

**PROPOSAL FOR CONSTITUTIONAL CHANGES TO PROVIDE
FOR A DEMOCRATICALLY ELECTED GOVERNMENT
FOR THE PEOPLE OF TONGA**

AUTHOR'S NOTE

27 July 2005

I respectfully submit the Proposal for Constitutional Changes to Provide for a Democratically Elected Government for the People of Tonga with this brief explanation for ease of understanding.

- I. Please read the Introduction and then the Conclusion before you embark on the proposal itself. This will provide you with a better perspective of the intention and objective of this paper.
- II. The breakdown of the present electoral districts to cater for the proposed number of 20 seats for Tongatapu, 7 for Vava'u, 4 for Ha'apai, 1 for Eua and 1 for the Nuias have not been done as I would like general consensus on the number and allocation obtained first. In the end, this allocation for each area will and must be based on the population distribution. The division of the electorates is not a complicated or a long, drawn out process.
- III. No further division of Electoral Districts is necessary in respect of the Representatives of the Nobles.
- IV. The proper legislative forms for the proposed amendments are ready to be engrossed on acceptance or otherwise of the proposal.

Respectfully,

Clive Edwards

PROPOSAL FOR CONSTITUTIONAL CHANGES
TO PROVIDE FOR
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INTRODUCTION

The Kingdom of Tonga is the last remaining Kingdom in the South Pacific, (and indeed one of the last in the Southern Hemisphere). By holding on to its monarchy and its system of governing nobles, the Kingdom has importantly retained many of the ancient Polynesian cultural traditions which are unique to the Tongan Islands, and it is unquestionably important that these traditions are not lost.

In 1875 Tonga took its first steps towards a western democratic style of government under the guidance of Great Britain, with the adoption of what was, for its time, an ideologically advanced, written Constitution and the creation of the country's Legislative Assembly (the principal house of parliament). Despite this modern Constitution and its parliamentary rules of procedure the Legislative Assembly was really the equivalent of the Assembly of Chiefs, admitting only noble representatives until 1914, when seven elected Representatives of the People (increased to nine in the early 1980's) were introduced.

Despite these changes the Legislative Assembly has continued to operate on the consensus based principle of determining issues, strongly influenced by the actual and perceived views of the Monarchy, a system which worked effectively under a benevolent monarchy, as flourished under George I, Queen Salote and His Majesty Taufa'Ahau Tupou IV. However in a modern society centered upon economics and money as opposed to more traditional Tongan values, the system starts to fail. That failure is now apparent in the mood of the Tongan people and their clear desire for change.

Tonga's Constitution was very sophisticated in its composition when it was first propagated in 1875, with its provisions and declarations regarding human rights and freedoms, which many nations only started to address after World War II and reframed again in the 1970's. Nevertheless the Constitution fell short of affording the Tongan people full democratic freedoms as it did not give the individual the vitally important right to choose his or her own government.

Governing powers have remained vested in the Monarchy, and while Tonga's Monarchs have ceded that power to their ministers, this has created an environment of fear in government, which in turn stagnates progress as Ministers are concerned not to take any decision or action which might be construed as not being in the royal interest, for fear of losing their jobs. That shortfall is readily apparent in parliament today and in the way the country is, or is not, being run. Traditionally only nobles, or on occasion commoners recognized for certain achievements, have been appointed as Ministers, although this year for the first time two of the elected Representatives of the People were appointed to cabinet posts. However upon being so appointed they were forced to resign their office as Representatives of the People, and are consequently subject to removal from office by the monarchy, and thus constrained in their actions for fear of losing their jobs. In this environment parliament is unable to function as a proper chamber for discussion and debate regarding the manner in which the country is being governed, as should be and is the case where governments, ministers and elected representatives are accountable to the people.

As a consequence of these critical shortfalls in the current political system, the pace of social and political change in Tonga has been slow, and economic growth has remained, at best, stagnant for several decades, as other Pacific nations have moved forward. The Kingdom and all of its people both need, and are ready for, if not demanding, further changes to come. There is a pressing need to change the nature of the Legislative Assembly to bring into play principles of accountability and fair play reflecting 20th Century ideals of democratic government.

Exposure of the Tongan people to international communities (there are now more Tongans living overseas than in Tonga itself, primarily New Zealand, Australia and the United States, but these ex-patriot communities unquestionably remain very proud of their Tongan heritage and vitally interested in the progress of their island home), is only serving to increase this pressure for democratic change.

It is most important however, that change be implemented carefully and prudently to ensure that Tongan traditions are not abandoned, but change must still come if Tonga is to retain its proper place as a strong and respected member of both the Pacific and international communities of nations. Better that change come in an orderly and consensual manner than by any damaging upheavals as have had to be endured by some of the Kingdom's Pacific neighbors.

This paper outlines proposed changes to the present system, but only such changes as are necessary (and nothing more, or less), to ensure a fair, accountable and fully democratic style of government for the Tongan people, while at the same time recognizing Tonga's more traditional hierarchical political and social traditions. It is true that democracy does not guarantee good government, but when competitive elections are truly free and fair, they do provide an instrument for removing poor or ineffectual leaders, and thus provide an incentive for political leaders to govern effectively and in the public interest. As such, the proposed changes are not a radical overhaul of the system, but rather a bringing about of democratic rule within the context of traditional Tongan society and customs, formulated to cause minimal disruption to the Tongan way of life, but nevertheless meeting the aspirations and desires of the people of Tonga today.

There are more than 120 democratically governed countries in the world today, compared to only 39 just thirty years ago. Effective democratic governance leads to increased international and investor confidence. It is the way of the world in the 21st century. The changes proposed in this paper will move Tonga into that century, while keeping vital links with the important traditions of its past.

What Changes are being proposed?

The fundamental change that is being proposed is the institution of a proper, elected parliament for Tonga and its people. The present system is neither truly representative of the people nor properly elected. It is that parliamentary institution, often referred to as the Legislative Assembly, which is being principally addressed, along with the system of its election, and the method of appointment of the Prime Minister and Cabinet Ministers and

their accountability to the Tongan people, and the composition of the Privy Council.

