



LIPOTI MO LE FONO AOAQ FAITULAFONO

**“Tulafono Tau Faaofi o le Ofisa e Faafoeina Moliaga
Tau Solitulafono 2015”**

**Komiti o Mataupu Tau Faamasinoga, Leoleo ma
Falepuipui ma Faamasinoga o Fanua ma Suafa**

1. FAUTUAGA

Ua fautuaina e le Komiti o Faamasinoga, Leoleo & Falepuipui, ma Faamasinoga o Fanua ma Suafa le Fono Aoao ina ia faautagia lana Lipoti.

2. TULAFONO TAU FAAOFI NA ILOILOINA.

(Tuuina atu 30/6/2015)

Tulafono Tau Faaofi o le Ofisa e Faafaeina Moliaga Tau Solitulafono 2015.

Na iloiloina e le Komiti o Mataupu Tau Faamasinoga, Leoleo & Falepuipui ma Faamasinoga o Fanua ma Suafa¹ le Tulafono Tau Faaofi o le Ofisa e Faafaeina Moliaga Tau Solitulafono 2015, e tusa ai ma le Faatonuga na tuuina mai e le Fono Aoao i le aso 30 Iuni 2015.

3. TAUALUMAGA

Na valaauina e le Komiti le mamalu o le atunuu e ala i se faasalalauga faalauaitele i luga o le Televisi (S.Q.B. TV 1) ma le leitio faasalalau a le Faalapotopotoga o Faasalalauga (2AP) mo ni finagalo faaalua po o ni finagalo tusitusia e faatatau i lenei Tulafono Tau Faaofi. Peitai e leai lava se isi na faaalua sona finagalo pe tuuina mai se finagalo tusitusia e faatatau i lenei Tulafono Tau Faaofi.

Na tapa foi e le Komiti le fesoasoani a i latou nei a o faagasolo ana iloiloiga.

FESOASOANI (T.T.156)

Ofisa o le Loia Sili:

Tuatagaloa Aumua Ming C Leung Wai	-	<i>Loia Sili</i>
Rupeni Nawaqakuta	-	<i>Loia Faufautua</i>
Kylie Wilson	-	<i>Loia</i>
Precious Chang	-	<i>Loia Sili Lagolago</i>
Lagafuaina Tavita	-	<i>Loia a le Malo</i>

¹ Tulafono Tumau 173, TUISA Tasi Patea, AFOAFOUVALE John Moors, LAFATELE Patrick Leiatuaalesa, LENATAI Victor Faafoi Tamapua, PAPALII Li'o Taeu Faavaivaomanu Masipau, LEFAU Harry Schuster ma TAPUAI Toese Ah Sam.

4. SAILIILIGA:

Ao faagasolo iloiloga a le Komiti, na tapa le Ofisa o le Loia Sili mo se fesoasoani i mataupu o loo laga i le Tulafono Tau Faaofi. Na taua e le Ofisa, o le agaga o lenei Tulafono Tau Faaofi o le faavaeina o le Ofisa o e Faafoeina Moliaga Tau Solitulafono ma o loo aiaia ai galuega tauave, tiute ma malosiaga a le Faatonu Faafoe Moliaga. Na taua foi e le Ofisa o lenei tulafono tau faaofi o se matatia taua mo Samoa I le faavaeina lea o se Ofisa tumaoti e Faafoeina Moliaga Tau Solitulafono.

Na maitauina e le Komiti o le tutoatasi o lenei Ofisa o lea mautinoa ai le le aafia o vaega o le pulega faatonu a le Malo i le faatinoina o tiute a le Faatonu. I le taimi lenei, o tiute ma le matafaioi o le faafoeina o moliaga tau solitulafono o lo o faaee atu i le Loia Sili e tusa ai ma Mataupu 41 o le Faavae². Na maitauina foi e le Komiti, o lenei Tulafono Tau Faaofi ua faatulaga atu ai o tuutuuga o le tofiga, aveesea ma le faamalolo le 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 amioa 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 le tumau i le Ofisa, i le noatia ma le fai fuafua i tuutuuga ma aiaga o le faafaigaluegaina le tumau i se isi ofisa, ae faapena foi i le tofogi o le afaigaluega o le fuafuaina i lalo o le Tulafono o Komiti Faufautua mo Totogi 2003. Ua aiaia foi le puipuiga o le Faatonu ma le afaigaluega mai noataga tau le tagata lava ia mo gaoioiga e faia i le agaga lelei i lalo o le Tulafono Tau Faaofi faapea ma isi lava mataupu eseese.

