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Tuvalu's Constitution of 1986

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Table of contents

Preamble . . . 10
PART I: THE STATE AND THE CONSTITUTION . . . 11
Division 1: The State . . . 11
1. The State . . . 11
2. The area of Tuvalu . . . 11
Division 2: The Constitution . . . 12
3. The Constitution as supreme law . . . 12
4. Interpretation of the Constitution . . . 12
5. Jurisdiction of the High Court in constitutional matters . . . 12
Division 3: Alteration of the Constitution . . . 12
6. Interpretation of Division 3 . . . 12
7. Alteration of the Constitution generally . . . 12
8. Alteration of the Constitution to give effect to U.K. constitutional change . . . 13
PART II: BILL OF RIGHTS . . . 13
Division 1: Preliminary . . . 13
9. Interpretation of Part II . . . 13
Division 2: The Principles of the Bill of Rights . . . 14
10. Freedom under law . . . 14
11. The fundamental human rights and freedoms . . . 14
12. Application of Part II . . . 15
13. The Principles of the Preamble . . . 15
14. Parliamentary declarations of purpose . . . 15
15. Reasonably justifiable in a democratic society . . . 15
Division 3: Protection of the Fundamental Rights and Freedoms . . . 16
Subdivision A: Protection Generally . . . 16
16. Life . . . 16
17. Personal liberty . . . 17
18. Slavery and forced labour . . . 18
19. Inhuman treatment . . . 19
20. Property rights . . . 19
21. Privacy of home and property . . . 21
22. Protection of law . . . 21
23. Freedom of belief . . . 24
24. Freedom of expression . . . 25
25. Freedom of assembly and association . . . 26
26. Freedom of movement . . . 26
27. Freedom from discrimination . . . 28

28. Other rights and freedoms 29
Subdivision B: Special Exceptions 29
29. Protection of Tuvaluan values, etc 29
30. Provisions relating to certain officials 30
31. Disciplined forces of Tuvalu 31
32. Foreign disciplined forces 31
33. Hostile disciplined forces 31
Division 4: Public Emergencies 31
34. Interpretation of Division 31
35. Declaration of public emergency 31
36. Restrictions on certain rights and freedoms during public emergencies 32
37. Detention during public emergencies 32
Division 5: Enforcement of the Bill of Rights 33
38. Application for enforcement of the Bill of Rights 33
39. Questions as to the Bill of Rights arising in subordinate courts 33
40. Jurisdiction of the High Court as to the Bill of Rights 33
41. Appeals as to the Bill of Rights 33
42. Additional powers of the High Court as to the Bill of Rights 34
PART III: CITIZENSHIP 34
43. Interpretation of Part III 34
44. Initial citizenship under the Constitution 34
45. Citizenship by birth 34
46. Citizenship by marriage under the Constitution 35
47. Laws as to citizenship 35
PART IV: THE SOVEREIGN AND THE GOVERNOR-GENERAL 35
Division 1: The Sovereign 35
48. The Sovereign of Tuvalu 35
49. Succession to the Crown 36
Division 2: Functions of the Head of State 36
50. The office of Head of State 36
51. Functions, etc., of the Head of State generally 36
52. Performance of functions by the Head of State 36
53. Failure by the Head of State to act 37
Division 3: The Governor-General 37
54. Establishment of office of Governor-General 37
55. Appointment, etc., of the Governor-General 37
56. Acting Governor-General 38
57. Oaths and affirmation by the Governor-General, etc 38

58. Performance of functions by the Governor-General . . . 38
59. Provision to the Governor-General of information as to the conduct of government . . . 39
60. Performance of certain ceremonial, etc., functions . . . 39
PART V: THE EXECUTIVE . . . 39
Division 1: The Executive Authority of Tuvalu . . . 39
61. Vesting of the executive authority . . . 39
Division 2: The Ministers . . . 39
62. Offices of Ministers . . . 39
63. The Prime Minister . . . 40
64. Removal from office of an incapacitated Prime Minister . . . 40
65. Suspension of Prime Minister . . . 41
66. Effect of removal or suspension of Prime Minister . . . 41
67. The other Ministers . . . 41
68. Acting Prime Minister . . . 41
69. Acting Ministers . . . 42
70. Conditions of acting appointments to Ministerial offices . . . 42
71. Caretaker governments . . . 42
72. Oaths and affirmations by Ministers . . . 43
Division 3: The Cabinet . . . 43
73. Establishment of the Cabinet . . . 43
74. Functions of the Cabinet . . . 43
76. Proceedings in Cabinet . . . 44
77. Validity of executive acts . . . 44
Division 4: Officers Associated with the Cabinet . . . 44
78. The Secretary to Government . . . 44
79. The Attorney-General . . . 45
Division 5: The Power of Mercy . . . 46
80. Commutation, etc., of sentences . . . 46
PART VI: PARLIAMENT AND LAW-MAKING . . . 46
Division 1: Parliament . . . 46
81. Establishment of Parliament . . . 46
82. Composition of Parliament . . . 47
83. Principles of electoral apportionment . . . 47
Division 2: The Law-making Power . . . 47
84. Vesting of the law-making power . . . 47
85. Delegated legislation . . . 48
86. Manner of exercise of the law-making power . . . 48
Division 3: Membership of Parliament . . . 48

87. Nature of elections 48
88. Holding of elections 48
89. Electoral laws 48
Subdivision B: Electors 49
90. Right to vote 49
91. Qualifications for registration 49
92. Disqualification from registration 49
Subdivision C: Candidates 50
93. Candidature 50
94. Qualifications for election 50
95. Disqualification from election 50
Subdivision D: Members 51
96. Tenure of office 51
97. Disclosure of interest 51
98. Vacation of seat on sentence 51
99. Recall of incapacitated member 52
Subdivision E: Miscellaneous 52
100. Questions as to membership of Parliament 52
101. Sitting, etc., while unqualified 53
102. Calculation of sentences 53
Division 4: The Speaker 53
103. Establishment of the office of Speaker 53
104. Election of the Speaker 53
105. Tenure of office of the Speaker 54
106. Functions of the Speaker 54
107. Acting Speaker 55
Division 5: Procedures in Parliament 55
108. Rules of Procedure 55
109. Quorum of Parliament 55
110. Voting in Parliament 56
111. Procedure on Bills, etc 56
Division 6: Miscellaneous 56
112. Oath and affirmation of members of Parliament 56
113. Validity of proceedings in Parliament 57
114. Privileges of Parliament 57
115. Clerk of Parliament and other officers 57
Division 7: Summoning, Dissolution, etc 58
116. Meetings of Parliament 58
117. Prorogation of Parliament 58

118. Dissolution of Parliament . . . 58
PART VII: THE COURTS . . . 59
Division 1: General . . . 59
119. The judicial system . . . 59
Division 2: The High Court . . . 59
Subdivision A: Establishment, etc . . . 59
120. Establishment of the High Court . . . 59
121. Composition of the High Court . . . 59
122. The Chief Justice of Tuvalu . . . 59
123. Other Judges . . . 59
124. Qualifications of Judges . . . 60
125. Remuneration, etc., of Judges . . . 60
126. Tenure of office of Judges . . . 60
127. Removal of Judges from office . . . 60
128. Suspension of Judges . . . 61
129. Completion of pending matters . . . 61
Subdivision B: Jurisdiction . . . 61
130. Jurisdiction of the High Court generally . . . 61
131. Constitutional interpretation . . . 62
132. Appellate jurisdiction of the High Court . . . 62
133. Other jurisdiction, etc., of the High Court . . . 62
Division 3: The Court of Appeal . . . 62
134. Establishment of the Court of Appeal . . . 62
135. Jurisdiction of the Court of Appeal . . . 62
Division 4: The Sovereign in Council . . . 63
136. Jurisdiction of the Sovereign in Council . . . 63
PART VIII: PUBLIC EMPLOYMENT . . . 63
Division 1: General . . . 63
137. Interpretation of Part VIII . . . 63
138. Application of Part VIII . . . 64
139. The State Services . . . 64
140. Creation etc., of offices, etc., in State Services . . . 64
141. Appointments subject to approval, etc . . . 64
142. Localization . . . 65
Division 2: The Public Service Commission . . . 65
143. Establishment of the Commission . . . 65
144. Composition of the Commission . . . 65
145. Appointment of members of the Commission . . . 65

146. Remuneration, etc., of members of the Commission 65
147. Tenure of office of members of the Commission 66
148. Exclusion of members of the Commission from certain employment 66
Division 3: General Functions of the Public Service Commission 66
149. Functions of the Commission 66
150. Independence of the Commission 67
151. Appeals within State Services 67
152. Procedures, etc., of the Commission 67
153. Delegation by the Commission 67
Division 4: Personnel Functions 68
154. Application of Division 4 68
155. The Public Service 68
156. Magistrates 68
157. The Police Force 68
158. Secretaries to Ministries 69
159. Special cases of appointments 69
Division 5: Removal, etc., of Certain Officials 70
160. Interpretation of Division 5 70
161. Application of Division 5 70
162. Removal of prescribed officials from office 70
163. Suspension of prescribed officials 71
164. Contract employment 71
PART IX: FINANCE 72
Division 1: Parliament and Finance 72
165. Parliamentary responsibility for finance 72
166. Executive initiative 72
167. The Consolidated Fund 72
168. Accounting, etc., for public money 73
169. Remuneration of certain officials 73
Division 2: The Auditor-General 73
170. Establishment of the office of Auditor-General 73
171. Independence of the office of Auditor-General 74
172. Functions of the Auditor-General 74
PART X: TRANSITIONAL 74
173. Transitional provisions 74
SCHEDULES 75
SCHEDULE 1: Rules for the Interpretation of the Constitution (Section 4) 75
1. Application of Schedule 1 75

2. General definitions . . . 75
3. Form of the Constitution . . . 79
4. Meaning of language used . . . 79
5. Gender and number . . . 79
6. Time limits . . . 79
7. Attainment of age . . . 79
8. Powers of majority, and quorums . . . 80
9. References to "total membership . . . 80
10. Performance of constitutional functions . . . 80
11. Appointments, etc., requiring prior approval . . . 80
12. Official appointments, etc . . . 80
13. References to the Sovereign of Tuvalu . . . 82
14. References to the Sovereign of the United Kingdom . . . 82
15. Independence . . . 82
16. Regulation of acts, etc . . . 82
17. Impracticability of obtaining advice, etc . . . 82
18. Acts in "deliberate judgment . . . 83
19. Effect of repeal . . . 83
20. Effect of disallowance . . . 84
21. Multiple oaths, etc . . . 84
SCHEDULE 2: Election and Appointment of the Prime Minister (Section 63) . . . 84
1. Functions of the Governor-General . . . 84
2. Election meetings . . . 84
3. Nominations . . . 85
4. Cancellation of proceedings . . . 85
5. List of candidates . . . 85
6. Quorum . . . 85
7. Conduct of the election meeting . . . 86
8. Conduct of the election . . . 86
9. Declaration of the result . . . 86
10. Disputes . . . 87
11. Saving of power to dissolve . . . 87
SCHEDULE 3: Procedure, etc., of the Public Service Commission and Certain Tribunals (Sections 127, 152, 162) . . . 87
1. Application of Schedule 3 . . . 87
2. Rules . . . 87
3. Voting . . . 87
4. Absence, etc . . . 87
5. Powers of certain tribunals . . . 88

