



Tonga

**ACT OF CONSTITUTION OF TONGA
(AMENDMENT) (NO. 2) BILL 2019**



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ACT OF CONSTITUTION OF TONGA (AMENDMENT) (NO. 2) BILL 2019

**A BILL FOR AN ACT TO AMEND THE ACT OF CONSTITUTION TO
ESTABLISH THE OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS TO TAKE OVER THOSE POWERS RELATING TO
CRIMINAL PROSECUTIONS FORMERLY VESTED IN THE ATTORNEY
GENERAL**

BE IT ENACTED by the King and Legislative Assembly of Tonga in the
Legislature of the Kingdom as follows:

1 Short Title and Interpretation

- (1) This Act may be cited as the Act of Constitution of Tonga (Amendment) (No. 2) Act 2019.
- (2) In this Act, the Act of Constitution of Tonga (Cap 2), as amended, shall be referred to as “the Constitution”.

2 New clause 31C

The Constitution is amended by inserting the following new clause 31C immediately after clause 31B -

“31C Director of Public Prosecutions

- (1) There shall be a Director of Public Prosecutions.
- (2) The Director of Public Prosecutions shall be appointed by the King, on the recommendation of the Judicial and Legal Service Commission.
- (3) A person shall not be qualified to be appointed to hold or act in the office of Director of Public Prosecutions unless he is a law practitioner who has practised for over 7 years.
- (4) The Director of Public Prosecutions shall have power in any case in which he considers it proper so to do –
 - (a) to institute and undertake criminal proceedings against any person before any court of law in respect of any offence against the laws of Tonga;
 - (b) to take over and continue any such criminal proceedings that may have been instituted or undertaken by any other person or authority; and
 - (c) to discontinue at any stage before judgment is delivered any such criminal proceedings instituted or undertaken by himself or any other person or authority.
- (5) In the exercise of the functions vested in him by sub-clause (4) the Director of Public Prosecutions shall not be subject to the direction or control of any other person or authority.
- (6) In the event of a vacancy in the office of the Director of Public Prosecutions, and pending the appointment of a Director of Public Prosecutions under sub-clause (2), the King, on the recommendation of the Judicial and Legal Service Commission, may appoint a suitably qualified person to be Director of Public Prosecutions ad interim, to hold office until a substantive appointment has been made. Any such appointee shall have all the powers and privileges and perform all the duties of the Director of Public Prosecutions as set forth in this clause.”.

Passed by the Legislative Assembly this day of 2019.

EXPLANATORY NOTES

(These notes do not form part of the Bill and is only intended to explain its scope and purpose)

Explanatory Notes	Explanation
<p>The primary intention of the Bill is to establish the Office of the Director of Public Prosecutions, and that it be an independent office, protected under the Constitution. The amendment together with the Act of Constitution of Tonga (Amendment) Bill 2019, has the combined effect that the criminal prosecutions, formerly vested in the Attorney General, will be vested with the Director of Public Prosecutions to ensure the impartiality and integrity of criminal prosecutions in the Kingdom. The Attorney General should not be the legal advisor to Government, and then also prosecute, especially if there is a prosecution of a Cabinet minister or a public servant. The proposed amendment was previously passed by the Legislative Assembly on 28 August 2014, as part of the Act of Constitution of Tonga (Amendment) Act 2014.</p>	<p>In effect, this amendment will remove the role of the Attorney General to be in charge of all criminal proceedings on behalf of the Crown and vest it in the Director of Public Prosecutions. This amendment will establish an independent office of the Director of Public Prosecutions to deal with criminal prosecutions with impartiality and integrity, and without any interference from any other authority.</p>

Hon. Sione Vuna Fa'otusia
Minister of Justice and Prisons