



*Tonga*

**ACT OF CONSTITUTION OF TONGA  
(AMENDMENT) (NO.2) ACT 2010**

**Act No. 20 of 2010**





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**SCHEDULE**



# ACT OF CONSTITUTION OF TONGA (AMENDMENT) (NO.2) ACT 2010

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## AN ACT TO MAKE VARIOUS AMENDMENTS TO REVISE THE CONSTITUTION

I assent,  
GEORGE TUPOU V,  
24<sup>th</sup> November 2010.

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

### 1 Short Title

- (1) This Act may be cited as the Act of Constitution of Tonga (Amendment) (No. 2) Act 2010.
- (2) In this Act, the Act of Constitution of Tonga, as amended, is referred to as “the Constitution”.

### 2 Clause 17 amended – Government to be impartial

Clause 17 of the Constitution, in the English version only, is amended by repealing “govern” and replacing it with “reign”.

### 3 Clause 19 amended – Expenditure to be voted

Clause 19 of the Constitution is amended by –

- (a) repealing paragraph (b); and
- (b) repealing “Treasurer” and replacing it with “Minister for Finance” wherever it appears.

**4 Clause 22 amended – Guards and Militia**

Clause 22 of the Constitution is amended by –

- (a) repealing the first sentence; and
- (b) in the Tongan version only, by repealing the words “Pea ‘oku” and replacing them with “‘Oku”.

**5 Clause 24 replaced – Public Officer not to engage in trade**

Clause 24 of the Constitution is repealed and replaced with the following –

**“24 Public officer not to engage in trade**

It shall not be lawful for anyone holding any office under the Government whether of emolument or otherwise to hold any appointment from another Government without first obtaining permission from Cabinet. And it shall not be lawful for anyone holding an office of emolument under the Government to engage in trade or work for anyone else, except with the prior consent of Cabinet.”.

**6 Clause 30 amended – Government**

In Clause 30 of the Constitution –

- (a) renumber the clause as 31; and
- (b) repeal the words “King Privy Council and Cabinet (Ministry)” and replace them with “Cabinet”.

**7 Clause 31 amended – Form of Government**

Clause 31 of the Constitution is repealed, renumbered and replaced with –

**“30 Form of Government**

The form of government for this Kingdom is a Constitutional Monarchy under His Majesty King George Tupou V and his successors.”.

## **8 Clause 31A inserted – Attorney General**

The Constitution is amended by inserting the following clause –

### **“31A Attorney General**

- (1) The King in Privy Council shall appoint an Attorney General, who shall:
  - (a) be the principal legal advisor to Cabinet and Government;
  - (b) be in charge of all criminal proceedings on behalf of the Crown; and
  - (c) perform any other functions and duties required under law.
- (2) The Attorney General shall, unless otherwise provided by law, have complete discretion to exercise his legal powers and duties, independently without any interference whatsoever from any person or authority.
- (3) The Attorney General shall be a person who is qualified to be a Judge of the Supreme Court and he shall, subject to any contractual arrangements, hold office during good behaviour.
- (4) The King in Privy Council shall determine the terms of appointment of the Attorney General, and shall have the power to dismiss him.”.

## **9 Clause 37 replaced – King may pardon convicts**

Clause 37 of the Constitution is repealed and replaced with the following –

### **“37 King may grant pardons**

It shall be lawful for the King in Privy Council to grant a Royal Pardon to any person for a breach of law (including any person who has been convicted of a breach of law) except in cases of impeachment.”.

## **10 Clause 39 amended – Treaties**

Clause 39 of the Constitution is amended by repealing the following –

“It shall not be lawful for the King to alter the customs duties without the consent of the Legislative Assembly.”.

**11 Clause 41 amended – King’s powers – Signature to Acts**

Clause 41 of the Constitution is amended by repealing “governs” and replacing it with “reigns”.