To effectively achieve the goal of a proper, democratically elected parliament for Tonga, there are three primary changes to the present system that are being proposed. A number of other procedural changes will need to be made which are related to these primary changes, but the primary changes are three. They are:

- 1) That the laws of the country will be passed by the democratically elected Representatives of the People in the Legislative Assembly.
- 2) That the Legislative Assembly will be comprised of 33 Representatives of the People all elected by the people of Tonga (with both nobles and people being able to stand for election), and 6 Representatives of the Nobles, elected by the Nobles. A noble will be eligible to stand for election as a Representative of the Nobles or as a Representative of the People, but not both. The Privy Council will be comprised of the King and Prime Minister and the Cabinet.
- 3) That the Prime Minister will be elected by the Representatives of the People and the Representatives of the Nobles as members of the Legislative Assembly, and the Prime Minister will appoint the Cabinet Ministers from the Representatives of the People and the Representatives of the Nobles.

How Is This Different From What Happens Now?

Under the present system the members of the Government, including the Prime Minister and the Cabinet members, are appointed by the King. Consequently the people of Tonga do not presently have a real voice in how the country is being run, and yet they are the ones who are most impacted by it. This is no longer the case in any other Pacific nation, Fiji, Samoa, Vanuatu, New Guinea, the Cook Islands, New Zealand, Australia all have governments elected by popular vote.

Under the present system there are three bodies of government.

- 1) The King in Privy Council. Under the proposed changes, the Privy Council will continue in its current role as the executive branch of government and serve as the highest court in the Kingdom. The Privy Council will be composed of the King, the Prime Minister and the other Cabinet Ministers.
- 2) The Legislative Assembly. This is probably what most people look upon as Parliament. It is presently comprised of nine elected Representatives of the People and the elected Representatives of the Nobles. The number of Representatives will increase to 39, with 33 Representatives of the People, and 6 Representatives of the Nobles. Nobles are eligible to stand for election as Representatives of the People, as long as they are not also a Representative of the Nobles.
- 3) The Cabinet. The Cabinet is made up of the Ministers, such as the Prime Minister, the Minister of Finance, the Minister of Police, the Minister of Lands, and are the

primary decision makers in government. They sit as members of the Privy Council and this will still be the case. However, they are presently appointed by the King and this will no longer be the case. The Prime Minister will be elected by the Members of the Legislative Assembly at the first meeting of the Legislative Assembly after a general election. The Prime Minister will then nominate the Cabinet Ministers, who will all remain and sit as Members of the Legislative Assembly.

In effect the people of the Kingdom will be selecting their own government as opposed to the King doing so on their behalf. Nobles are, under the proposed new system, eligible for election as Members of the Legislative Assembly, (as either Representatives of the Nobles or, if they wish, Representatives of the People), and thus as Prime Minister or a Cabinet Minister.

Why Are These Changes Being Proposed?

To ensure that the government of the Kingdom is placed in the hands of Representatives elected by a majority of all of the people of the Kingdom, as opposed to the government being appointed by and from a small percentage of the people of the Kingdom, and that the Government is then accountable to all of the People of the Kingdom for what it does or does not do.

A Government that is accountable to its people has greater incentive to ensure that its actions are in the best interests of the nation and its people as a whole. This in turn should ensure greater stability for a political system which is designed to protect not only the interests of the people of Tonga, but also the country's royal and noble traditions.

How Will the Changes Happen?

First it is proposed that there should be a convention of all interested parties to discuss and review how they wish to proceed in light of the changes being proposed.

A paper detailing all the proposed changes would then be distributed to every household in the country, followed by village to village meetings to review and discuss the changes.

The paper will then, before its introduction into Parliament, be distributed to the Commonwealth Secretariat and to the United Nations, as well as to Tongans living overseas who remain vitally interested in these developments in their homeland.

After this process there would be a meeting with all Government Ministers for final review of the paper, following which the paper would be introduced into parliament for passage into law.

Ultimately the proposed changes will of course need the support of a majority of the Representatives of the People, the Representatives of the Nobles, the Legislative Assembly, Cabinet and naturally, His Majesty the King. Changes will need to be made to parts of the Constitution of the Kingdom of Tonga, the Legislative Assembly Act and the Government Act, and to a lesser degree, the Acts Interpretation Act and the Electoral Act

in order to bring the changes into effect.

It is hoped that all these steps can be taken peacefully and smoothly with all parties recognizing the needs for the future of the country as a whole without divisive sectional interests, so that peace and stability can be maintained as the changes are introduced.

What Will the King's Role in Government Be?

The King is, and will continue to be of vital importance in the proper and good government of the Kingdom of Tonga. The Constitution of the Kingdom of Tonga presently states that: "The King is the Sovereign of all of the Chiefs and all the people. The person of the King is sacred. He governs the country but his ministers are responsible." The substance of this does not change (although it is clarified that the King governs under and subject to the law). Under a democratically elected parliament the King would still be asked to express his views on what is being proposed by that Parliament.

As His Majesty does now, the King will continue to preside over the Privy Council. However, the King will no longer appoint the members of the Privy Council, rather the Privy Council will be made up of the Prime Minister who will be elected by the Members of the Legislative Assembly, and the Cabinet Ministers, who will be nominated by (and can only removed by) the Prime Minister.

The Privy Council, as it does now, will assist the King in the Governance of the Kingdom.

The laws of the Kingdom will be proposed, discussed, drafted and passed by the 6 Representatives of the Nobles and the 33 Representatives of the People in the Legislative Assembly. Finally, the King is required to give his assent to those laws before they take effect.

The King will retain the rights of royal prerogative under the Constitution (royal pardons etc.), and continue to perform other traditional functions of State.

Will the Way I Vote Be Any Different?

The way a citizen of Tonga votes will not be any different, but it is important to realize that the impact and effect of that vote will be completely different. The vote of a citizen of Tonga will now count and have a real impact on the country and its government. Parliament will be elected by the people of Tonga and can be changed by the people of Tonga.