6. Procedures generally 88
SCHEDULE 4: Oaths and Affirmations (Sections 57, 72 and 112) 88
1. Oath, etc., of Allegiance 88
2. Oath, etc., of Office of Governor-General 88
3. Oath, etc., of Office of Member of Cabinet 88
SCHEDULE 5: Transitional provisions (Section 173) 89
1. Interpretation 89
2. Existing laws 89
3. Prescribed matters 89
4. The Governor-General 89
5. Ministers 90
6. Parliament 90
7. Public Officers 91
8. Legal Proceedings 91
9. Financial 91

• Source of constitutional authority
• Human dignity
• Political theorists/figures
• God or other deities
• Motives for writing constitution

Preamble

WHEREAS in adopting the Independence Constitution of Tuvalu the people of Tuvalu provided in the Preamble to it as follows:—

"WHEREAS the Islands in the Pacific Ocean then known as the Ellice Islands came under the protection of Her Most Gracious Majesty Queen Victoria in September 1892 and on 12 January 1916 in conjunction with the Gilbert Islands became known as the Gilbert and Ellice Islands Colony;

"AND WHEREAS on 1 October 1975 Her Most Excellent Majesty Queen Elizabeth II was graciously pleased to establish the Ellice Islands as a separate colony under their ancient name of Tuvalu;

"AND WHEREAS the people of Tuvalu, acknowledging God as the Almighty and Everlasting Lord and giver of all good things, humbly place themselves under His good providence and seek His blessing upon themselves and their lives;

"AND WHEREAS the people of Tuvalu desire to constitute themselves as an Independent State based on Christian principles, the Rule of Law, and Tuvaluan custom and tradition;

"NOW THEREFORE the people of Tuvalu hereby affirm their allegiance to Her Most Excellent Majesty Queen Elizabeth II, Her Heirs and Successors, and do hereby proclaim the establishment of a free and democratic sovereign nation.....";

AND WHEREAS the Constitution then adopted, which was given the force of law by Order in Council of Her Most Excellent Majesty dated 25 July 1978 and taking effect on 1 October 1978, provided for its amendment or replacement by Ordinance of the Parliament established by it for Tuvalu;

AND WHEREAS that Constitution has served the people of Tuvalu well since Independence but now, more than seven years since its adoption, it is time that the people of Tuvalu reconsidered it in the light of their history and their present and future needs as they see them;

NOW THEREFORE, the people of Tuvalu, having considered, as individuals, in their maneapas and island councils, and in their Parliament, what should be in their constitution, give to themselves the following Constitution:

IN SO DOING, the people of Tuvalu set out for themselves and for their governmental institutions, the following Principles:—

Principles of the Constitution

1. The principles set out in the Preamble to the Independence Constitution are re-affirmed and re-adopted.
2. The right of the people of Tuvalu, both present and future, to a full, free and happy life, and to moral, spiritual, personal and material welfare, is affirmed as one given to them by God.
3. While believing that Tuvalu must take its rightful place amongst the community of nations in search of peace and the general welfare, nevertheless the people of Tuvalu recognize and affirm, with gratitude to God, that the stability of Tuvaluan society and the happiness and welfare of the people of Tuvalu, both present and future, depend very largely on the maintenance of Tuvaluan values, culture and tradition, including the vitality and the sense of identity of island communities and attitudes of co-operation, self- help and unity within and amongst those communities.
4. Amongst the values that the people of Tuvalu seek to maintain are their traditional forms of communities, the strength and support of the family and family discipline.

5. In government, and in social affairs generally, the guiding principles of Tuvalu are—
   - agreement, courtesy and the search for consensus, in accordance with traditional Tuvaluan procedures, rather than alien ideas of confrontation and divisiveness;
   - the need for mutual respect and co-operation between the different kinds of authorities concerned, including the central Government, the traditional authorities, local governments and authorities, and the religious authorities.
6. The life and the laws of Tuvalu should therefore be based on respect for human dignity, and on the acceptance of Tuvaluan values and culture, and on respect for them.
7. Nevertheless, the people of Tuvalu recognize that in a changing world, and with changing needs, these principles and values, and the manner and form of their expression (especially in legal and administrative matters), will gradually change, and the Constitution not only must recognize their fundamental importance to the life of Tuvalu but also must not unnecessarily hamper their expression and their development.

THESE PRINCIPLES, under the guidance of God, are solemnly adopted and affirmed as the basis of this Constitution, and as the guiding principles to be observed in its interpretation and application at all levels of government and organized life.

PART I: THE STATE AND THE CONSTITUTION

Division 1: The State

• Type of government envisioned

1. The State

Tuvalu is a sovereign democratic State, governed in accordance with this Constitution and in particular in accordance with the Principles set out in the Preamble.

2. The area of Tuvalu

1. Subject to subsections (3) and (4), the area of Tuvalu consists of the land areas referred to in subsection (2), together with—
   a. the territorial sea and the inland waters as declared by law, the land beneath them, and the air space above; and
   b. such additional lands and waters as are declared by law to be part of the land area of Tuvalu.
2. The land areas referred to in subsection (1) consist of all islands, rocks and reefs within the area bounded by—
   a. the parallel 05°S; and
   b. the meridian 180°E; and
   c. the parallel 11°S; and
   d. the meridian 176°E,

together with all small islands, islets, rocks and reefs depending on them.

• Supermajority required for legislation
• Treaty ratification

3. For the purpose of implementing any international agreement binding on Tuvalu and approved by Parliament by resolution for the purposes of this section, subsection (2) may be amended by Act of Parliament made in accordance with section 7 (alteration to the Constitution generally), without reference to the requirement of a special majority of votes under section 7(3) (which requires Bills to alter the Constitution to be passed by a two-thirds majority in Parliament).
4. Nothing in this section prevents a law from proclaiming the jurisdiction of Tuvalu, complete or partial, over any area of land or water or airspace above, or prevents a law from having extra-territorial effect in accordance with section 84 (vesting of the lawmaking power).

Division 2: The Constitution

• Legal status of treaties
• Constitutionality of legislation

3. The Constitution as supreme law

1. This Constitution is the supreme law of Tuvalu and, subject to subsection (2), any act (whether legislative, executive or judicial) that is inconsistent with it is, to the extent of the inconsistency, void.
2. All other laws shall be interpreted and applied subject to this Constitution, and, as far as is practicable, in such a way as to conform with it.

4. Interpretation of the Constitution

1. The provisions of Schedule 1 (Rules for the Interpretation of the Constitution) apply for the purpose of the interpretation of this Constitution.
2. In all cases, this Constitution shall be interpreted and applied consistently with the Principles set out in the Preamble.
3. Subject to subsection (2), this Constitution shall be interpreted and applied in such a way as to achieve the aims of fair and democratic government, in the light of reason and experience and of Tuvaluan values.

5. Jurisdiction of the High Court in constitutional matters

The High Court has the jurisdiction in relation to the interpretation, application and enforcement of this Constitution conferred by—

a. section 14 (Parliamentary declaration of purpose); and
b. Division 5 of Part II (Enforcement of the Bill of Rights);
c. section 131 (constitutional interpretation),

and otherwise by law.

Division 3: Alteration of the Constitution

6. Interpretation of Division 3

In this Division, a reference to this Constitution includes a reference to any other law so far as that law alters the Constitution.

• Constitution amendment procedure

7. Alteration of the Constitution generally

1. An Act of Parliament may alter this Constitution.

2. A Bill for an Act to alter the Constitution must state that it is a Bill to alter this Constitution.
3. Subject to—
   a. section 2(3) (which relates to alterations to the description of the land areas of Tuvalu); and
   b. section 8 (alterations to the Constitution to give effect to UK constitutional arrangements),

a Bill for an Act to alter this Constitution is not passed by Parliament unless it is supported at its final reading in Parliament by the votes of two-thirds of the total membership of Parliament.

4. A Bill for an Act to alter this Constitution shall not be excluded from the operation of section 111(2) (which relates to the circulation of Bills to local governments and authorities).

8. Alteration of the Constitution to give effect to U.K. constitutional change

1. If as a result of constitutional change in or in relation to, or affecting, the United Kingdom any provision of, or any reference in, this Constitution ceases to be appropriate, the Head of State, acting in accordance with the advice of the Cabinet, may, by order, make such alterations to this Constitution as appear to be necessary or convenient to adapt it to the new constitutional arrangements.
2. An order under subsection (1)—
   a. shall be presented to Parliament by the Prime Minister; and
   b. unless previously confirmed, with or without modification, by an Act of Parliament, expires at the end of the second session of Parliament that commences after it is made.
3. The requirement of a special majority of votes under section 7(3) (which requires Bills to alter the Constitution to be passed by a two-thirds majority in Parliament) does not apply in relation to a Bill for the purposes of subsection (2)(b).
4. A Bill for the purposes of subsection (2)(b) shall not be excluded from the operation of section 111(2) (which relates to the circulation of Bills to local governments).

PART II: BILL OF RIGHTS

Division 1: Preliminary

9. Interpretation of Part II

1. In this Part, "court" means a court having jurisdiction in Tuvalu, including—
   a. the Court of Appeal; and
   b. the Sovereign in Council,

but, except in sections 17 (personal liberty) and 18 (slavery and forced labour), does not include a court or tribunal established by a disciplinary law.

2. In this Part, a reference to the national interest includes a reference to the public interest in—
   a. defence; or

b. national security; or

c. public safety; or

d. public order; or

e. the protection of the international standing and reputation of Tuvalu and its products (including the supply of labour overseas); or

f. the protection and development of Tuvaluan values and culture.

3. A reference in this Part to consent is a reference to consent whether express or implied.

4. Where this Part requires or permits the consent of a person under the age of 18 years, the consent may be given on his behalf by one of his parents or guardians.

Division 2: The Principles of the Bill of Rights

10. Freedom under law

1. Freedom based on law consists of the least restriction on the activities of individuals consistent with the public welfare and the maintenance and development of Tuvalu and Tuvaluan society in accordance with this Constitution and, in particular, in accordance with the Principles set out in the Preamble.

2. Everyone has the right to freedom based on law, and accordingly, subject to this 0Constitution—

a. everyone has the legal right to do anything that—

i. does not injure others, or interfere with the rights and freedoms of others; and

ii. is not prohibited by law; and

b. no-one may be—

i. legally obliged to do anything that is not required by law; or

ii. prevented by law from doing anything that complies with the provisions of paragraph (a).

3. This section is not intended to deny the existence, nature or effect of cultural, social, civic, family or religious obligations, or other obligations of a non-legal nature, or to prevent such obligations being given effect by law if, and so far as, it may be thought appropriate to do so.