**12 Clause 50 replaced – Constitution and powers of Privy Council**

Clause 50 of the Constitution is repealed and replaced with the following –

**“50 Constitution and powers of Privy Council**

- (1) The King shall appoint a Privy Council to provide him with advice. The Privy Council shall be composed of such people whom the King shall see fit to call to his Council.
- (2) If any case shall be heard in the Land Court relating to the determination of hereditary estates and titles, it shall be lawful for either party thereto to appeal to the King in Privy Council which shall determine how the appeal shall proceed and the judgment of the King in Privy Council shall be final.
- (3) Privy Council may by Order in Council regulate its own procedures.”.

**13 Clause 50A inserted – Prime Minister**

The following heading and clause is inserted in the Constitution –

“THE PRIME MINISTER

**50A The Prime Minister**

- (1) The King shall appoint from amongst the elected representatives a Prime Minister who is recommended by the Legislative Assembly in accordance with the procedure set out in the Schedule to, or clause 50B of, this Constitution.
- (2) The Prime Minister shall hold office until –
  - (a) another Prime Minister is appointed in accordance with this Constitution;
  - (b) his appointment is revoked under clause 50B;
  - (c) he dies, resigns, or his appointment is revoked after he ceases to be an elected representative for any reason other than the dissolution of the Legislative Assembly; or
  - (d) he becomes ineligible to hold the office in accordance with this Constitution or any other law.

- (3) The Prime Minister shall regularly and as required report to the King upon matters that have arisen with the government and upon the state of the country.”.

#### **14 Clause 50B inserted –Votes of No Confidence**

The following clause is inserted in the Constitution –

##### **“50B Votes of No Confidence**

- (1) If the Legislative Assembly passes a motion described as a “Vote of no confidence in the Prime Minister” in accordance with this clause, then upon delivery of that resolution to the King by the Speaker, the Prime Minister and all Ministers shall be deemed to have resigned and their appointments revoked.
- (2) A vote of no confidence in the Prime Minister –
  - (a) shall not be moved unless at least 5 working days’ notice of the intention to move such a motion has been given to the Speaker; and
  - (b) shall be of no effect if made within 18 months after a general election has been held, nor within 6 months before the date by which an election shall be held in accordance with clause 77(1), nor within 12 months after the date on which the last such motion was voted upon in the Legislative Assembly.
- (3) If within 48 hours of the revocation of the appointment of the Prime Minister and all Ministers in accordance with sub-clause (1) following a vote of no confidence in the Prime Minister, the Legislative Assembly passes a motion that recommends the appointment of another elected representative as Prime Minister, then upon delivery of that resolution to the King by the Speaker, the King shall appoint the person so nominated as the Prime Minister.
- (4) If no recommendation is delivered to him in accordance with sub-clause (3) following a vote of no confidence in the Prime Minister, the King shall –
  - (a) dissolve the Legislative Assembly and command that a general election be held on a date not more than 90 days thereafter;
  - (b) appoint as interim Prime Minister the elected representative who the King considers best able to lead an interim government, who shall not be the Prime Minister in respect of whom a motion of no confidence was passed in the Legislative Assembly, until a Prime Minister is appointed after the general election; and

- (c) in consultation with the interim Prime Minister, appoint interim Ministers to hold office until Ministers are appointed after the general election.”.

## 15 Clause 51 replaced – Constitution and powers of Cabinet

Clause 51 of the Constitution is repealed and replaced with –

### “51 Function, constitution and powers of Cabinet

- (1) The executive authority of the Kingdom shall vest in the Cabinet, which shall be collectively responsible to the Legislative Assembly for the executive functions of the Government.
- (2) The Cabinet shall consist of the Prime Minister and such other Ministers who are nominated by the Prime Minister and appointed by the King:  
Provided that –
  - (a) the Prime Minister may nominate as Cabinet Ministers not more than 4 persons who are not elected representatives;
  - (b) the Prime Minister and Cabinet shall be fewer in number than half of the number of elected members of the Legislative Assembly excluding the Speaker.
- (3) A Minister shall retain his position as Minister until –
  - (a) his appointment is revoked by the King on the recommendation of the Prime Minister or in accordance with clause 50B;
  - (b) he dies, resigns or is dismissed from office following impeachment under clause 75; or
  - (c) he becomes ineligible to hold the office in accordance with this Constitution or any other law:

PROVIDED THAT: Following a general election, and when appointed under clause 50B (4)(c), Ministers shall be and remain as caretaker Ministers until their appointments are revoked or continued on the recommendation of the newly appointed Prime Minister; and during such period caretaker Ministers shall not incur any unusual or unnecessary expenditure without the written approval of the caretaker Minister for Finance.