² **41. Loia Sili-**(1) O le a tofia e le Ao o le Malo se Loia Sili, e faia i luga o le fautuaga a le Palemia o ia lea o le a avea o se tagata ua na maua le tulaga agavaa e fai ai ma faamasino o le Faamasinoga Sili.

(2) O le Loia Sili o le a fautua i mataupu tau tulafono e tuuina atu ia te ia e le Ao o le Malo, Kapeneta, le Palemia po o se Minisita ma o le a i ai le pule, e faaogaina i lana faitalia, ia faatuina, taitai po o le faagataina o so o se taualumaga mo se solitulafono sa faapea ua uma ona faia.

(3) O le a i ai i le Loia Sili le aia tatau e faalogologo ai, ma o le a maua e ia le avanoa muamua i so o se tagata e oo atu i luma o so o se faamasinoga po o se suega.

(4) O pulega a le Loia Sili e mafai ona faaogaina e ia lava po o tagata ofisa i ona lalo ifo o lo o galulue i lalo ma ua tusa ai ma ana faatonuga aoao po o faatonuga faapitoa.

(5) O le a i ai pea i le tofi le Loia Sili mo se vaitaimi po o ni vaitaimi ma i lalo o ni tuutuuga e pei ona faatatauina e le Ao o le Malo, e faia i luga o fautuaga a le Palemia.

Na maitauina foi e le Komiti e tusa ai ma le faamalamalamaga a le Ofisa o le Loia Sili o lenei Tulafono Tau Faaofi e faitauina faatasi ma le Tulafono Tau Faaofi o le Teuteuga o le Faavae (Nu. 2) 2015 mo o loo i faitauina faalua ma o loo i Komiti Filifilia o ana iloiloga. Ma ona o lea tulaga sa iloiloaina ai foi mataupu na laga ao faia le faitauga faalua o le Tulafono Tau Faaofi faapea ma le Tulafono Tau Faaofi o Teuteuga o le Faavae ina ia mafai ona maua mai se fesoasoani a le Loia Sili. Ma o lea na fesiligia ai e le Komiti le tutoatasi o le Faatonu mai le Malo. Ma na taua e le Ofisa o galuega tauave, tiute ma malosiaga a le Loia Sili o loo aiaia i lalo o le Mataupu 41 of le Faavae³ ma o lea teuteuina i lalo o le Tulafono Tau Faaofi o Teuteuga o le Faavae (Nu.2) 2015⁴ ina ia amanaia ai le faavaeina o le Ofisa o Faafoeina Moliaga Tau Solitulafono faapea ma le aiaia o galuega tauave, tiute ma malosiaga a le Faatonu, faatasi ai ma le tutoatasi o le Faatonu mai vaega o le pulega faatonu a le Malo.

5. ILOILOGA AUILIILI O LE TULAFONO TAU FAAOFI:

I le iloiloaina auiliili o lenei Tulafono Tau Faaofi i ona Fuaiupu taitasi, ua faamalieina le Komiti ma o lo o talafeagai aiaiga uma e pei ona faatulaga mai vagana ai fuaiupu o loo taua i lalo:

A. Fuaiupu 9(1)(a) - ia faaofi le parakarafa laititi fou (iv) ma o lea faitauina le parakarafa laitit (iv) faapea:

Fuaiupu 9(1)(a)

(iv) afai e manatu le Faatonu o se tulaga e manaomia i le faia ai o le amiotonu, ona talosagaina le Loia Sili e faatino o malosiaga, galuega tauave ma tiute o le Faatonu.