11. The fundamental human rights and freedoms

• General guarantee of equality
• Equality regardless of gender
• Equality regardless of skin color
• Equality regardless of origin
• Equality regardless of race
• Equality regardless of religion

1. Every person in Tuvalu is entitled, whatever his race, place of origin, political opinions, colour, religious beliefs or lack of religious beliefs, or sex, to the following fundamental rights and freedoms:—

a. the right not to be deprived of life (see section 16); and

b. personal liberty (see sections 17 and 18); and

c. security for his person (see sections 18 and 19); and

d. the protection of the law (see section 22); and

e. freedom of belief (see section 23); and

f. freedom of expression (see section 24); and

g. freedom of assembly and association (see section 25); and

h. protection for the privacy of his home and other property (see section 21); and

i. protection from unjust deprivation of property (see section 20), and to other rights and freedoms set out in this Part or otherwise by law.

2. The rights and freedoms referred to in subsection (1) can, in Tuvaluan society, be exercised only—
   a. with respect for the rights and freedoms of others and for the national interest; and
   b. in acceptance of Tuvaluan values and culture, and with respect for them.
3. The purpose of this Part is to protect those rights and freedoms, subject to limitations on them that are designed primarily to give effect to subsection (2).

12. Application of Part II

1. Each provision of this Part applies, as far as may be—
   a. between individuals as well as between governmental bodies and individuals; and
   b. to and in relation to corporations and associations (other than governmental bodies) in the same way as it applies to and in relation to individuals,

except where, or to the extent that, the context requires otherwise.

2. Notwithstanding anything to the contrary in any other law, any act that is done under a valid law but that in the particular case—
   a. is harsh or oppressive; or
   b. is not reasonable in the circumstances; or
   c. is otherwise not reasonably justifiable in a democratic society having a proper respect for human rights and dignity,

• Human dignity

is an unlawful act.

3. The burden of showing that subsection (2) applies in respect of an act is on the party claiming that it does apply.
4. Nothing in this section affects the operation of any other law under which an act may be held to be unlawful.

13. The Principles of the Preamble

The Principles set out in the Preamble are adopted as part of the basic law of Tuvalu, from which human rights and freedoms derive and on which they are based.

14. Parliamentary declarations of purpose

1. When the purpose of an Act of Parliament is specifically declared in the Act, then in considering the possible effect on that Act of Division 3 (Protection of the Fundamental Rights and Freedoms) a court shall give due weight to that declaration as a statement of the considered opinion of Parliament.
2. If an Act of Parliament specifically declares that a certain provision is required in the national interest, a court shall, subject to subsection (3), presume that the provision was reasonably required in the national interest.
3. Subsection (2) does not apply if the High Court is satisfied that the provision could not reasonably be said to have been intended primarily to serve the national interest.

15. Reasonably justifiable in a democratic society

1. Notwithstanding anything to the contrary in this Part, other than—
   a. section 33 (hostile disciplined forces); and

• Human dignity

b. section 36 (restrictions on certain rights and freedoms during public emergencies),

all laws, and all acts done under a law, must be reasonably justifiable in a democratic society that has a proper respect for human rights and dignity.

2. Any question whether a law is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity is to be determined in the light of the circumstances existing at the time when the decision on the question is made.

3. Subsection (2) does not affect any question whether an act done under a law was reasonably justifiable in a democratic society that has a proper respect for human rights and dignity.

4. A law may be declared not to be reasonably justifiable in a democratic society that has a proper respect for human rights and dignity only by the High Court or some other court prescribed for the purpose by or under an Act of Parliament.

5. In determining whether a law or act is reasonably justifiable in a democratic society that has a proper respect for human rights and dignity, a court may have regard to—

a. traditional standards, values and practices, as well as previous laws and judicial decisions, of Tuvalu; and

b. law, practices and judicial decisions of other countries that the court reasonably regards as democratic; and

c. international conventions, declarations, recommendations and judicial decisions concerning human rights; and

d. any other matters that the court thinks relevant.

Division 3: Protection of the Fundamental Rights and Freedoms

Subdivision A: Protection Generally

• Prohibition of capital punishment
• Right to life

16. Life

1. Subject to the provisions of this Part, and in particular to—

a. subsection (2); and

b. section 32 (foreign disciplined forces); and

c. section 33 (hostile disciplined forces),

no-one shall be killed intentionally.

2. A person shall not be considered to have been killed in contravention of this section if he dies as the result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary—

a. for the defence of any person from violence; or

b. for the defence of property; or

c. in order to effect a lawful arrest or to prevent the escape of any person lawfully detained; or

d. for the purpose of suppressing a riot, rebellion or mutiny; or

e. in order to prevent him from committing an offence,

or if he dies as the result of a lawful act of war.

17. Personal liberty

1. Subject to the provisions of this Part, and in particular to—

- **a.** the succeeding provisions of this section; and
- **b.** section 31 (disciplined forces of Tuvalu); and
- **c.** section 32 (foreign disciplined forces); and
- **d.** section 33 (hostile disciplined forces); and
- **e.** section 36 (restrictions on certain rights and freedoms during public emergencies),

no-one shall be detained except—

- **f.** with his consent; or
- **g.** as authorized by law in the cases set out in subsection (2).

• Power to deport citizens
• Treaty ratification

2. Subsection (1) (g) applies in the following cases:—

- **a.** in the case of a person under the age of 18 years—in the reasonable exercise of the authority of a parent, teacher or guardian, or under the order of a court for the purpose of his education, welfare or proper discipline; or
- **b.** under a warrant or order of a court; or

• Extradition procedure

- **c.** for the purposes of extradition; or
- **d.** in order to bring the person before a court to be dealt with in accordance with law; or
- **e.** in the case of detention of a person on reasonable suspicion of his having committed, or being about to commit, an offence; or
- **f.** in the case of reasonable temporary detention of a person for the avoidance of actual or apprehended violence, disorder or breach of the peace; or
- **g.** in the case of reasonable temporary detention of a person so affected by drink or a drug to make detention desirable for his own protection or that of others; or
- **h.** in the case of detention of a person for quarantine or health purposes; or
- **i.** in the case of detention of a person under the laws relating to unlawful immigration or to deportation; or
- **j.** in the case of detention of a person incidental to the arrest or seizure of a vehicle, vessel or aircraft; or
- **k.** in the case of detention of a person as a prisoner of war or, subject to Division 4 (Public Emergencies), as a civil or military internee in time of war; or
- **l.** in the case of detention of a person required by and for the purposes of any international or multi-national convention, treaty or arrangement to which Tuvalu is a party and which is approved by Parliament, by resolution, for the purposes of this paragraph; or
- **m.** in the case of restrictions on liberty or detention of a person permitted by section 26 (freedom of movement) or Division 4 (Public Emergencies).

3. A person who is detained shall be informed as soon as practicable, and in a language that he understands, of the reason for his detention.

4. A person who is detained—

- **a.** for the purpose of bringing him before a court; or
- **b.** on reasonable suspicion of having committed, or being about to commit, an offence; or
- **c.** for temporary purposes, in accordance with subsection (2)(f) or (g),

and who is not released, shall be brought without undue delay before a court, and unless the court, in accordance with law, orders his continued detention it shall order his release.

5. If a person detained on suspicion of having committed an offence is not tried within a reasonable time, he shall be released either unconditionally or on reasonable conditions (including in particular conditions reasonably necessary to ensure that he appears for trial or for proceedings preliminary to trial).

6. A release under subsection (5) does not prevent further proceedings being brought, in accordance with law, against the released person.

18. Slavery and forced labour

• Prohibition of slavery

1. Subject to the provisions of this Part, and in particular to—

a. the succeeding provisions of this section; and

b. section 32 (foreign disciplined forces); and

c. section 33 (hostile disciplined forces); and

d. section 36 (restrictions on certain rights and freedoms during public emergencies),

no-one shall—

e. be held in slavery or servitude; or

f. be required to perform forced labour.

2. For the purposes of this section—

a. slavery or servitude includes slavery or servitude within the meaning of any international or multinational convention or treaty prohibiting slavery or servitude to which Tuvalu is a party; and

• Right to conscientious objection

b. forced labour does not include—

i. labour required by or in consequence of the sentence or order of a court; or

ii. labour required in accordance with law of a person while he is lawfully detained that is reasonably necessary in the interests of hygiene or for the maintenance of the place where he is detained; or

iii. labour required in accordance with law of a member of a disciplined force as a member of that force; or

• Duty to serve in the military

iv. in the case of a person who proves that he has a conscientious objection to compulsory service as a member of a naval, military or air force—labour which he is required by law to perform in place of such service; or

v. labour required in accordance with law—

A. during a period of public emergency within the meaning of Division 4 (Public Emergencies); or

B. in the event of any other emergency or calamity that threatens the life or wellbeing of the community or a part of the community, to the extent that the requirement is reasonably justified for the purpose of dealing with any situation arising or existing by reason of the public emergency or the other emergency or calamity; or

vi. in the case of a person under the age of 18 years—labour required in the reasonable exercise of the authority of a parent, teacher or guardian; or

vii. labour reasonably required as part of reasonable and normal traditional, communal or civic obligations, including any service required in accordance with section 23(7) (which relates to the performance of certain services instead of other traditional, etc., obligations).

19. Inhuman treatment

Subject to the provisions of this Part, and in particular to—

a. section 32 (foreign disciplined forces); and

b. section 33 (hostile disciplined forces);

no-one shall—

• Prohibition of torture

c. be tortured; or

• Prohibition of cruel treatment

d. given inhuman or degrading punishment or treatment.

20. Property rights

1. In this section—

- "deprivation", in relation to any property, includes—
  - **a.** the using or taking away of possession of it, or the exercise of rights over or in respect of it; and
  - **b.** its destruction; and
  - **c.** the making of it useless or valueless for the purposes for which it was used; and
  - **d.** its transfer to another person;
- "property" includes an interest in property, whether or not the interest was in existence immediately before the deprivation.

• Protection from expropriation

2. Subject to the provisions of this Part, and in particular to—

a. section 31 (disciplined forces of Tuvalu); and

b. section 32 (foreign disciplined forces); and

c. section 33 (hostile disciplined forces),

no-one shall be deprived of property except—

d. with his consent; or

e. in accordance with the succeeding provisions of this section.

• Protection from expropriation

3. The deprivation must be authorized by or under an Act of Parliament.

• Protection from expropriation

4. The deprivation must be for a purpose declared by or under an Act of Parliament to be a public purpose.

• Protection from expropriation

5. There must be a sufficient reason for the causing of any hardship that may result to any person having an interest in or a right over the property (whether the interest or right is present or future, actual or potential).

• Protection from expropriation

6. Adequate compensation shall be promptly made.

7. A person having an interest in or a right over the property (whether the interest or right is present or future, actual or potential) may apply to the High Court, or to any other court having jurisdiction in the matter, for the determination of—

a. his interest or right; and

b. the legality of the deprivation; and

c. the compensation due under subsection (6),

and for the purpose of obtaining prompt settlement of the compensation.