- (4) The Prime Minister may assign and re-assign ministries to and amongst the Cabinet Ministers.
- (5) Each Minister shall draw up an annual report to the Legislative Assembly advising of the activities and plans of his ministry and if the Legislative Assembly shall wish to know anything concerning the

ministry of any Minister he shall answer all questions put to him by the Legislative Assembly and report everything in connection with his ministry.

- (6) A Minister who is not an elected representative shall sit and vote in the Legislative Assembly and shall, unless otherwise provided in any Act, have all the rights, duties and responsibilities of an elected representative except that he shall not be entitled to vote in any vote of no confidence in the Prime Minister under clause 50B.
- (7) The term “executive authority” in sub-clause (1) excludes all powers vested in the King or the King in Council, whether by this Constitution, or any Act of the Legislative Assembly, any subordinate legislation, and Royal Prerogatives.”.

## **16 Clause 54 replaced – Governors – how appointed**

Clause 54 of the Constitution is repealed and replaced with –

### **“54 Governors – how appointed**

The King shall appoint Governors to Ha’apai and Vava’u on the advice of the Prime Minister.”.

## **17 Clause 55 amended – Powers of Governors**

Clause 55 of the Constitution is amended by repealing “If the administration of any Governor be contrary to law it shall be lawful to impeach him in the Legislative Assembly.”.

## **18 Clause 59 replaced – Composition of Legislative Assembly**

Clause 59 of the Constitution is repealed and replaced with –

### **“59 Composition of Legislative Assembly**

- (1) The Legislative Assembly shall be composed of –
  - (a) the representatives of the nobles;
  - (b) the representatives of the people; and
  - (c) all members of the Cabinet.
- (2) Cabinet Ministers who are elected representatives shall, unless dismissed after impeachment under clause 75, remain as members of the Legislative Assembly and representatives in their respective electoral constituency during their appointment as Minister.”.

**19 Clause 61 replaced – Speaker**

Clause 61 of the Constitution is repealed and replaced with –

**“61 Speaker**

- (1) The King shall, within 5 days after the appointment of a Prime Minister in accordance with clause 50A following a general election, appoint one of the elected representatives of the nobles on the recommendation of the Legislative Assembly, to be the Speaker of the Legislative Assembly.
- (2) The Speaker shall remain in office until –
  - (a) the King appoints an Interim Speaker following the next general election in accordance with sub-section (8) of the Schedule to this Constitution;
  - (b) his appointment is revoked under sub-clause (3); or
  - (c) he dies, resigns or his appointment is revoked after he ceases to be an elected representative of the nobles for any reason other than the dissolution of the Legislative Assembly.
- (3) If the Prime Minister, with the approval of at least half of the members of the Legislative Assembly, recommends to the King that the Speaker be removed from office, the King shall revoke the Speaker’s appointment and appoint a new Speaker on the recommendation of the Legislative Assembly.
- (4) The King shall appoint a Speaker within 7 days of the occurrence of a vacancy.”.

**20 Clause 62 replaced – Rules of procedure**

Clause 62 of the Constitution is repealed and replaced with –

**“62 Rules of procedure**

- (1) The Legislative Assembly shall make its own rules of procedure for the conduct of its meetings.
- (2) Any member of the Legislative Assembly may, in accordance with its rules of procedure –
  - (a) introduce a Bill in the Assembly;
  - (b) propose a motion for debate in the Assembly; or
  - (c) present a petition to the Assembly,

and it shall be dealt with in accordance with the Assembly's rules of procedure.

## **21 Clause 70 amended – Offences against the Assembly**

Clause 70(1) of the Constitution is amended by repealing the words after subparagraph (f) and replacing it with –

“may, by resolution of the Legislative Assembly, be imprisoned for any period not exceeding thirty days and if he is a member of the Assembly he may be suspended from the Assembly for up to thirty days in substitution for or in addition to any other penalty.”.