³ Silasila i le #2

⁴ Tulafono Tau Faaofi o Teuteuga o le Faavae (Nu.2) 2015

2. Ua teuteuina le Mataupu 41 - I totonu o le Mataupu 41 o le Faavae:

(a) mo le fuaiupu (2), ia aveese upu “ma o le a i ai le pule, e faaogāina i lana faitalia, ia faatuina, taitai po o le faagataina o so o se tualumaga mo se soligatulafono sa faapea ua uma ona faia”;

(b) mo le fuaiupu (3), i le tuanai o le upu “suega” ia faaopoopo i ai upu “i luga o so o se tualumaga e ese mai i tualumaga tau solitulafono”.

- B. Fuaiupu 9(1)(c)(iii) - aveese upu “fesoasoani i le Loia Sili” ma o lea faitauina ai le teuteuga e faapea:

Fuaiupu 9(1)(c)(iii)

(iii) mataupu e faasino i le auina ese atu i fafo o tagata solitulafono ma fesoasoani soofaatasi i mataupu tau solitulafono;

- C. Fuaiupu 24(2) - aveese upu “isi tulafono e faasino i so o se”, ma ia sui upu nei “maliega ma le faamaoniga” i upu “galuega tauave, tiute ma malosiaga” ma o lea faitauina ai le teuteuga e faapea:

Fuaiupu 24(2)

E ui lava i le faafuaiupu (1), so o se galuega tauave, tiute ma malosiaga o le Loia Sili i so o se isi lava tulafono e faasino i moliaga o po o tualumaga mo se soligatulafono ua teuteuina ma ia suia e avea ma galuega tauave, tiute ma malosiaga o le Faatonu Faafoe Moliaga.

- D. Fuaiupu 25 - Ia faaofi le parakalafa fou (d):

Fuaiupu 25(d)

O le Faauluuluga o le Vaega e Faafoeina Moliaga Tau Solitulafono i le Ofisa o le Loia Sili i le taimi nei ua faatatauina e galue e avea ma Faatonu Faafoe Moliaga e tusa ai ma le fuaiupu 12 o lenei Tulafono seia oo ina faia se tofiga mautu e tusa ai ma le Mataupu 41A o le Faavae.

6. IUGAFONO:

I le maea ai o iloiloga auiliili, na faaiugafonoina ai e le Komiti;

Ina ia faagasolo le Tulafono Tau Faaofi o le Ofisa e Faafoeina Moliaga tau Solitulafono faatasi ai ma teuteuga.

SUI O LE KOMITI:

Tofa TUISA Tasi Patea
TAITAFONO

Susuga PAPALII Lio F T Masipau
SUI USUFONO

Afioga AFOAFOUVALE John Moors
SUI TAITAFONO

Tofa TAPUAI Toese Ah Sam
SUI USUFONO

Tofa LENATAI Victor Faafoi Tamapua
SUI USUFONO

Tofa LEFAU Harry Schuster
SUI USUFONO

Afioga LAFATELE Patrick Leiatuaalesa
SUI USUFONO



REPORT TO THE LEGISLATIVE ASSEMBLY

“National Prosecution Office Bill 2015”

Justice, Police and Prisons, Lands and Titles Committee

1. RECOMMENDATION:

The Justice, Police and Prisons, Lands and Titles Committee recommends that the Assembly take note of its Report.

2. BILL CONSIDERED:

(Referred 30/6/2015)

National Prosecution Office Bill 2015.

The Justice, Police and Prisons, Lands and Titles Committee⁵ considered the National Prosecution Office Bill 2015, in accordance with instructions by the Legislative Assembly on 30th June 2015.

3. PROCEEDINGS:

The Committee called for public submissions through advertisements broadcast on the Samoa Quality Broadcasting (TV1) and 2AP radio. However, no oral or written submissions were put forth on the Bill.

The Committee sought assistance from the following officials during the course of its deliberations.

ASSISTANCE (S.O.156)**Office of the Attorney General:**

Tuatagaloa Aumua Ming C Leung Wai	-	<i>Attorney General</i>
Rupeni Nawaqakuta	-	<i>Legislative Advisor</i>
Kylie Wilson	-	<i>Law Clerk</i>
Precious Chang	-	<i>Assistant Attorney General</i>
Lagafuaina Tavita	-	<i>State Solicitor</i>

⁵Standing Order 173, TUISA Tasi Patea, AFOAFOUVALE John Moors, LAFATELE Patrick Leiatuaalesa, LENATAI Victor Faafoi Tamapua, PAPALII Li'o Taeu Faavaivaio manu Masipau, LEFAU Harry Schuster, and TAPUAI Toese Ah Sam.

