act (No.1) 2017 is administered by the Office of the Attorney General.

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