The procedure for casting votes will however remain largely unchanged, as follows:

- 1) Elections for the Representatives of the People will continue to be conducted in the same manner as they are now. The number of Representatives is being increased from 9 to 33. The District of Tongatapu will now have 20 representatives, Vava'u will have 7, Ha'apai 4, Eua 1, and the Nuias 1.

(These proposed numbers are based on the relative size of the population of each Island, and may be subject to change).

There will be no change in the qualification to be able to vote in the election, but voters will be asked to vote for just one candidate as opposed to the present three.

There will be no change in the qualification to be able to stand for election as a Representative of the People, but nobles will now be able to stand for election as a Representative of the People if they want to. However, if a noble is elected as a Representative of the People he cannot also be a Representative of the Nobles, and vice versa.

- 2) Elections for Representatives of the Nobles will continue to be conducted in the same manner as they are now, and will be governed by the nobles. There will be 2 Representatives of the Nobles for Tongatapu, 1 for Vava'u, 1 for Ha'apai, 1 for Eua and 1 for the Nui'a's.
- 3) Elections for both the Representatives of the Nobles and for the Representatives of the People will still be held every three years.

The number of Representatives for the Nobles and Representatives for the People will, under the proposed new system, more fairly reflect the composition of the country's population.

Who Will Be The Prime Minister?

As stated above, the Prime Minister will be an elected Member of the Legislative Assembly (and thus may be a noble), elected by the Representatives of the People and the representatives of the Noble together at the first meeting of the Legislative Assembly (Parliament) after a General Election. The Prime Minister will then appoint the Cabinet Ministers from the Representatives of the People. The Prime Minister may well change from one election to the next, as happens in all democratically elected governments, but the decision will be in the hands of all of the people of Tonga qualified to vote.

Will There Be Political Parties, as in New Zealand and Australia?

The proposed changes do not extend, presently, to the formation of political parties and a party political system in government. There is nothing to prevent this system from being adopted in the future as and when the people of Tonga so desire.

Will Parliament Operate Differently?

Essentially Parliament will operate in the same manner as it does now, but, most importantly, parliament and government ministers will be accountable to the people of Tonga for the way they run the country. Parliament, under the proposed changes, will have a stronger and independent role in the governing of the country, and that parliament will be elected by and can be changed by the people.

The King will continue to summon and dissolve parliament as His Majesty does now, but

will do so only at the request of the Prime Minister, in the same manner as do the Governors General of New Zealand and Australia, and the President of Fiji.

Meetings of the Privy Council will continue to be presided over by the King.

Meetings of the Legislative Assembly will continue to be presided over by the Speaker of the House. However while the Speaker is presently appointed by the King, under the proposed new system, the Speaker of the House would be elected by the Representatives of the People and the Representatives of the Nobles together in the Legislative Assembly, in the same manner as the Prime Minister is elected.

PROPOSED AMENDMENTS
TO
THE CONSTITUTION

THE CONSTITUTION OF TONGA

The purpose of this Bill is directed at achieving 8 different but related objectives namely,

- I. To ensure that laws can be passed by the Legislative Assembly without impedance. Laws shall be promulgated by the Legislative Assembly and passed into effect by Royal Assent (which assent may not be withheld).

Clause 56 of the Principal Act is repealed and replaced with the following:

The power to enact laws for the Kingdom vests in the King and the Legislative Assembly.

- 1) The Representatives of the Nobles and the Representatives of the People shall sit as one house (and shall together individually and collectively from time to time be referred to as “Members of the Legislative Assembly”).
- 2) Subject to this Constitution, the power to enact laws is exercised through the enactment of Bills passed by the Legislative Assembly, and assented to by the King.
- 3) When the Legislative Assembly shall have agreed upon any Bill by its reading and voting for by a majority three times, the Bill shall be sent to the King for assent, which assent shall not be withheld. Votes in the Legislative Assembly shall be given by raising the hand or by standing up in division or by saying “Aye” or “No”.

Clause 68 of the principal Act is repealed and replaced with the following:

“The King shall not refuse to assent to a Bill duly presented for his assent. Should the King refuse his assent, the King’s assent will nonetheless be deemed to have been given and the law shall be deemed to pass into effect on the date it was presented to the King for assent notwithstanding the King’s refusal”.

Clause 41 of the Principal Act is amended by the insertion of the words:

“under and subject to the law” and “unless otherwise provided by law” as follows;

“The King is the Sovereign of all the Chiefs and all the people. The person of the King is sacred. He governs the country under and subject to the law but his ministers are responsible. All Acts that have passed the Legislative Assembly shall, unless otherwise provided by law, bear the King’s signature before they become law”.

Dissolution of Legislative Assembly

- II. To provide that the Legislative Assembly shall be convoked and dismissed by the King only upon the advice of the Prime Minister, or in certain limited circumstances upon the request of a prescribed number of the Members

Legislative Assembly, and that the Legislative Assembly will meet in session at least once every six months.

Clause 38 of the Principal Act is repealed and replaced with the following:

- 1) The King may convoke and dissolve the Legislative Assembly at any time upon the advice of the Prime Minister, and command that new Representatives of the Nobles and new Representatives of the People be elected to enter the Assembly and form the Cabinet in accordance with Clause.51.
- 2) Elections for new Representatives of the Nobles and new Representatives of the People shall be held not later than 45 days after expiry of the term of the Legislative Assembly or the proclamation of its dissolution.
- 3) The Assembly shall always meet at Nuku'alofa and no other place except in a time of war.
- 4) After an election for new Representatives of the Nobles and new Representatives of the People, the Legislative Assembly shall be summoned to meet by the King on the advice of the Prime Minister not later than 7 days after the day of the election.
- 5) Other sessions of the Legislative Assembly shall commence on a date appointed by the King on the advice of the Prime Minister but no longer than 6 months shall elapse between the end of one session and the start of another.”
- 6) Subject to the law, the sittings of the Legislative Assembly shall otherwise be held at such time and place as the Assembly determines for itself in accordance with its rules and orders.