8. For the purposes of subsections (6) and (7), compensation need not be wholly or even partly in money.

• Right to transfer property

9. Nothing in or done under a law shall be considered to be inconsistent with this section—

a. to the extent that the law makes provision for deprivation of property—

i. in satisfaction of any liability to taxation; or

ii. by way of penalty for a breach of the law, or of forfeiture in consequence of a breach of the law; or

iii. as an incident of—

A. a permit, licence or other authority affecting the property; or

B. the creation or acceptance of an interest in or over the property; or

iv. in the execution of a judgment or an order of a court in proceedings for the determination of civil rights or obligations; or

v. where it is reasonably necessary to do so because the property, or some other property, is or may be in a dangerous state or injuries to the health of humans, animals or plants; or

vi. in consequence of a law relating to—

A. the limitation of actions; or

B. acquisition by prescription or adverse possession, or any similar matter; or

vii. for so long only as is necessary for the purposes of any examination, investigation, trial or inquiry; or

viii. in the case of land—for so long only as is necessary for the carrying out on it of—

A. work of conservation of natural resources; or

B. work relating to agricultural development or improvement that the owner or occupier of the land has been required, in accordance with law, to carry out and has, without reasonable excuse, failed to carry out; or

C. any survey to determine the existence or extent of mineral (including petroleum) resources; or

b. to the extent that the law makes provision for depriving a person of—

i. enemy property; or

ii. property of—

A. a deceased person; or

B. a person of unsound mind; or

C. a person who has not attained the age of 18 years; or

D. a person who is absent from Tuvalu,

for the purpose of its administration for the benefit of the persons entitled to the benefit of it; or

iii. property of a person declared to be insolvent, or of a body corporate in liquidation, for the purposes of its administration for the benefit of—

A. the creditors of the insolvent or body corporate; and

B. subject to the interests of the creditors—the persons entitled to the benefit of it; or

iv. property subject to a trust—

A. for the purpose of vesting the property in the trustees of the property; or

B. by order of a court—for the purpose of giving effect to the trust; or

v. shares in a body corporate pursuant to any take-over bid, scheme of arrangement or in other similar circumstances.

10. Nothing in this section prevents a body corporate established by a law from being deprived, in accordance with law, of any property by a person or governmental body who or which is the only investor in the body corporate.

• Right to privacy

21. Privacy of home and property

1. Subject to the provisions of this Part, and in particular to—
   a. subsection (2); and
   b. section 31 (disciplined forces of Tuvalu); and
   c. section 32 (foreign disciplined forces); and
   d. section 33 (hostile disciplined forces); and
   e. section 36 (restrictions on certain rights and freedoms during public emergencies),

   except with his consent no-one shall be subjected to—
   f. the search of his person, or
   g. the search of his property; or
   h. entry by others on his property.
2. Nothing in or done under a law shall be considered to be inconsistent with this section to the extent that the law makes provision for search or entry for a purpose declared by or under an Act of Parliament to be a public purpose for the purposes of this section, or—
   a. for the purpose of protecting the rights or freedoms of others; or
   b. for the purpose of authorizing an officer or agent of—
      i. a governmental body; or
      ii. a body corporate established by law for a public purpose, to enter on the property of any person—
      iii. in order to inspect the property or anything on it for the purposes of any law providing for taxation; or
      iv. in order to carry out any work connected with any thing that is lawfully on the property and that belongs to the governmental body or body corporate, as the case may be; or
   c. for the purpose of authorizing the entry on any property under an order of a court for the purpose of enforcing a judgment or order of a court; or
   d. for the purpose of authorizing the entry on any property for the purpose of—
      i. preventing or detecting the commission of an offence; or
      ii. administering, policing or enforcing a law (including a revenue law); or
   e. as permitted by section 20 (property rights).

22. Protection of law

1. This section shall be read subject to the provisions of this Part, and in particular to—
   a. section 31 (disciplined forces of Tuvalu); and
   b. section 32 (foreign disciplined forces); and
   c. section 33 (hostile disciplined forces).

• Guarantee of due process
• Right to fair trial
• Right to speedy trial

2. If a person is charged with an offence, unless the charge is withdrawn he shall be given a fair hearing within a reasonable time by an independent and impartial court established by law.

• Presumption of innocence in trials
• Trial in native language of accused

3. A person charged with an offence—
   a. subject to subsection (14)(a), shall be presumed to be innocent until—
      i. he is proved guilty; or
      ii. he has pleaded guilty and the plea has been accepted by the court; and

b. shall be informed as soon as practicable, in detail and in a language that he understands, of the precise nature and particulars of the offence charged, and if the information is not given in writing it shall be confirmed in writing as soon as practicable; and

c. shall be given adequate time and facilities for the preparation of his defence, including time to study and fully understand the precise charge against him, and its possible consequences; and

• Right to counsel

d. shall be given reasonable facilities to consult, at his own expense, a representative of his own choice; and

e. shall be permitted to defend himself before the court in person or, at his own expense, by a representative of his own choice; and

f. subject to subsection (14)(b), shall be given adequate facilities—

• Right to examine evidence/ witnesses

i. to examine, in person or by his representative, the witnesses called before the court by the prosecution; and

ii. to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on conditions no less advantageous than those applying to witnesses called by the prosecution; and

g. shall be permitted to have without payment the assistance of a competent interpreter, if he cannot adequately understand the language used at the trial or any part of the trial.

4. Except with his consent, the trial shall not take place in his absence unless—

a. he behaves in such a way as to make it impracticable or unreasonable to continue the proceedings in his presence; and

b. the court orders his removal and the continuance of the trial in his absence.

5. When a person is tried for an offence, the accused person or a person authorized by him for the purpose is entitled, on request and on payment of such reasonable fee (if any) as is prescribed, to be given within a reasonable time after judgment a copy, for the use of the accused person, of any record of the proceedings made by or on behalf of the court.

• Protection from ex post facto laws
• Principle of no punishment without law

6. No-one shall be convicted of an offence on account of an act that was not, at the time of the doing of the act, and offence or a legal element of an offence.

7. No penalty shall be imposed for an offence that is more severe in amount or in kind than the maximum that might have been imposed for the offence at the time when it was committed.

• Right to appeal judicial decisions
• Prohibition of double jeopardy

8. Subject to subsection (14)(c), no-one who shows that he has been tried for an offence by a competent court and was either—

a. convicted; or

b. acquitted,

shall again be tried for—

c. the same offence; or

d. any other offence of which he could have been convicted at the trial of that offence,

except on the order of a superior court in the course of appeal or review proceedings relating to the conviction or acquittal.

9. No-one shall be tried for an offence if he shows that—

a. he has been pardoned for the offence; and

b. if the pardon was a conditional pardon, he has complied with the conditions of the pardon.

• Protection from self-incrimination

10. No-one who is tried for an offence shall be compelled to give evidence at the trial.

11. A court or other adjudicating authority prescribed by law for the determination of the existence or extent of a civil right or obligation shall be—

a. established or recognised by law; and

b. independent and impartial,

and where proceedings for such a determination are instituted by a person before such a court or authority the case shall be given a fair hearing within a reasonable time.

• Right to public trial

12. Subject to subsection (13), except with the consent of all the parties to the proceedings—

a. all proceedings before a court; and

b. all proceedings before any other adjudicating authority for the determination of the existence or extent of any civil right or obligation,

including the announcement of the decision, shall be held in public.

13. Subsection (12) does not prevent the court or other authority from excluding from the proceedings persons other than the parties, and the representatives in the proceedings of the parties, to such extent as the court or authority—

a. is by law empowered to do so and thinks it necessary or desirable to do so—

i. if publicity would not be in the interests of justice; or

ii. in interlocutory proceedings, that is to say, in proceedings of a kind described in subsection (16); or

iii. in the interests of—

A. decency; or

B. public morality; or

C. the welfare of persons under the age of 18 years; or

D. the protection of the privacy of persons concerned in the proceedings; or

b. is by law empowered or required to do so in the interests of—

i. defence; or

ii. public safety; or

iii. public order.

14. Nothing in or done under a law shall be considered to be inconsistent with—

a. subsection (3)(a)—to the extent that the law imposes upon a person charged with an offence the burden of proving or disproving certain facts which are particularly within his knowledge or his capacity to prove or disprove; or

b. subsection (3)(f)—to the extent that the law imposes reasonable conditions that must be satisfied if witnesses called on behalf of an accused person are to be paid expenses out of public funds; or

c. subsection (8)—subject to subsection (15), to the extent that the law authorizes a court to try a member of a disciplined force even though he has been tried and either—

i. convicted; or

ii. acquitted,

under the disciplinary law of that force.

15. In a case to which subsection 14(c) applies, the court that tries the member shall, in sentencing him to punishment, take into account any punishment given to him under the disciplinary law.

16. In subsection (13)(a)(ii), "interlocutory proceedings" refers to any judicial proceedings that—

- **a.** occur during or for the purposes of some other legal proceedings (referred to in this subsection as "the principal proceedings"); and
- **b.** are incidental to the principal proceedings; and
- **c.** do not finally dispose of the principal proceedings.

• Freedom of opinion/thought/conscience

23. Freedom of belief

1. Subject to the provisions of this Part, and in particular to—

- **a.** the succeeding provisions of this section; and
- **b.** section 29 (protection of Tuvaluan values, etc.); and
- **c.** section 31 (disciplined forces of Tuvalu); and
- **d.** section 32 (foreign disciplined forces); and
- **e.** section 33 (hostile disciplined forces); and
- **f.** section 36 (restrictions on certain rights and freedoms during public emergencies),

except with his consent no-one shall be hindered in the exercise of his freedom of belief.

• Freedom of religion

2. For the purposes of this section, freedom of belief includes—

- **a.** freedom of thought, religion and belief; and
- **b.** freedom to change religion or belief; and
- **c.** freedom, either alone or with others, to show and to spread, both in public and in private, a religion or belief, in worship, teaching, practice and observance.

3. A religious community is entitled, at its own expense—

- **a.** to establish and maintain places of education; and
- **b.** subject to the maintenance of any minimum prescribed educational standards, to manage any place of education that it wholly maintains; and
- **c.** subject to subsection (4), to provide religious instruction for members of the community in the course of any education that it provides.

4. Except with his consent, no-one attending a place of education shall be required—

- **a.** to receive religious instruction; or
- **b.** to take part in or attend a religious ceremony or observance, if the instruction, ceremony or observance relates to a religion or belief other than his own.

5. No-one shall be compelled—

- **a.** to take an oath or make an affirmation that is contrary to his religion or belief; or
- **b.** to take an oath or make an affirmation in any manner that is contrary to his religion or belief.

6. Nothing in or done under a law shall be considered to be inconsistent with this section to the extent that the law makes provision which is reasonably required—

- **a.** in the interests of—
  - **i.** defence; or
  - **ii.** public safety; or
  - **iii.** public order; or
  - **iv.** public morality; or

v. public health; or

b. for the purpose of protecting the rights or freedoms of other persons, including the right to observe and practice any religion or belief without the unsolicited intervention of members of any other religion or belief.

7. Nothing in or done under a law shall be considered to be inconsistent with this section to the extent that the law makes reasonable provision—

a. requiring a person who proves that he has a conscientious objection to performing some reasonable and normal traditional, communal or civic obligation, or to performing it at a particular time or in a particular way, to perform instead, some reasonably equivalent service of benefit to the community; or

b. for the exclusion of such a person and his household from any benefit arising out of the performance of those obligations by others until the equivalent service has been performed.

8. The protection given by this section to freedom of religion or belief applies equally to freedom not to have or hold a particular religion or belief, or any religion or belief.

9. A reference in this section to a religion includes a reference to a religious denomination and to the beliefs of a religion or religious denomination.