4. FINDINGS:

During the Committee deliberations, the Office of the Attorney General was invited to assist the Committee on matters pertaining to the Bill. The Office stated that the purpose of the Bill is to establish the National Prosecution Office and provides for the functions, powers and duties of the Director of Public Prosecution. The Office also stated that this Bill is a milestone for Samoa in establishing an independent National Prosecution Office.

The Committee noted that the independence of this Office ensures that no arm of Government influences the duties of the Director. Currently, the duty and role of the prosecution is vested in the Attorney General pursuant to Article 41 of the Constitution⁶. The Committee also noted that the Bill provides for the terms of appointment, removal and suspension of the Director and the Offices values, principles and code of conduct. In addition the Bill 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. Furthermore, the Bill provides protection of the Director and staff from personal liability for acts done in good faith under the Bill and other miscellaneous matters.

The Committee found from the clarification by the Office of the Attorney General that the Bill is inter-related with the Constitution Amendment Bill (No.2) 2015 of which is also in second reading. To this effect the Committee also noted issues mentioned during the second reading of both the Bill and the Constitution Amendment Bill to raise with the Attorney General. As a result, the Committee

⁶ **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.

queried the independence of the Director from Government. The Office stated that the Constitution Amendment No.2 2015⁷ is to amend the functions, duties and powers of the Attorney General pursuant to Article 41 of the Constitution⁸ to recognise the establishment of the National Prosecution Office and to recognise the independence of the functions, duties and powers of the Director.

5. CONSIDERATION IN DETAIL OF THE BILL:

The Committee noted during its consideration in detail of the Bill that the provisions therein are sufficient except for amendments to the following clauses:

- A. Clause 9(1)(a) - insert a new sub-paragraph (iv) of which the new sub-paragraph (iv) reads as:

Clause 9(1)(iv)

(iv) if the Director considers it desirable in the interests of justice, request the Attorney General to exercise the Director's powers, functions and duties.

- B. Clause 9(1)(c)(iii) - delete "assisting the Attorney General on" the amended clause reads as:

Clause 9(1)(c)(iii)

(iii) matters relating to extradition and mutual assistance in criminal matters;

⁷ Constitution Amendment Bill (No.2) 2015.

2. Article 41 amended - In Article 41 of the Constitution:

(a) for clause (2) omit "and shall have power, exercisable in his discretion, to institute, conduct or discontinue any proceedings for an offence alleged to have been committed";

(b) for clause (3) after "tribunal" add "on any proceedings other than criminal proceedings".

⁸ See note # 6.

- C. Clause 24(2) - delete “other enactment relating to any”, and to replace “consent and approval” with “functions, duties and powers” - the amended clause reads as:

Clause 24(2)

Despite subsection (1), any functions, duties and powers of the Attorney General in any other enactment relating to prosecution of or proceedings for an offence is amended and to be substituted as the functions, duties and powers of the Director of Public Prosecutions.

- D. Clause 25 - add a new paragraph (d):

Clause 25(d)

the current Head of the Prosecution Division of the Attorney General’s Office is taken to be acting as Director of Public Prosecutions pursuant to section 12 of this Act until a substantive appointment is made pursuant to Article 41A of the Constitution.

6. RESOLUTION:

At the conclusion of its consideration in detail, the Committee resolved that;

The National Prosecution Office Bill 2015 progress along with amendments.

MEMBERS OF THE COMMITTEE:

Tofa TUISA Tasi Patea
CHAIRPERSON

Susuga PAPALII Lio F T Masipau
MEMBER

Afioga AFOAFOUVALE John Moors
DEPUTY CHAIRPERSON

Tofa TAPUAI Toese Ah Sam
MEMBER

Tofa LENATAI Victor Faafoi Tamapua
MEMBER

Tofa LEFAU Harry Schuster
MEMBER

Afioga LAFATELE Patrick Leiatuaalesa
MEMBER