Clause 58 of the Principal Act is repealed and replaced with the following:

- 1) If:
 - a) The Legislative Assembly is not in session; and
 - b) The King receives a request in writing from not less than 20 Members of the Legislative Assembly requesting that Parliament be summoned to meet to consider without delay a matter of public importance; the King shall summon the Legislative Assembly to meet.
- 2) If:
 - a) the Parliament is in session but more than 2 months have elapsed between the sittings of the Legislative Assembly; and
 - b) the Speaker receives a request in writing from not less than 20 members of the Legislative Assembly requesting that a sitting be held to consider without delay a matter of public importance: the Speaker shall call a sitting of the House for a date not later than 2 weeks after the date on which the request was made.

Clause 77 is amended by deletion of the words “at his pleasure” and insertion of the words “upon the advice of the Prime Minister”, as follows:

“New elections shall be held for all the Representatives of the Nobles and the Representatives of the People at least once every three years, but it shall be lawful for the King to dissolve the Legislative Assembly upon the advice of the Prime Minister although three years may not have expired and to command that new elections be held according to law throughout the Kingdom”.

Appointment of the Prime Minister, Speaker, and Cabinet

III. To provide that

- 1) the Prime Minister and Speaker and Deputy Speaker of the Assembly will be elected by vote of the Legislative Assembly from amongst their number, and
- 2) the Prime Minister will appoint all Ministers of the Cabinet, including the Deputy Prime Minister, and advise such appointments to the King.

Clause 51 is repealed and replaced with the following;

- 1) The Prime Minister shall be chosen by vote of the Members of the Legislative Assembly, such vote to be held as the second item of business, immediately following election of the Speaker and Deputy Speaker of the Assembly, at the first meeting of the Legislative Assembly following election of new Representatives pursuant to clause.38.
- 2) Nominations for the office of Prime Minister shall be directed to the Speaker by a Member of the Legislative Assembly and shall be supported by at least six other Members of the Legislative Assembly, (except the nominee), each of whom may support only that nomination. The nominee shall advise the Speaker whether or not he accepts the nomination. If a nominee does not accept his nomination, that nomination shall be void and of no effect. The election shall then be conducted by raising of the hand with the nominee receiving the highest number of votes being elected to the office of Prime Minister. In the event of a tied vote, the voting shall be conducted again with only the tied nominees as candidates. If after three votes the voting remains tied, the Speaker of the Assembly shall cast a deciding vote.
- 3) The appointment of the Prime Minister, and the appointment of the Speaker and Deputy Speaker of the Assembly, shall be advised to the King by the Prime Minister so elected.
- 4) The Prime Minister shall then hold that office until the earlier of :

- a) his death,
 - b) his resignation, which must be tendered in writing to the King,
 - c) his successful impeachment by the Legislative Assembly pursuant to clause.75.
 - d) his ceasing to be a Member of the Legislative Assembly (subject to clause.51 (3(5)),
 - e) appointment of a new Prime Minister by election in the Legislative Assembly in accordance with law, provided that the Prime Minister will continue to hold office pending the result of that election in the Legislative Assembly, even if the Prime Minister is not then a duly elected Member of the Legislative Assembly.
- 5) In the event of the Prime Minister vacating his office as Prime Minister, the Legislative Assembly shall meet (and if not in session, the King shall upon the advice of the Acting Prime Minister summon the Legislative Assembly to meet) within seven days of that event to elect a new Prime Minister from the Members of the Legislative Assembly in the manner provided in Clause.51.2. Prior to that the Deputy Prime Minister shall act as Prime Minister.
- 6) The Cabinet of Ministers of the King shall be appointed and dismissed by the King on the advice of the Prime Minister and shall consist of the Prime Minister, the Minister of Foreign Affairs, the Minister of Lands, the Minister of Finance, and the Minister of Police and any other ministers whom the King on the advice of the Prime Minister shall appoint. One of the Cabinet Ministers so appointed will be appointed by the Prime Minister as Deputy Prime Minister and the Prime Minister shall advise the King of such appointment”.
- 7) The Ministers of the Cabinet shall be appointed within seven days of the election of the Prime Minister by the Legislative Assembly. Until, but only until, those appointments are duly made the Ministers of the Cabinet holding office immediately prior to the last election of new Representatives of the People shall continue to hold office as such Ministers, even if not elected as a Representative of the Nobles or a Representative of the People in such last election.
- 8) The Ministers of the Cabinet may hold two or more Cabinet offices. It shall be lawful to impeach the Ministers, including the Prime Minister, before the Legislative Assembly if their administration is not in accordance with law.
- 9) The Ministers of the Cabinet shall be members of the Legislative Assembly, and, together with the King, shall compose the Privy Council in accordance with the clause 50.
- 10) Each Minister shall draw up a report once every year acquainting the King with the affairs of his department and such report shall be submitted to the Prime Minister who shall forward such report to the King. Each such report shall also be submitted by the Prime Minister to the Legislative Assembly at its next meeting

and if any member of the Legislative Assembly shall wish to know anything concerning the department of any Minister he shall answer questions put to him by the Legislative Assembly and report everything in connection with his department”.

- 11) a) The Cabinet is collectively responsible to the Legislative Assembly for the governance of the Kingdom.
- b) A minister is individually responsible to the Legislative Assembly for all things done by or under the authority of the minister in the execution of his office.
- 12) The Prime Minister shall keep the King generally informed about issues relating to the governance of the Kingdom and shall supply the King with such information as the King requests concerning matters relating to the governance of the Kingdom.

Clause 61 of the Principal Act is repealed and replaced with the following;

- 1) The Speaker and the Deputy Speaker of the Assembly shall be appointed by vote of the Members of the Legislative Assembly;
 - a) at the first meeting of the Legislative Assembly immediately following an election of new Representatives of the Nobles and new Representatives of the People pursuant to clause.38, which vote shall comprise the first order of business at that meeting. The incumbent Speaker shall continue to hold office and will conduct the business of that meeting of the Legislative Assembly (even he is no longer an elected member of the Legislative Assembly), including the voting for the Office of Speaker of the Assembly, and shall continue to hold that Office until the voting is complete, and shall continue to hold office if so re-elected. If not re-elected the former Speaker will then stand down and recognize the newly elected Speaker of the Assembly in that office: and
 - b) Whenever the office of Speaker or Deputy Speaker is vacant.
- 2) Nominations for the office of the Speaker of the Assembly and the Deputy Speaker of the House shall be directed to the Speaker by a Member of the Legislative Assembly and shall be supported by at least three other Members of the Legislative Assembly, except the nominee, each of whom may support only that nomination. The nominee shall advise the Speaker whether or not they accept the nomination. If a nominee does not accept his nomination, that nomination shall be void and of no effect. The election shall then be conducted by raising of the hand with the nominee receiving the highest number of votes being elected to the office of Speaker. In the event of a tied vote, the voting shall be conducted again with only the tied nominees as candidates. If after three votes the voting remains tied, the Speaker of the Assembly shall cast a deciding vote.