• Freedom of expression
• Freedom of opinion/thought/conscience

24. Freedom of expression

1. Subject to the provisions of this Part, and in particular to—

a. subsection (3); and

b. section 29 (protection of Tuvaluan values, etc.); and

c. section 30 (provisions relating to certain officials); and

d. section 31 (disciplined forces of Tuvalu); and

e. section 32 (foreign disciplined forces); and

f. section 33 (hostile disciplined forces); and

g. section 36 (restrictions on certain rights and liberties during public emergencies),

except with his consent no-one shall be hindered in the exercise of his freedom of expression.

2. For the purposes of this section, freedom of expression includes—

a. freedom to hold opinions without interference; and

b. freedom to receive ideas and information without interference; and

c. freedom to communicate ideas and information without interference; and

d. freedom from interference with correspondence.

3. Nothing in or done under a law shall be considered to be inconsistent with subsection (1) to the extent that the law makes provision—

a. in the interests of—

i. defence; or

ii. public safety; or

iii. public order; or

iv. public morality; or

v. public health; or

• Telecommunications

b. for the purpose of—

i. protecting the reputations, rights or freedoms of other persons; or

ii. protecting the privacy of persons concerned in legal proceedings; or

iii. preventing the disclosure of information received in confidence; or

iv. maintaining the authority or independence of the courts; or

v. regulating the administration or the technical operation of posts or telecommunications.

• Freedom of assembly
• Freedom of association

25. Freedom of assembly and association

1. Subject to the provisions of this Part, and in particular to—

a. subsection (3); and

b. section 29 (protection of Tuvaluan values, etc.); and

c. section 30 (provisions relating to certain officials); and

d. section 31 (disciplined forces of Tuvalu); and

e. section 32 (foreign disciplined forces); and

f. section 33 (hostile disciplined forces); and

g. section 36 (restrictions on certain rights and freedoms during public emergencies),

except with his consent no-one shall be hindered in the exercise of his freedom of assembly and association.

• Right to join trade unions

2. For the purposes of this section, freedom of assembly and association includes—

a. the right to assemble freely and to associate with other persons; and

• Right to form political parties

b. the right to form or belong to political parties; and

c. the right, as regulated by law, to form or belong to trade unions or other associations for the protection or advancement of one's interests.

3. Nothing in or done under a law shall be considered to be inconsistent with subsection (1) to the extent that the law makes provision—

a. in the interests of—

i. defence; or

ii. public safety; or

iii. public order; or

iv. public morality; or

v. public health; or

b. for the purpose of protecting the rights or freedoms of other persons.

• Freedom of movement

26. Freedom of movement

1. Subject to the provisions of this Part, and in particular to—

a. the succeeding provisions of this section; and

b. section 30 (provisions relating to certain officials); and

c. section 31 (disciplined forces of Tuvalu); and

d. section 32 (foreign disciplined forces); and

e. section 33 (hostile disciplined forces); and

f. section 36 (restrictions on certain rights and freedoms during public emergencies),

no-one shall be deprived of—

g. the right to move freely throughout Tuvalu; or

h. the right to reside anywhere in Tuvalu; or

i. the right to enter and to leave Tuvalu,

and no-one shall be expelled from Tuvalu.

2. No restriction on the rights of a person under subsection (1) that is involved in his lawful detention shall be considered to be inconsistent with that subsection.

3. Nothing in or done under a law shall be considered to be inconsistent with subsection (1) to the extent that the law makes provision—

a. in respect of—

i. the entry into Tuvalu of a person who is not a citizen of Tuvalu; or

ii. the movement within Tuvalu of a person referred to in subparagraph (i); or

iii. the residence in Tuvalu of a person referred to in subparagraph (i); or

iv. the exclusion or expulsion from Tuvalu of a person referred to in subparagraph (i); or

b. for the imposition of restrictions on—

i. the movement within Tuvalu, or the residence in Tuvalu, of any person; or

ii. the right of any person to leave Tuvalu,

that are reasonably required in the interests of—

iii. defence; or

iv. public safety; or

v. public order; or

• Protection of environment

c. for the imposition of restrictions on—

i. the movement within, Tuvalu or the residence in Tuvalu; or

ii. the right to leave Tuvalu,

of person generally or of any class of persons, being restrictions that are reasonably required in the interests of—

iii. defence; or

iv. public safety; or

v. public order; or

vi. public morality; or

vii. public health; or

viii. conservation of the environment; or

d. imposing restrictions on—

i. the movement within Tuvalu; or

ii. the residence in any part of Tuvalu,

of any class of person where such restrictions are reasonably required to meet the special circumstances of a part of Tuvalu, for example—

iii. overcrowding or potential overcrowding; or

iv. a shortage or potential shortage of resources; or

v. the disruption or potential disruption of the local economy, ecology or distinctive culture; or

e. for the imposition of restrictions on the use of any land in Tuvalu; or

f. for the imposition of restrictions on the right of any person to leave, or move within. Tuvalu, in order to secure the fulfilment of any obligation imposed on him by law; or

g. for the imposition of restrictions on the movement within Tuvalu, or the residence in Tuvalu, of a person in circumstances that would justify depriving him of his liberty under section 17 (personal liberty).

4. If a person whose rights under subsection (1) have been restricted by virtue only of a law to which subsection (3)(b) applies so requests at any time—

a. during the period of restriction; and

b. not earlier than six months after he last made such a request during that period,

his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person who—

c. is qualified to practise before the High Court; and

d. is appointed by the Chief Justice for the purpose.

5. On a review under subsection (4) the tribunal may make to the appropriate authority recommendations concerning the necessity or desirability of continuing the restriction, but unless it is otherwise provided by law that authority is not obliged to act in accordance with any such recommendation.

- General guarantee of equality
- Equality regardless of gender
- Equality regardless of skin color
- Equality regardless of origin
- Equality regardless of race
- Equality regardless of religion

27. Freedom from discrimination

1. In this section, discrimination refers to the treatment of different people in different ways wholly or mainly because of their different—

a. races; or

b. places of origin; or

c. political opinions; or

d. colours; or

e. religious beliefs or lack of religious beliefs,

in such a way that one such person is for some such reason given more favourable treatment or less favourable treatment than another such person.

2. Subject to the provisions of this Part, and in particular to—

a. the succeeding provisions of this section; and

b. section 31 (disciplined forces of Tuvalu); and

c. section 32 (foreign disciplined forces); and

d. section 33 (hostile disciplined forces); and

e. section 36 (restrictions on certain rights and freedoms during public emergencies),

no-one shall be treated in a discriminatory manner.

3. Subsection (2) does not apply to a law so far as it makes provision—

a. for the imposition of taxation by the Government or a local government or authority; or

b. the spending of money by the Government or a local government or authority; or

c. with respect to persons who are not citizens of Tuvalu; or

d. in respect of—

i. adoption; or

ii. marriage; or

iii. divorce; or

iv. burial; or

v. any other such matter,

in accordance with the personal law, beliefs or customs of any person or group; or

e. in relation to land; or

f. by which any person or group may be given favourable treatment or unfavourable treatment which, having regard to the nature of the treatment and to any special circumstances of the person or group, is reasonably justifiable in a democratic society having a proper respect for human rights and dignity.

4. Nothing in a law shall be considered to be inconsistent with subsection (2) to the extent that it makes provision for—
    a. standards or qualifications (not specifically related to any matter referred to in subsection (1)(a)—(e))for appointment to any office or position in—
        i. a State Service; or
        ii. a disciplined force; or
        iii. the service of a local government or authority; or
        iv. a body corporate established by law for a public purpose, or the service of such a body; or
    b. localization within the meaning of section 142 (localization).
5. Subsection (2) does not affect the exercise of any discretion relating to the institution, conduct or discontinuance in a court of any proceedings that is vested in any person or authority by or under this Constitution or any other law.
6. Nothing in or done under a law shall be considered to be inconsistent with subsection (2) to the extent that the law provides that any person may be subjected to any restriction on the rights and freedoms guaranteed by—
    a. section 21 (privacy of home and property); and
    b. section 23 (freedom of belief); and
    c. section 24 (freedom of expression); and
    d. section 25 (freedom of assembly and association); and
    e. section 26 (freedom of movement); and
    f. section 28 (other rights and freedoms)

to the extent authorized by that section.

7. Subject to section 12(2) (which relates to harsh, oppressive or otherwise unlawful acts) and 15 (definition of "reasonably justifiable in a democratic society") and to any other law, no act that—
    a. is in accordance with Tuvaluan custom; and
    b. is reasonable in the circumstances,

shall be considered to be inconsistent with subsection (2).

8. Nothing in or done under a law shall be considered to be inconsistent with subsection (2)—
    a. if the law was in force in Tuvalu immediately before the date on which this Constitution took effect; or
    b. to the extent that the law repeals and re-enacts any provision that has been contained in a law in force in Tuvalu at all times since that date.

28. Other rights and freedoms

The fact that certain rights and freedoms are referred to in this Constitution does not mean that there may not be other rights and freedoms retained by the people or conferred by law.

Subdivision B: Special Exceptions

29. Protection of Tuvaluan values, etc

1. The Preamble acknowledges that Tuvalu is an Independent State based on Christian principles, the Rule of Law, Tuvaluan values, culture and tradition, and respect for human dignity.

2. This includes recognition of—
   a. the right to worship, or not to worship, in whatever way the conscience of the individual tells him; and
   b. the right to hold, to receive and to communicate opinions, ideas and information.
3. Within Tuvalu, the freedoms of the individual can only be exercised having regard to the rights or feelings of other people, and to the effect on society.
4. It may therefore be necessary in certain circumstances to regulate or place some restrictions on the exercise of those rights, if their exercise—
   a. may be divisive, unsettling or offensive to the people; or
   b. may directly threaten Tuvaluan values or culture.
5. Subject to section 15 (definition of "reasonably justifiable in a democratic society") nothing contained in a law or done under a law shall be considered to be inconsistent with section 23 (freedom of belief) or 24 (freedom of expression) to the extent that the law makes provision regulating or placing restrictions on any exercise of the right—
   a. to spread beliefs; or
   b. to communicate opinions, ideas and information;

if the exercise of that right may otherwise conflict with subsection (4)

30. Provisions relating to certain officials

1. Subject to section 15 (definition of "reasonably justifiable in a democratic society") nothing in—
   a. section 24 (freedom of expression); or
   b. section 25 (freedom of assembly and association); or
   c. section 26 (freedom of movement),

   prevents the inclusion in the terms and conditions of employment of any member of a State Service of reasonable requirements, related to his office or position in that Service, as to—
   d. his communications or associations with other persons; or
   e. his movements or residence.
2. The terms and conditions of employment referred to in subsection (1) include—
   a. all terms and conditions that are applicable to or in relation to a member of a State Service while he is a member of the Service; and
   b. all terms and conditions related to membership of the service that are applicable to or in relation to a former member of a State Service; and
   c. all terms and conditions of a kind referred to in paragraph (a) or (b) that are applicable to or in relation to him because of his consent.
3. Subsection (1) and (2) apply whether a term or condition of employment is contained in—
   a. a contract or agreement of employment (whether written or oral); or
   b. an Act of Parliament, or any regulation or other subsidiary legislation made under an Act; or
   c. general administrative orders or any similar instruction or instrument,

that is applicable to or in relation to him.