## **22 Clause 71 replaced – Noble deprived of his seat**

Clause 71 of the Constitution is repealed and replaced with –

### **“71 Noble deprived of his seat**

Should any representative of the nobles be deprived of his seat another noble shall be elected to succeed to his seat in the Legislative Assembly but his title and hereditary estates shall not be confiscated except for treason or sedition.”.

## **23 Clause 75 amended – Impeachment**

(1) Clause 75 of the Constitution is amended by repealing the words “the members of the Legislative Assembly to impeach any Privy Councillor, Minister, Governor, or Judge” in sub-clause (1) and replacing it with –

“a member of the Legislative Assembly, of his own volition or as the result of a written complaint made to him by any Tongan subject, to move the Assembly, in accordance with the rules of procedure, for the impeachment of any Minister or representative of the nobles or of the people”.

(2) Clause 75 of the Constitution is amended by repealing sub-clauses (3) and (4) and replacing them with –

“(3) The trial shall be conducted in accordance with the eleventh clause and the Chief Justice shall preside.”.

## **24 Clause 76 amended – Bye-elections**

Clause 76 of the Constitution is amended by inserting, after the word “people” the following –

“and when a member is deprived of his seat after impeachment,”.

**25 Clause 77 replaced – General Elections**

Clause 77 of the Constitution is repealed and replaced with –

**“77 General elections**

- (1) Elections shall ordinarily be held for all the representatives of the nobles and the people every four years, and if not earlier dissolved the Legislative Assembly shall stand dissolved at the expiration of four years from the date of the last general election.
- (2) It shall be lawful for the King, at his pleasure, to dissolve the Legislative Assembly at any time and command that new elections be held.
- (3) If the Legislative Assembly is dissolved by the King or by the operation of sub-clause (1), the King shall, after consultation with the Speaker of the Legislative Assembly, fix a date for a general election.”.

**26 Clause 85 amended – The Court of Appeal**

Clause 85 of the Constitution is amended by inserting the following sub-clause –

- “(2) The King in Privy Council shall determine the terms of appointment of the Judges of the Court of Appeal and may dismiss them.”.

**27 Clause 86 replaced – The Supreme Court**

Clause 86 of the Constitution is repealed and replaced with –

**“86 The Supreme Court**

- (1) The Supreme Court shall consist of the Chief Justice and such other judges as may be appointed from time to time by the King in Privy Council:  
Provided that no person shall be appointed unless —
  - (a) he holds, or has held, high judicial office; or
  - (b) (i) he is qualified to practise as an advocate in a court in some part of the Commonwealth having unlimited jurisdiction in civil or criminal matters; and
  - (ii) he has been qualified so to practise for not less than ten years.
- (2) The King in Privy Council shall determine the terms of appointment of the Chief Justice and Judges of the Supreme Court, and may dismiss them.”.

## 28 Clause 87 amended – Judges to hold office during good behaviour

Clause 87 of the Constitution is repealed and replaced with –

### “87 Judges to hold office during good behaviour

The judges, subject to any contractual arrangements, shall hold office during good behaviour:

Provided that it shall be lawful to appoint Judges of the Supreme Court and Court of Appeal for limited periods, or for the purposes of a particular sitting of the Supreme Court or Court of Appeal, or of particular proceedings to come before the Court, on such terms as may be approved by the King in Privy Council.”.

## 29 Schedule – Procedure for appointing a Prime Minister

The Constitution is amended by inserting the Schedule that is set out in the Schedule to this Act.

## 30 Minor amendments

The provisions of the Constitution specified in column 1 of the following Table shall be amended as specified in the adjacent column 2.