- 3) The Deputy Speaker of the Assembly must perform the duties of the Speaker if the Speaker is absent from duty or from the Kingdom or is, for any other reason, unable to perform those duties.
- 4) If neither the Speaker nor the Deputy Speaker is able to perform the duties of the Speaker, the Members of the Legislative Assembly must elect one of their number to preside at meetings of the Legislative Assembly, and pending such election the Chief Justice of the Kingdom shall preside over meetings of the Legislative Assembly (including the meeting at which election of the new Speaker and Deputy Speaker of the Assembly is conducted).
- 5) The Speaker of the Assembly will not be entitled to a vote in the normal conduct of the business of the Legislative Assembly, (including the appointment of the Speaker of the Assembly and the appointment of the Prime Minister) but shall be required to exercise a deciding vote in the event of any tied vote.
- 6) The Office of the Speaker becomes vacant if the Speaker:
 - a) Resigns by giving to the Prime Minister a signed resignation;
 - b) becomes the holder of another public office;
 - c) ceases to be qualified to be an elector in an election for the representatives of the People;
 - d) has an interest in an agreement or contract referred to in paragraph 76 (1) (f);
 - e) is removed from office by a resolution supported by not less than two thirds of the Members of the Legislative Assembly;
 - f) dies.
- 7) The Office of the Deputy Speaker becomes vacant if the Deputy Speaker:
 - a) resigns by giving to the Speaker a signed resignation;
 - b) vacates their place as a Member of the Legislative Assembly;
 - c) is appointed as a Minister;
 - d) is removed from office by a resolution supported by not less than two thirds of the Members of the Legislative Assembly;
 - e) dies

(Note: The Office of Chairman of Committees will be addressed by the Rules of Procedure of the Legislative Assembly, as it is presently).

Clauses 54 and 55 of the Principal Act (formerly establishing the offices of the Governors of Ha'apai and Vava'u), are repealed in their entirety.

Clause 75 of the Principal Act establishing the rules for impeachment of Ministers and Government Officers is amended by deletion of the word "Governor", as the office of Governor has now been repealed.

Clause 40 of the Principal Act is amended by the deletion of the word “shall” and insertion of the word “may” as follows;

“The King may receive Foreign Ministers and may address the Legislative Assembly in writing regarding the affairs of the Kingdom and matters which he may wish to bring before the Assembly for deliberation.”

Composition of the Legislative Assembly and Privy Council

- IV. To provide for the composition of the Legislative Assembly to be a prescribed number of Representatives of the Nobles elected by the Nobles and a prescribed number of Representatives of the People elected by the People from each of the 5 electoral districts, and the Privy Council to be composed of the King and the Cabinet.

Clause 50 is amended by the deletion of the words “and the Governors in accordance with the fifty-fourth clause and any others whom the King shall see fit to call to his Council”, and the deletion of the words “If any case shall have been heard in the Supreme Court it shall be lawful for either party thereto to appeal to the Privy Council which shall rehear the case and the judgment of the Privy Council shall in all cases be final provided that it shall not be lawful for the Privy Council to re-try any criminal case but only to advise the King on the remission or mitigation of sentences”, as follows:

- 1) “The King shall appoint a Privy Council to assist him in the effective discharge of the governance and administration of the Kingdom. The Privy Council shall be composed of the Cabinet in accordance with clause.51. No ordinance which may be passed by the King and Privy Council shall have any effect until the signature of the minister to whose department such Ordinance relates is affixed thereto and if such Ordinance shall be illegal such minister alone shall be responsible and when the Legislative Assembly shall meet it may confirm such Ordinances and make them law or rescind them.”

Clause 59 of the Principal Act defining the composition of the Legislative Assembly is repealed in its entirety as its provisions are now incorporated in the new clause 60 (below).

Clause 60 of the Principal Act is repealed and replaced by the following;

- 1) “There shall be elected by the nobles of the Kingdom from among their number six nobles as Representatives of the Nobles and there shall be elected by electors duly qualified thirty three Representatives of the People, who together shall compose the Legislative Assembly, and from whom the Cabinet Ministers shall be appointed in accordance with law. “

- 2) No person may be elected or be nominated as a candidate for election as both a Representative of the Nobles and a Representative of the People. If, by any error, oversight or omission or any other manner howsoever, a noble is elected as or otherwise holds office as both a Representative of the Nobles and a Representative of the People that noble shall take their place as a Representative of the Nobles and resign as a Representative of the People”.

Clause 64 of the Principal Act is amended by deletion of the words “who being a male and not a noble pays taxes and being a...”, as follows;

“Every Tongan subject of twenty-one years of age or more, male or female, and not a noble, who can read and write and is not insane or imbecile and is not disabled by clause 23 shall be entitled to vote in an election for Representatives of the People to the Legislative Assembly and on the day appointed for election shall be exempt from summons for debt.”