31. Disciplined forces of Tuvalu

Subject to section 15 (definition of "reasonably justifiable in a democratic society", etc.), in relation to a person who is a member of a disciplined force of Tuvalu nothing contained in or done under the disciplinary law of that force shall be considered to be inconsistent with any provision of Subdivision A of this Division, other than—

- **a.** section 16 (life); or
- **b.** section 18 (slavery and forced labour); and
- **c.** section 19 (inhuman treatment).

32. Foreign disciplined forces

In relation to a person who—

- **a.** is a member of a disciplined force of a foreign country or is, as recognized by or under an Act of Parliament, a person otherwise subject to the disciplinary law of such a force; and
- **b.** is present in Tuvalu under arrangements made between the Government of Tuvalu and the Government of another country or an international organization,

nothing contained in the disciplinary law of that force shall be considered to be inconsistent with any provision of this Part.

33. Hostile disciplined forces

Nothing done in relation to a person who is a member of a disciplined force of a country with which Tuvalu is at war, and no law, to the extent that it authorizes the doing of any such thing shall be considered to be inconsistent with any provision of this Part.

Division 4: Public Emergencies

34. Interpretation of Division

In this Division "period of public emergency" means a period throughout which—

- **a.** Tuvalu is at war; or
- **b.** there is in effect a proclamation under section 35 (declaration of public emergency).

• Emergency provisions

35. Declaration of public emergency

1. The Head of State, acting in accordance with the advice of the Prime Minister, may by proclamation declare that a state of public emergency exists in Tuvalu, or in a part of Tuvalu specified in the proclamation.
2. Unless earlier revoked, a proclamation under subsection (1) lapses at the expiration of—
   - **a.** three days; or
   - **b.** if it was made when Parliament is not meeting—14 days,

after the date on which it is made, unless it is approved in the meantime by Parliament by resolution.

3. An approval under subsection (2) remains in force for such period, not exceeding six months, as is specified in the resolution granting the approval, and may be extended by further resolution from time to time for such period or periods, each not exceeding six months, as is or are specified in any such further resolution or resolutions.

• Emergency provisions

36. Restrictions on certain rights and freedoms during public emergencies

Nothing in or done under a law shall be considered to be inconsistent with—

- **a.** section 16 (life); or
- **b.** section 17 (personal liberty); or
- **c.** section 21 (privacy of home and property); or
- **d.** section 23 (freedom of belief); or
- **e.** section 24 (freedom of expression); or
- **f.** section 25 (freedom of assembly and association); or
- **g.** section 26 (freedom of movement); or
- **h.** section 27 (freedom from discrimination),

to the extent that the law—

- **i.** makes any provision, in relation to a period of public emergency; or
- **j.** authorizes the doing, during any such period, of any thing,

that is reasonably justifiable for the purpose of dealing with any situation that arises or exists during that period.

37. Detention during public emergencies

1. If a person is detained by virtue of a law authorized only by section 36 (restrictions on certain rights and freedoms during public emergencies)—

- **a.** he shall, as soon as practicable and in any case not more than 10 days after the beginning of his detention, be furnished with a written statement, in a language that he understands, stating in detail the grounds on which he is detained; and
- **b.** not more than 14 days after the beginning of his detention a notice shall be published—
  - **i.** in the manner prescribed for the publication of subordinate legislation; and
  - **ii.** in such other manner (if any) as is directed by the Chief Justice; and
- **c.** not more than one month after the beginning of his detention, and afterwards at intervals of not more than six months, his case shall be reviewed by an independent and impartial tribunal established by law and presided over by a person who—
  - **i.** is qualified to practise before the High Court; and
  - **ii.** is appointed by the Chief Justice for the purpose; and
- **d.** he shall be given reasonable facilities to consult, at his own expense, a representative of his own choice, who shall be permitted to advise and assist him and to make representations to the tribunal; and
- **e.** at the hearing of the case he shall be permitted to appear in person or, at his own expense, by a representative of his own choice.

2. On a review under subsection (1)(c), the tribunal may make recommendations to the authority that detained him concerning the necessity or desirability of continuing the detention, but unless it is otherwise provided by law that authority is not obliged to act in accordance with any such recommendation.
3. A failure to comply with subsection (1)(b) does not invalidate the detention.

Division 5: Enforcement of the Bill of Rights

38. Application for enforcement of the Bill of Rights

1. In accordance with any rules of court made for the purposes of this Division, if any person claims that any of the provisions of this Part—
   a. has been; or
   b. is being; or
   c. is likely to be,

contravened or not complied with in relation to him, he may apply to the High Court under this Division.

2. In the case of a person who is being detained, an application under subsection (1) may be made—
   a. by the person himself; or
   b. by any other person on his behalf.
3. Nothing in subsection (1) or (2) prevents any other action that may be taken under any other law in respect of the contravention.

39. Questions as to the Bill of Rights arising in subordinate courts

If in any proceedings in a subordinate court a question arises as to a contravention of any of the provisions of this Part, the court may, and shall if a party to the proceedings so requests, refer the question to the High Court unless, in the opinion of the court, the question raised is frivolous or vexatious.

40. Jurisdiction of the High Court as to the Bill of Rights

1. The High Court has original jurisdiction—
   a. to determine any application made under section 38 (application for enforcement of the Bill of Rights); and
   b. to determine any question referred to it under section 39 (questions as to the Bill of Rights arising in subordinate courts),

and may make any orders, issue any writs and give any directions that it thinks appropriate for enforcing or securing the enforcement of this Part.

2. The High Court may refuse to exercise its powers under subsection (1) if it is satisfied that adequate means of redress for the alleged contravention are or have been reasonably available to the person concerned under any other law.

41. Appeals as to the Bill of Rights

1. Subject to subsection (2), an appeal may be made, in accordance with Part VII (The Courts), against any determination of the High Court under this Division.
2. There is no appeal against a determination dismissing an application on the ground that it is frivolous or vexatious.

42. Additional powers of the High Court as to the Bill of Rights

An Act of Parliament may confer on the High Court powers, additional to those conferred by the preceding provisions of this Division, for the purpose of enabling the Court to exercise more effectively the jurisdiction conferred on it by this Division.

PART III: CITIZENSHIP

• Requirements for birthright citizenship

43. Interpretation of Part III

1. For the purposes of this Part, a person born on board—
   a. a registered vessel or aircraft; or
   b. an unregistered vessel or aircraft of the Government of any country,

   shall be considered to have been born—
   c. in the place where the vessel or aircraft was registered; or
   d. in that country,

   as the case may be.
2. For the purposes of this Part, a foundling discovered at any time in Tuvalu shall, in the absence of proof to the contrary, be considered to have been born in Tuvalu.

• Requirements for birthright citizenship

44. Initial citizenship under the Constitution

Every person who, immediately before the date on which this Constitution took effect, was a citizen of Tuvalu by virtue of—

a. Chapter III (Citizenship) of the Independence Constitution; or
b. the Citizenship Ordinance 1979,

is as at that date a citizen of Tuvalu for the purposes of this Constitution.

• Requirements for birthright citizenship

45. Citizenship by birth

1. Subject to subsections (3) and (4), a person born in Tuvalu on or after the date on which this Constitution took effect is a citizen of Tuvalu by birth.
2. A person born outside Tuvalu on or after the date on which this Constitution took effect is a citizen of Tuvalu by birth if on the date of his birth either of his parents is, or would but for his death have been, a citizen of Tuvalu.
3. Subject to subsection (5), a person does not become a citizen of Tuvalu by virtue of subsection (1) if at the time of his birth—
   a. neither of his parents was a citizen of Tuvalu; and
   b. his father had the privileges and immunities of an envoy to Tuvalu from a country with which Tuvalu had diplomatic relations.
4. Subject to subsection (5), a person does not become a citizen of Tuvalu by virtue of subsection (1) if at the time of his birth—
   a. his father was a citizen of a country with which Tuvalu was at war; and
   b. the birth occurred in a place in Tuvalu occupied by that country.

5. In the case of a person who was born out of wedlock, a reference in subsection (3) or (4) to his father shall be read as a reference to his mother.

• Requirements for birthright citizenship
• Requirements for naturalization

46. Citizenship by marriage under the Constitution

1. Subject to subsection (2), a person who, on or after the date on which this Constitution took effect, marries a person who is or becomes a citizen of Tuvalu is entitled, on making application in such manner as is prescribed by law, to be registered as a citizen of Tuvalu.
2. The right conferred by subsection (1) may be made subject to such exceptions and qualifications as are declared by law to be in the interests of national security or public policy.

• Requirements for birthright citizenship
• Right to renounce citizenship
• Conditions for revoking citizenship
• Requirements for naturalization

47. Laws as to citizenship

1. An Act of Parliament may make provision—
   a. for the acquisition of citizenship of Tuvalu by persons who are not otherwise eligible to become citizens of Tuvalu by virtue of this Part; or
   b. for the renunciation by any person of his citizenship of Tuvalu; or
   c. for the maintenance of a register of citizens of Tuvalu who are also citizens or nationals of another country; or
   d. subject to subsection (2), for depriving any person of his citizenship of Tuvalu,

and generally for carrying into effect the purposes of this Part.

2. Subsection (1)(d) does not apply to a person who—
   a. became a citizen automatically on Independence Day, by virtue of section 19 (persons who became citizens on Independence Day) of the Independence Constitution; or
   b. became a citizen by birth under—
      i. section 22 (persons born in Tuvalu after the day prior to Independence Day) of the Independence Constitution; or
      ii. section 23 (persons born outside Tuvalu after the day prior to Independence Day) of the Independence Constitution; or
      iii. section 45 (citizenship by birth) of this Constitution.

PART IV: THE SOVEREIGN AND THE GOVERNOR-GENERAL

Division 1: The Sovereign

• Political theorists/figures
• Head of state selection

48. The Sovereign of Tuvalu

1. Her Majesty Queen Elizabeth II, by the grace of God Queen of the United Kingdom of Great Britain and Northern Ireland and of Her Other Realms and Possessions, Head of the Commonwealth, Defender of the Faith, having at the request of the people of Tuvalu graciously consented, is the Sovereign of Tuvalu and, in accordance with this Constitution, the Head of State.
2. The Royal Style and Titles are as determined by Act of Parliament.

49. Succession to the Crown

The provisions of this Constitution referring to the Sovereign extend, in accordance with section 13 (references to the Sovereign of Tuvalu) of Schedule 1, to the Heirs and Successors of the Sovereign according to law.

Division 2: Functions of the Head of State

50. The office of Head of State

In addition to the other functions of the office, the office of Head of State is a symbol of the unity and identity of Tuvalu, and the Head of State is entitled to proper respect accordingly.

51. Functions, etc., of the Head of State generally

1. The only privileges and functions of the Head of State are those prescribed as such.
2. Subject to this Constitution and to any Act of Parliament, the privileges and functions of the Sovereign as Head of State may be had and performed through a Governor-General appointed in accordance with Division 3 (the Governor-General) and, except where the context requires otherwise, references in any law to the Head of State shall be read as including a reference to the Governor-General.