Column 1	Column 2
Clause 53	Change “Treasurer” to “Minister for Finance” in the heading and the provision.
Clause 79	Change “the Privy Council” to “His Majesty”.
Clause 83	Repeal the final paragraph and replace it with – “The members of the Privy Council shall sign their names to the oath and read it in the presence of the King. The ministers, the nobles and representatives of the people shall sign their names to the oath and read it in the presence of the Legislative Assembly.”.
Clause 88(1)	Repeal “Prime Minister with the consent of Cabinet in the name and on behalf of His Majesty” and replace it with “King in Privy Council”
Clauses 83 and 95	Repeal “King Taufā’ahau Tupou IV” and replace it with “King George Tupou V”

Passed in the Legislative Assembly this 20<sup>th</sup> day of July 2010.

**SCHEDULE**

“Schedule

**Procedure for Appointing a Prime Minister**

(clause 50A)

- (1) The Legislative Assembly shall recommend the appointment of a Prime Minister as follows –
- (a) within 10 days from the return of the writs of election after a general election has taken place, the Interim Speaker appointed under subsection (8) of this Schedule shall invite all elected representatives to submit to him their nominations for Prime Minister Designate, to be duly seconded by 2 other elected representatives and to be received by the Interim Speaker within 14 days from the return of the writs of election; and no representative who has proposed or seconded a candidate may propose or second any other;
  - (b) within 3 days after the last date for receipt of nominations for Prime Minister Designate, the Interim Speaker shall convene a meeting of all the elected representatives of the people and of the nobles for the purpose of deciding who they shall recommend for appointment as Prime Minister Designate:  
Provided that the failure of any representative to attend any meeting, for whatever reason, shall not affect the validity of proceedings under this section;
  - (c) the representatives so convened shall consider who they want to recommend for appointment as Prime Minister Designate, and at that meeting every representative present will have the right to speak on his own behalf or that of another candidate, and they shall vote thereon by secret ballot and if one candidate receives more than half of the votes, the Interim Speaker shall report to the King that the duly elected representatives recommend the appointment of that person as Prime Minister Designate;
  - (d) if no single candidate is elected under paragraph (c) then the Interim Speaker shall 2 days after that meeting convene another meeting at which the candidate(s) who received the least votes shall be eliminated and the representatives shall (without speeches) vote by secret ballot for their choice amongst the remaining candidates, and if one candidate receives more than half of the votes then the Interim Speaker shall report to the King that the duly elected representatives recommend the appointment of that person as Prime Minister Designate;

- (e) if no single candidate is elected under paragraph (d) then the Interim Speaker shall 2 days after that meeting convene another meeting and the procedure under paragraph (d) shall be likewise repeated, at 2 days intervals if necessary, until one candidate receives more than half of the votes cast; and the Interim Speaker shall report to the King that the duly elected representatives recommend the appointment of that person as Prime Minister Designate.
- (2) If the representatives fail to make a recommendation to the King in accordance with the procedure in subsection (1) of this Schedule, the King may extend any of the times specified and may authorise the Interim Speaker to vary such procedure to enable a recommendation to be made.
- (3) Upon receipt by the King from the Interim Speaker the recommendation of the elected representatives under subsection (1) of this Schedule, the Lord Chamberlain shall then summon the Prime Minister Designate to be appointed by the King.
- (4) The Prime Minister shall take his oath of office before the Legislative Assembly at its first sitting.
- (5) The Legislative Assembly shall also recommend the appointment of a Prime Minister following a vote of no confidence, in the manner provided in clause 50B of this Constitution.
- (6) In the event of any other vacancy occurring in the office of Prime Minister, except following a vote of no confidence, the procedure specified in this Schedule shall be followed to enable the King to appoint a Prime Minister on the recommendation of the Legislative Assembly, but in such case the Speaker shall perform the role of the Interim Speaker specified in this Schedule.
- (7) Any dispute arising out of or in connection with the calling or conduct of any meeting under this Schedule or the election or recommendation of the Prime Minister under this Schedule shall be determined by the Interim Speaker in consultation with the King.
- (8) For the purposes of this Schedule, the King shall within 7 days of the declaration of the result of a general election, appoint a person who was not a candidate at the general election to be the Interim Speaker of the Assembly, and such person shall hold office as Interim Speaker until a Speaker is next appointed under clause 61 of this Constitution.”.