Clause 65 of the Principal Act is amended by the insertion of the words “either

- a) a noble, but not a Representative of the Nobles or nominated for election as a Representative of the Nobles (provided that a noble who is a Representative of the Nobles on the date of election for new Representatives of the People, but is not then nominated for re-election as a Representative of the Nobles shall be eligible for election as a Representative of the People), or, b) as follows;*

- 1) Representatives of the People shall be chosen by ballot and any person who is either;
 - a) a noble, but not a Representative of the Nobles or nominated for election as a Representative of the Nobles, (provided that a noble who is a Representative of the Nobles on the date of an election for new Representatives of the People, but is not then nominated for re-election as a Representative of the Nobles shall be eligible for election as a Representative of the People), or;
 - b) Qualified to be an elector may be elected as a Representative of the People, save that no person may be chosen against whom an order has been made in any Court in the Kingdom for the payment of a specific sum of money the whole or any part of which remains outstanding or if ordered to pay by installments the whole or any part of such installments remain outstanding on the day on which such person submits their nomination paper to the Returning Officer: and provided that no person holding an emolument under the Crown shall enter the assembly except the Ministers.

Vacancies in the Legislative Assembly and Privy Council and Bye Elections

- V. To define the circumstances in which Representatives of the People and Representatives of the Nobles may or shall be deemed to have vacated their office, the requirement for bye-elections, and to provide that both the Privy Council and the Legislative Assembly may continue to function with full force of law despite a shortfall in their number.

Clause.74. of the Principal Act addressing the manner in which a Representative of the Nobles may resign his seat in the Legislative Assembly is repealed in its entirety, as this issue is now addressed in the provisions of the new clause76 (below).

Clause 76 of the Principal Act is repealed and replaced with the following;

- 1) The place of a Representative of the People becomes vacant if the Representative:
 - a) Resigns by giving to the Speaker a signed resignation;
 - b) with the Representative's consent becomes the holder of a public office;
 - c) ceases to have a right to be registered as an elector in an election of the Representatives of the People;
 - d) is an undischarged bankrupt;
 - e) is absent from 7 consecutive meetings of the House of Representatives without having obtained the permission of the Speaker to be absent;
 - f) has an interest in an agreement or contract entered into with the government or a government authority, being an interest of a kind which Parliament has prescribed as an interest that must not be held by a member of the Parliament or a presiding officer of a House of the Parliament
 - g) is elected as a Representative of the Nobles
 - h) dies

- 2) The place of a Representative of the Nobles becomes vacant if the Representative:
 - a) resigns by giving to the Speaker a signed resignation;
 - b) with the Representative's consent becomes the holder of a public office;
 - c) would, if they were a Representative of the People, vacate their place by reason of the operation of Clause 76.1 (c), (d), (e) or (f);
 - d) is elected as a Representative of the People
 - e) dies.

- 3) In this clause public office does not include:
 - a) the office of a Minister;
 - b) the office of the Speaker or Deputy Speaker of the Assembly; or
 - c) if the Representative is a Minister - an office held by them by virtue of their appointment as a Minister.

- 4) In the event of the place of a Representative of the Nobles or of the People becoming vacant the Speaker shall immediately command that,

- a) in the case of a Representative of the Nobles, the nobles, or
 - b) in the case of a Representative of the People, the electors of the district which that Representative represented, shall elect a Representative in their place.
- 5) Both the Legislative Assembly and the Privy Council may act despite a vacancy in its membership, and the presence at, or the participation in, its proceedings of a person not entitled to be a member does not invalidate the proceedings.

Prince Regent

- VI. To provide that the King may appoint a Prince Regent to act in his behalf should the King be absent from the country, or that the Legislative Assembly may appoint a Prince Regent to administer the Affairs of the Kingdom should the King die before his heir has reached the age of 18, and that any party so appointed as Prince Regent shall be of Tongan descent/citizenship, a child or sibling of the King or otherwise appropriately qualified to hold the office of Prince Regent.

Clause 43 of the Principal Act shall be amended by the addition of the following words at the end of the existing clause,

“ PROVIDED THAT any person appointed by the King or the Cabinet to the office of Prince Regent shall be either;

- 1) a child or sibling of the King of 18 years of age or more, or
- 2) a) be both a citizen and resident of Tonga, and ;
b) be qualified to be an elector; and
c) have been (but shall not be at the time of the appointment nor at any time while holding the office of Prince Regent be) a Representative of the Nobles, or a Representative of the People, or have held public office”.

Martial Law and Armed Forces

- VII. To provide that a state of Martial Law in the Kingdom can only be declared by the King with the prior approval of the Legislative Assembly, and that laws and regulations regarding training and control of the armed forces will be promulgated by the Legislative Assembly and the Cabinet.

Clause 36 of the Principal Act is amended by the insertion of the words “with the consent of the Privy Council” and the deletion of the words “and make such regulations for the training and control of the forces as he may think best for the welfare of the country but”, as follows:

- 1) “The King is the Commander in Chief of the forces on land and sea.

- 2) He shall with the consent of Privy Council appoint all officers of the forces
- 3) It shall not be lawful for the King to make war without the consent of the Legislative Assembly.”

Clause 46 of the Principal Act is amended by inserting the words “with the prior approval of the Legislative Assembly” to ensure that the King must obtain the approval of the Legislative Assembly before declaring martial law, as follows:

“In the event of civil war or war with a foreign state it shall be lawful for the King with the prior approval of the Legislative Assembly to proclaim martial law over any part or over the whole of the country”.

Privilege of Nobles

- VIII. To provide that certain legislation shall only be subject to change with the approval of a specified extraordinary majority vote of the Legislative Assembly.
-

Clause 67 of the Principal Act is repealed and replaced with the following;

- 1) “A Bill which alters
 - a) the Land Act or,
 - b) the Royal Estates Act must be expressed as a Bill to alter the Constitution or the Land Act or the Royal Estates Act, and shall not be presented for the King’s assent unless it has been read 3 times in the Legislative Assembly and at its third reading is supported by at least 22 of the Representatives of the People and at least 4 of the Representatives of the Nobles.
- 2) A Bill which alters the Constitution must be expressed as a Bill to alter the Constitution, and must not be presented for the King’s assent unless it has been read 3 times in the Legislative Assembly and at its third reading is supported by at least 26 of the Members of the Legislative Assembly.
- 3) The King shall not assent to a Bill referred to in sections.1. or 2. of this Clause unless it is accompanied by a certificate of the Speaker of the House certifying that the requisite approval required by this clause has been given.”

Clause 79 of the Principal Act establishing the present procedure for amending the Constitution is repealed in its entirety, as this issue is now addressed by the new clause 67 (above).