52. Performance of functions by the Head of State

1. Subject to section 17 (impracticability of obtaining advice, etc.) of Schedule 1, in the performance of his functions under this Constitution or any other law the Head of State shall act only in accordance with the advice of—
   a. the Cabinet; or
   b. the Prime Minister or another Minister acting under the general or special authority of the Cabinet,

   except where he is required to act—
   c. in accordance with the advice of any other person or authority (in which case he shall act only in accordance with that advice); or
   d. after consultation with any person or authority, including the Cabinet (in which case he shall act only after such consultation); or
   e. in his own deliberate judgment (in which case he shall exercise an independent discretion),

   or where this Constitution obliges or specifically permits him to act in a particular way.
2. When the Head of State is required or permitted by this Constitution or any other law to act in accordance with the advice of, or after consultation with, any person or authority, no question—
   a. whether he received the advice; or
   b. whether he has the consultation and the nature of the consultation; or
   c. what advice (if any) he was given; or
   d. by whom he was advised or whom he consulted,

shall be considered in any court.

53. Failure by the Head of State to act

1. Subject to subsection (2), if—
   a. the Head of State is required by this Constitution or by or under an Act of Parliament to perform any function in accordance with the advice of any person or authority; and
   b. he does not so act within a period of seven days after the advice is received by him, or by a person authorized by him to receive such advice,

he shall be considered to have acted in accordance with the advice.

2. If the person or authority giving the advice—
   a. certifies to the Head of State that the matter is urgent; and
   b. requests him to act in accordance with the advice within a specified period of less than seven days,

the reference in subsection (1) to a period of seven days shall be read as a reference to that specified period.

3. If the Head of State is required by this Constitution or by or under an Act of Parliament to perform any function otherwise than—
   a. in accordance with the advice of any person or authority; or
   b. in his own deliberate judgment,

and if at any time after the occasion for the performance of the function has arisen he has not so acted he shall be considered to have acted as required.

4. An Act of Parliament may make provision as to the proof of matters referred to in this section, and of acts considered to have been done by virtue of this section.

Division 3: The Governor-General

• Name/structure of executive(s)

54. Establishment of office of Governor-General

1. An office of Governor-General of Tuvalu is established.
2. The Governor-General is the representative of the Sovereign.

• Scheduling of elections
• Head of state selection
• Head of government removal
• Head of state removal

55. Appointment, etc., of the Governor-General

1. The Governor-General shall be appointed, and may be removed from office at any time (with or without cause), by the Sovereign, acting in accordance with the advice of the Prime Minister given after the Prime Minister has, in confidence, consulted the members of Parliament.

• Minimum age of head of state
• Eligibility for head of state

2. A person is not qualified to be appointed Governor-General unless—
   a. he has attained the age of 50 years; and
   b. he has not attained the age of 65 years; and
   c. he is otherwise qualified to be elected as a member of Parliament.
3. The Governor-General vacates his office—
   a. on death; or
   b. if he is removed from office under subsection (1); or
   c. when he attains the age of 65 years; or
   d. subject to subsection (4), if he resigns by notice in writing to the Speaker; or
   e. if he ceases to be otherwise qualified to be elected as a member of Parliament; or

• Head of state term length

   f. at the end of the period of four years after the date of his appointment.

4. A resignation under subsection (3)(d) takes effect on the day on which it is received by the Speaker, or on such later date as is agreed between the Governor-General and the Prime Minister.

56. Acting Governor-General

• Head of state replacement

1. Where—
   a. the office of Governor-General is vacant; or
   b. the Governor-General is—
      i. absent from Tuvalu; or
      ii. for any other reason unable to perform any of the functions of his office,

      the functions of the Governor-General, or the relevant parts of those functions, shall be performed by—
   c. a person appointed in accordance with subsection (2); or
   d. in the absence of a person appointed in accordance with subsection (2) who is able to perform those functions—the Speaker.
2. For the purposes of subsection (1)(c), an appointment shall be made in the same way as the appointment of a Governor-General under section 55 (appointment, etc., of Governor-General,) and the provisions of that section, with the necessary modifications, apply, provided that any oath or affirmation required under section 57 (oaths and affirmation by the Governor-General, etc) may be taken or made before the Governor-General.
3. No question whether the need for the performance of any function of the Governor-General by another person (including the Speaker) in accordance with subsection (1) has arisen, or has ceased, shall be considered in any court.

57. Oaths and affirmation by the Governor-General, etc

1. Before entering on the duties of his office the Governor-General shall take an oath, or make an affirmation, of allegiance, and take the relevant oath, or make the relevant affirmation, of office, in the forms respectively set out in Schedule 4, and before performing under section 56(1) (acting Governor-General) any of the functions of the Governor-General the person referred to in section 56(1)(c) (which relates to the appointment of an acting Governor-General) or the Speaker, as the case may be, shall do the same.
2. The oaths and affirmations shall be taken or made before the Chief Justice or a person appointed by the Chief Justice for the purpose.

58. Performance of functions by the Governor-General

1. Subject to any Act of Parliament, the Governor-General shall perform the functions of the Head of State when the Sovereign is—
   a. outside Tuvalu; or
   b. incapacitated; or
   c. under age.
2. No question whether the conditions prescribed by or under subsection (1) apply shall be considered in any court.

• Head of state immunity

3. No question whether in performing a function as Head of State the Governor-General is acting in accordance with the will, opinion or decision of the Sovereign shall be considered in any court, and—
   a. except to the extent implied by sections 55 (appointment, etc., of Governor-General) and 56 (acting Governor-General) the Sovereign has no power to give directions to the Governor-General; and
   b. there is no right of appeal or petition to the Sovereign from or against the performance of a function by the Governor-General.

59. Provision to the Governor-General of information as to the conduct of government

The Governor-General, as the representative of the Sovereign, is entitled—
   a. to be informed by the Prime Minister concerning the general conduct of the government of Tuvalu; and
   b. to be given by the Prime Minister any information that he asks for with respect to any particular matter relating to the government of Tuvalu.

60. Performance of certain ceremonial, etc., functions

• Head of state powers

1. With the approval of the Prime Minister, the Governor-General may authorize a person to perform, on his behalf and in his name, any of the ceremonial or formal functions of the Head of State or of the Governor-General.
2. Subsection (1) does not apply to—
   a. any function conferred by this Constitution on the Head of State or on the Governor-General; or
   b. except as provided for by an Act of Parliament, any function conferred by or under any Act of Parliament on the Head of State or the Governor-General; or
   c. any other function certified by the Prime Minister to have a legal or practical effect, or to be more than only ceremonial or formal.

PART V: THE EXECUTIVE

Division 1: The Executive Authority of Tuvalu

• Name/structure of executive(s)

61. Vesting of the executive authority

1. The executive authority of Tuvalu is primarily vested in the Sovereign, and in the Governor-General as the representative of the Sovereign.
2. The executive authority so vested in the Sovereign shall be exercised in accordance with section 52 (performance of functions by the Head of State).
3. Nothing in this section prevents a law from conferring functions on any other person or authority.

Division 2: The Ministers

• Name/structure of executive(s)

62. Offices of Ministers

1. An office of Prime Minister is established.
2. Subject to subsection (3), there shall be such number of other offices of Minister, and they shall have such titles, as are determined by the Head of State, acting in accordance with the advice of the Prime Minister.
3. The number of offices of Minister (other than the office of Prime Minister) shall not exceed one third of the total membership of Parliament.

• Deputy executive

4. One of the Ministers other than the Prime Minister may be appointed to the office of Deputy Prime Minister by the Head of State, acting in accordance with the advice of the Prime Minister.

• Eligibility for cabinet
• Head of government's role in the legislature

5. Subject to section 71 (caretaker governments) and to subsection (6), all Ministers (including the Prime Minister) must be members of Parliament.
6. If it is necessary to appoint a Minister (other than a Prime Minister) at any time—
   a. after Parliament is dissolved under section 118 (dissolution of Parliament); and
   b. before the beginning of the first meeting of Parliament after the following general election,

a person who was a member of Parliament immediately before the dissolution may be appointed.

7. Subject to sections 68 (acting Prime Minister) and 76 (proceedings in Cabinet), all Ministers other than the Prime Minister rank equally.

• Head of government selection

63. The Prime Minister

1. The Prime Minister shall be elected by the members of Parliament in accordance with Schedule 2 (Election and Appointment of Prime Minister).

• Head of government removal

2. The office of the Prime Minister becomes vacant—
   a. on death; or
   b. when a new election to the office of Prime Minister is completed; or
   c. if he ceases to be a member of Parliament for any reason other than the dissolution of Parliament; or
   d. if he resigns his office by notice in writing to the Head of State; or
   e. if he is removed from office under section 64 (removal from office of an incapacitated Prime Minister); or
   f. if a motion of no confidence in the Government receives in Parliament the votes of a majority of the total membership of Parliament.
3. Subject to section 71 (caretaker governments), a resignation under subsection (2)(d) takes effect upon its receipt by the Head of State.

• Head of government removal

64. Removal from office of an incapacitated Prime Minister

1. If in the opinion of the Head of State, acting in his own deliberate judgment after consultation, in confidence, with the other Ministers—
   a. the Prime Minister is unable to perform properly the functions of his office because of infirmity of body or mind; and
   b. it is desirable in the interests of the good government of Tuvalu that the question of removing him from office should be investigated,

the Head of State, acting in accordance with the advice of a professional medical body outside Tuvalu approved by an Act of Parliament for the purpose, shall appoint two or more medical practitioners who are legally qualified to practice medicine in Tuvalu or elsewhere to investigate the question of the capacity of the Prime Minister.

2. The persons appointed under subsection (1) shall investigate the question and make a joint professional report to the Head of State personally.
3. If after considering the report the Head of State, acting in his own deliberate judgment, is satisfied that it is in the interests of the good government of Tuvalu to do so, he may, acting in his own deliberate judgment, by written notice to—
   a. the Prime Minister; and
   b. the Speaker; and
   c. the Cabinet,

remove the Prime Minister from office.

65. Suspension of Prime Minister

1. If the question of the capacity of the Prime Minister has been referred to a tribunal under section 64 (removal from office of an incapacitated Prime Minister), the Head of State, acting in his own deliberate judgment, may suspend the Prime Minister from office.
2. A suspension under subsection (1)—
   a. may be lifted at any time by the Head of State, acting in his own deliberate judgment; and
   b. ceases to have effect if the tribunal reports to the Head of State that the Prime Minister is able to perform properly the functions of his office.
3. A suspension under this section takes effect without loss of remuneration or other entitlements.

66. Effect of removal or suspension of Prime Minister

His removal under section 64 (removal from office of an incapacitated Prime Minister), or his suspension under section 65 (suspension of Prime Minister), does not affect the position of the Prime Minister as a member of Parliament.

67. The other Ministers

1. The Ministers other than the Prime Minister shall be appointed by the Head of State, acting in accordance with the advice of the Prime Minister.
2. The office of a Minister other than the Prime Minister becomes vacant—
   a. on death; or
   b. when a new election to the office of Prime Minister is completed; or
   c. if the Minister ceases to be a member of Parliament for any reason other than the dissolution of Parliament; or
   d. subject to subsection (3), if the Minister resigns his office by notice in writing to the Head of State; or
   e. if the Minister is removed from office by the Head of State, acting in accordance with the advice of the Prime Minister; or
   f. in the circumstances set out in section 63 (2)(f) (which relates to votes of no confidence in Government).