PROPOSED AMENDMENTS
TO
THE GOVERNMENT ACT

GOVERNMENT ACT 1903

The Purpose of this Bill is directed at achieving two objectives,

Executive Authority

- I. To provide that the King shall exercise executive authority only upon the advice of the party or parties prescribed by law to advise the King to act.
-

Clause 2 of the Principal Act is repealed and replaced with the following;

“The King symbolizes the unity of the Kingdom. Executive authority of the Kingdom is vested in the King, provided that in the exercise of his powers and executive authority the King acts only on the advice of the Cabinet or the Prime Minister or of some other body or authority prescribed by law for a particular purpose as the body or authority on whose advice the King acts in that case.”

Clause 4 of the Principal Act shall be amended by the deletion of the words “for the consideration of urgent matters and for the authorization of extraordinary expenditure in emergencies”, as follows;

“If the King is unable to hold a Privy Council meeting either by reason of absence in some other part of the Kingdom or abroad or owing to ill health it shall be lawful for the King to authorize one of the Ministers to represent him at any Privy Council meeting .”

(Note - this clause reflects the present legislation but expands its applicability as it is now no longer limited to the appointment of a Cabinet Minister to represent the King in his absence in urgent situations only . Clearly the King would not need to appoint a Cabinet Minister to represent him if he has formally appointed a Prince Regent).

Office of the Prime Minister

- II. To confirm that the Prime Minister is appointed by a majority vote of the Members of the Legislative Assembly and is not subject to arbitrary removal from office, and that the Deputy Prime Minister shall be appointed by the Prime Minister.
-

Clause 17 (1) of the Principal Act is amended by the deletion of the words “by the King and shall hold office during the King’s pleasure and...”, and insertion of the words “by vote of the Legislative Assembly, and may only be removed from office, in accordance with law.” as follows;

“The Prime Minister shall be appointed by vote of the Legislative Assembly, and may only be removed from office, in accordance with law. The Prime Minister shall be charged with the administration of any department or any government property the administration of which is not specifically provided for in this or any other Act.”

Clause 17(4) of the Principal Act is amended by the insertion of the words “(in addition to such other powers as may be conferred by law)”, as follows;

“he shall (in addition to such other powers as may be conferred by law) have the power, with the consent of Cabinet:

- a) to appoint dismiss or discipline all Government Officers (including Magistrates)
- b) to delegate to any person or persons appointed for the purposes, the power to appoint, dismiss or discipline all those officers and otherwise to administer the Public Service, such delegation to be to an extent specified and not be inconsistent with the provisions of any other Act”.

Clause 18 (1) of the Principal Act is amended by the deletion of the words “The King may with the consent of the Privy Council...”, and the insertion of the words “The Prime Minister may...”, as follows;

“The Prime Minister may appoint from the Ministers of the Cabinet a Deputy Prime Minister who shall hold office during the Prime Minister’s pleasure”

Clause 24 of the Principal Act (pertaining to the Governors of Ha’apai and Vava’u) is repealed in its entirety.

PROPOSED AMENDMENTS
TO
THE LEGISLATIVE ASSEMBLY ACT

THE LEGISLATIVE ASSEMBLY ACT 1915

The purpose of this Bill is directed at achieving 3 different objectives.

Elections

- I. To provide for the election of a prescribed number of Representatives of the Nobles and the election of a prescribed number of Representatives of the People, who shall together sit as the Members of the Legislative Assembly.
-

Clause 3 of the Principal Act is repealed and replaced with the following;

- 1) “The Kingdom shall be divided into 5 electoral districts namely -
 - a) Tongatapu
 - b) Ha’apai
 - c) Vava’u
 - d) Eua
 - e) Niufo’ou and Nuiatoputapu

There shall be elected

- a) for Tongatapu 2 Representatives of the Nobles and 20 Representatives of the People, and
- b) for the district of Vava’u 1 Representative of the Nobles and 7 Representatives of the People, and
- c) for the district of Ha’apai 1 Representative of the Nobles and 4 Representatives of the People, and
- d) for the district of Eua 1 Representative of the Nobles and 1 Representative of the People and
- e) for the district of Niufo’ou and Nuiatoputapu 1 Representative of the Nobles and 1 Representative of the People.

Any persons qualified under clause 64 of the Constitution to be electors of Representatives of the People may be a candidate for election as a Representative of the People subject to the requirements of this Act.

- 2) The Prime Minister with the consent of the Cabinet shall appoint the places within each district where the election shall be held.

Clause 5 (g) of the Principal Act is amended by the deletion of the words “His Majesty in Council” and the insertion of the words “The Prime Minister”, as follows;

“The Prime Minister shall appoint an Electoral Appeal Committee in each electoral district consisting of a chairman and not less than 2 or more than 5 other persons for the purpose of hearing appeals against the decision of a returning officer in respect of registration;

Any duly qualified elector whose application for registration has been refused, or whose name has been wrongfully removed from the register, may appeal in writing to the Electoral Appeal Committee. On any such appeal the Electoral Appeal Committee may give any such directions in the matter as they think proper and the order shall be final and conclusive and not subject to appeal to any other body;”.

Sessions

- II. To provide for appropriate duration for sessions of the Legislative Assembly, and provide for sessions to be summoned by the King on the advice of the Prime Minister.
-

Clause 14 of the Principal Act is repealed and replaced with the following;

“Sessions of the Legislative Assembly shall, subject as otherwise provided for by law, commence on a day appointed by the King on the advice of the Prime Minister but no longer than 6 months shall elapse between the end of one session and the start of another.”

Speaker of the Assembly

- III. To provide that the Speaker of the Assembly shall be appointed by a majority vote of the Legislative Assembly.
-

Clause 15 of the Principal Act is repealed and replaced with the following;

“The Speaker of the Assembly shall be appointed from the Members of the Legislative Assembly by vote of the Legislative Assembly at the first meeting of the Legislative Assembly immediately following the election of new Representatives of the Nobles and new representatives of the People, in accordance with law. The Speaker of the Assembly shall preside over all meetings, and shall hold office in accordance with law”.

All other officers shall be appointed by majority vote of the Legislative Assembly and it shall have power to make its own rules of procedure for governing its meetings”.

Clause 16 of the Principal Act addressing appointment of an Acting Speaker in the event that the Speaker is incapacitated is repealed in its entirety, as this issue is now addressed in the Constitution.

PROPOSED AMENDMENT
TO
THE ELECTORAL ACT

ELECTORAL ACT 1989

Electoral Appeal Committees

The Purpose of this Bill is to provide that Electoral Appeal Committee(s) in each electoral district will be appointed by the Prime Minister.

Clause 6 (1) of the Principal Act is amended by deletion of the words “His Majesty in Council” and the insertion of the words “The Prime Minister”, as follows;

- 1) The Prime Minister shall appoint an Electoral Appeal Committee in each electoral district consisting of a chairman and not less than 2 or more than 5 other persons for the purpose of hearing appeals under section 5 (3) and against the decision of the Supervisor in respect of registration under section 4 (9).”

PROPOSED AMENDMENT
TO
THE INTERPRETATION ACT

Interpretation Act 1903

The purpose of this Bill is to modify the Principal Act to provide that laws shall take effect upon the date King gives, or is deemed to have given, his consent thereto.

Clause 3 (1) of the Principal Act is amended by the insertion of the words “or has been deemed by law to have...”, and “is deemed to have received...”, as follows;

“An Act to which His Majesty’s assent has been or has been deemed by law to have been given comes into operation on the day on which that Act receives or is deemed to have received His Majesty’s Assent, unless the contrary intention appears.”

Clause 22 of the Principal Act is amended by the insertion of the words “or deemed to be given...”, as follows;

“The date appearing on the copy of an Act printed by the Government Printer and purporting to the date on which His Majesty’s Assent was given or deemed to be given to that Act is evidence of the date on which that Assent was given to that Act is evidence that date was the date on which His Majesty’s Assent was given or deemed to be given to that Act.”

SCHEDULE OF LEGISLATIVE AMENDMENTS

The following is a schedule of the principal legislative topics which are subject to change, referenced by the relevant Legislation and the page number in this paper.

1) Assent of the King to Legislation			
Constitution	Clause 68	page	11
	Clause 41	page	11
Interpretation Act	Clause 3	page	31
2) Armed Forces			
Constitution	Clause 36	page	20-21
	Clause 46	page	21
3) Cabinet			
Appointment:			
Constitution	Clause 51 (6), (7), (8)	page	14
Dismissal:			
Constitution	Clause 51 (6), (8)	page	14

4) Elections			
Legislative Assembly:			
Constitution	Clause 77	page	13
Legislative Assembly Act	Clause 3 (a)	page	26
Qualifications for Electors:			
Constitution	Clause 64	page	18
Electoral Appeals Committee:			
Electoral Act	Clause 6	page	29
Vacancies and Bye-Elections:			
Representatives of the People			
Constitution	Clause 76 (1), (3), (4), (5)	pages	19-20
Representatives of the Nobles			
Constitution	Clause 76 (2), (3), (4), (5)	pages	19-20
5) Foreign Ministers			
Constitution	Clause 40	page	16-17
6) Governors of Ha'apai and Vava'u.			
Constitution	Clause 54	page	16
Government Act	Clause 24	page	24
7) Legislative Assembly			
Composition:			
Constitution	Clause 60, 64, 65	pages	17-18
Convoking & Dissolution:			
Constitution	Clause 38, 77	pages	12-13
Sessions:			
Constitution	Clause 38	page	12
	Clause 58	pages	12
Legislative Assembly Act	Clause 14	page	27
Qualification of Representatives:			
Constitution	Clause 65	page	18
8) Martial Law			
Constitution	Clause 46	page	21
9) Passage of Laws.			
Constitution	Clause 56, 68	pages	11-12
Interpretation Act	Clause 2	page	31
10) Prime Minister			
Appointment:			
Constitution	Clause 51 (1), (2), (3), (4)	page	13-14
Government Act	Clause 17, 18	page	23-24
Dismissal and Vacancy:			

Constitution	Clause 51(5)	pages	14
Duties:			
Constitution	Clause 51(12)	page	15
Government Act	Clause 17, 18	page	23-24
Deputy Prime Minister:			
Government Act	Clause 18	page	24
11) Prince Regent.			
Constitution	Clause 43	page	20
12) Privy Council.			
Composition:			
Constitution	Clause 50, 51	pages	17, 14
Appointment:			
Constitution	Clause 51(6), (7)	page	14
Dismissal:			
Constitution	Clause 51(8)	page	14
Executive Authority:			
Government Act	Clause 2	page	23
13) Speaker of the Assembly.			
Appointment:			
Constitution	Clause 61(1), (2)	page	15
Legislative Assembly Act	Clause 15	page	27
Voting Power:			
Constitution	Clause 61(5)	page	16
Vacancy			
Constitution	Clause 61(4), (6)	page	16
Deputy Speaker of the Assembly			
Appointment:			
Constitution	Clause 61(1), (2)	page	15
Duties:			
Constitution	Clause 61(3)	page	16
Vacancy:			
Constitution	Clause 61(4), (7)	page	16

CONCLUSION

The legislative changes proposed in this paper have been developed with a targeted objective of providing all the people of Tonga with a fair and democratically elected system of parliamentary government, where the country's leaders will be chosen by and accountable to its people, but within the framework of traditional Tongan society and values.

In drafting the changes a review of equivalent legislation and parliamentary systems in other Pacific nations was undertaken, and where appropriate those systems have been drawn upon and adapted to fashion a constitutional and legislative framework addressing the unique needs of Tongan society in the modern era. The proposed changes are presented in draft form to promote proper and open consideration and discussion, and as such may be subject to change.

It is of vital importance that these proposed changes be given such consideration and become the catalyst for the progress which is both needed and demanded at this time. Tonga and its people are deserving of governance which is dedicated to the advancement, security and welfare of the country as a whole, and which is accountable to all its people in adhering to that dedication. It is sincerely believed that the changes proposed here will meet that need.