• Cabinet removal

3. A resignation under subsection (2)(d) takes effect on the date on which it is received by the Head of State.

68. Acting Prime Minister

1. This section applies when the Prime Minister is—
   a. absent from Tuvalu; or

b. for any other reason unable to perform the functions of his office.

• Deputy executive

2. Subject to subsection (3), in a case to which subsection (1) applies until the Prime Minister returns to Tuvalu or is again able to perform the functions of his office the Deputy Prime Minister (if any) shall perform those functions.

3. If—

a. there is no office of Deputy Prime Minister; or

b. there is a vacancy in the office of Deputy Prime Minister; or

c. the Deputy Prime Minister is absent from Tuvalu; or

d. the Deputy Prime Minister is for any other reason unable to perform the functions of the Prime Minister,

a Minister appointed by the Head of State, acting in accordance with the advice of the Prime Minister, shall perform the functions of the Prime Minister.

69. Acting Ministers

1. When—

a. subject to section 71 (caretaker governments), the office of a Minister other than the Prime Minister is vacant; or

b. a Minister other than the Prime Minister is—

i. absent from Tuvalu; or

ii. for any other reason unable to perform the functions of his office.

the Head of State, acting in accordance with the advice of the Prime Minister, may appoint another member of Parliament to perform temporarily the functions of the Minister.

2. The provisions of section 62(6) (which relates to the appointment of former members of Parliament as Ministers) apply to an appointment under this section in the same way as they apply to other appointments.

70. Conditions of acting appointments to Ministerial offices

No question whether the need for—

a. the performance of any function of the Prime Minister by another Minister in accordance with section 68 (acting Prime Minister); or

b. the appointment of a person to perform temporarily the functions of a Minister in accordance with section 69 (acting Ministers),

has arisen, or has ceased, shall be considered in any court.

71. Caretaker governments

• Head of government replacement

1. Notwithstanding anything in this Part other than this section, in the event of a vacancy in the office of Prime Minister the Cabinet in office immediately before the occurrence of the vacancy continues in office as a caretaker government until a new election of a Prime Minister is completed.

2. If the Prime Minister—

a. dies; or

b. ceases to be a member of Parliament for any reason other than the dissolution of Parliament; or

c. is removed from office under section 64 (removal from office of an incapacitated Prime Minister),

then subsections (4)–(7) apply.

3. If the Prime Minister resigns under section 63(2)(d) (which relates to the resignation of the Prime Minister) and indicates in his notice of resignation that he wishes it to become effective immediately, then subsections (4)–(7) apply.
4. Subject to subsection (5), in a case to which subsection (2) or (3) applies the Deputy Prime Minister shall perform the functions of the Prime Minister.
5. If—
   a. there is no office of Deputy Prime Minister; or
   b. subject to section 69 (acting ministers), there is a vacancy in the office of Deputy Prime Minister; or
   c. the Deputy Prime Minister is absent from Tuvalu; or
   d. the Deputy Prime Minister is for any other reason unable to perform the functions of the Prime Minister,

a Minister appointed by the Head of State, acting in his own deliberate judgment after consultation, in confidence, with the other Ministers, shall perform the functions of the Prime Minister.

6. The provisions of section 62(6) (which relates to the appointment of former members of Parliament to be Ministers) apply in respect of a caretaker government holding office under this section.
7. A caretaker government goes out of office when a new election to the office of Prime Minister is completed.

72. Oaths and affirmations by Ministers

Before entering upon the duties of his office, the Prime Minister and any other Minister shall take an oath, or make an affirmation, of allegiance, and take an oath, or make an affirmation, of office, in the forms respectively set out in Schedule 4 (Oaths and Affirmations).

Division 3: The Cabinet

• Establishment of cabinet/ministers

73. Establishment of the Cabinet

1. A Cabinet is established for Tuvalu.
2. The Cabinet consists of the Prime Minister and all the other Ministers.

• Cabinet removal

74. Functions of the Cabinet

The Cabinet is collectively responsible to Parliament for the performance of the executive functions of the Government.

• Powers of cabinet

75. Assignment of responsibilities to Ministers

1. The Head of State, acting in accordance with the advice of the Prime Minister, may—
   a. assign to the Prime Minister or to any other Minister responsibility for the conduct of any business of the Government (including responsibility for the administration of any Ministry or office of Government); and
   b. from time to time re-assign any such responsibility either on a substantive basis or on an acting basis.
2. Except as provided by or under an Act of Parliament—
   a. all Ministries, offices and functions of Government shall be the responsibility of the Prime Minister or another Minister; and

b. the Prime Minister is responsible for any function of Government that is not specifically assigned under this section.

76. Proceedings in Cabinet

1. Meetings of the Cabinet shall be summoned by the Prime Minister or Minister appointed to act as Prime Minister.

2. The Prime Minister shall, as far as practicable, attend and preside at all meetings of the Cabinet, and in his absence—

a. if there is an office of Deputy Prime Minister and the Deputy Prime Minister is present—the Deputy Prime Minister shall preside; and

b. in any other case—a Minister chosen by the Ministers present shall preside.

3. Subject to this subsection, the quorum for a meeting of the Cabinet is a majority of the total membership, but if the members of the Cabinet present at a meeting certify to the Head of State that—

a. it is not practicable for a full quorum to be present; and

b. a matter requiring decision is too urgent to wait for the availability of a full quorum,

the number of members actually present is a quorum for that meeting.

4. Subject to the requirement of a quorum in accordance with subsection (3)—

a. the Cabinet may conduct any business even if there is a vacancy in its membership; and

b. proceedings in Cabinet are valid even if a person who was not entitled to do so took part in those proceedings.

5. Subject to any directions of the Cabinet, the Prime Minister or Minister appointed to act as Prime Minister, shall decide what business is to be considered at a meeting of the Cabinet.

77. Validity of executive acts

1. The succeeding provisions of this section are subject to any Act of Parliament.

2. Except as authorized by the Cabinet, or as otherwise required or permitted by an Act of Parliament, the business and proceedings of the Cabinet shall be kept secret.

3. No question whether any procedures prescribed for the Cabinet have been, or are being, complied with shall be considered in any court.

4. Subject to subsection (5), no act of the Prime Minister or of any other Minister is open to any challenge on the ground that he was not authorized to perform it if any Minister v(whether or not specifically named) was so authorized to do so.

5. Subsection (4) does not apply in relation to a function that is specifically conferred on the Prime Minister.

Division 4: Officers Associated with the Cabinet

78. The Secretary to Government

1. An office of Secretary to Government is established as an office in the Public Service.

2. The Secretary to Government shall be appointed in accordance with section 159(3)(a) (which relates to the appointment of the Secretary to Government).

3. Unless he has been excused by or under the authority of the Prime Minister, the Secretary to Government shall attend all meetings of the Cabinet.

4. The Secretary to Government is responsible, in accordance with such instructions as are given to him by the Cabinet, for co-ordinating the work of all Ministries and offices of Government, and has such other functions as are prescribed or as are directed by the Cabinet or the Prime Minister.
5. On receipt of a written notice of resignation from the Secretary to Government, the Prime Minister shall advise the Public Service Commission and submit the resignation to the Head of State for approval, which, subject to any other law, shall take effect on the date specified.

79. The Attorney-General

1. An office of Attorney-General for Tuvalu is established as an office in the Public Service.
2. The Attorney-General shall be appointed in accordance with section 159(4)(a) (which relates to the appointment of the Attorney-General).
3. The Attorney-General is the principal legal adviser to the Government, and has such other functions as are prescribed.
4. A person is not qualified to hold or to act in the office of Attorney-General unless he is entitled to practise before the High Court.
5. Unless he is excused by or under the authority of Parliament, the Attorney-General—
   a. shall attend all meetings of Parliament; and
   b. may take part, in accordance with the Rules of Procedure of Parliament, in the proceedings of Parliament and committees of Parliament (but without a vote).
6. Unless he is excused by or under the authority of the Prime Minister, the Attorney-General shall attend all meetings of the Cabinet.

• Attorney general

7. Subject to the succeeding provisions of this section, in any case where he considers it desirable to do so the Attorney-General may—
   a. take criminal proceedings against any person before a court (other than a court- martial or other military tribunal) in respect of an offence; or
   b. take over and continue any criminal proceedings referred to in paragraph (a) that have been taken by any other person or authority; or
   c. discontinue, at any stage before judgment is given, any criminal proceedings referred to in paragraph (a) that have been taken by him or by any other person or authority.
8. Subject to any Act of Parliament, the functions of the Attorney-General may be performed—
   a. in person; or
   b. through officers responsible to him, acting in accordance with his general or specific instructions,

and references to the Attorney-General include references to officers so acting.

9. Where any person or authority other than the Attorney-General has taken any criminal proceedings, nothing in this section prevents the withdrawal, in accordance with law, of those proceedings by any person or authority except where those proceedings have been taken over by the Attorney-General.
10. Subject to subsections (8) and (9), the powers conferred on the Attorney-General by subsection (7)(b) and (c) are vested in him to the exclusion of any other person or authority.
11. Subject to section 15 (independence) of Schedule 1, in the performance of his functions under subsection (7) the Attorney-General is not subject to the direction or control of any other person or authority.

12. Subject to subsection (13), for the purposes of this section—

a. an appeal from a decision in any proceedings; and

b. a case stated or question of law reserved for the purpose of any proceedings,

is part of those proceedings.

13. The functions of the Attorney-General under subsection (7)(c) shall not be exercised in relation to—

a. an appeal by a person convicted in any proceedings; or

b. a case stated or question of law reserved at the instance of a person convicted in any proceedings; or

c. a judicial review of any proceedings.

Division 5: The Power of Mercy

• Power to pardon

80. Commutation, etc., of sentences

1. The Head of State, acting in accordance with the advice of the Cabinet, may—

a. grant to a person a pardon, either free or subject to lawful conditions, for an offence; or

b. relieve a person from any disability imposed by this Constitution or by or under an Act of Parliament because of a conviction under, or a contravention of, or a failure to comply with, a law of a country other than Tuvalu; or

c. grant to a person a delay, either indefinite or for a specified period, in the enforcement of any penalty imposed on that person for an offence; or

d. substitute a less severe form of punishment for any punishment imposed on a person for an offence; or

e. remit the whole or part of—

i. any punishment imposed on a person for an offence; or

ii. any penalty, fine or forfeiture otherwise due to the Government on account of an offence.

2. In any case in which the power of mercy is exercised in accordance with subsection (1), the Prime Minister shall present to Parliament—

a. if the power is exercised during a meeting of Parliament—during that meeting; or

b. if the power is exercised at any other time—during the next meeting of Parliament,

a statement giving details of the exercise of the power and of the reasons for it.

PART VI: PARLIAMENT AND LAW-MAKING

Division 1: Parliament

• Structure of legislative chamber(s)

81. Establishment of Parliament

A Parliament is established for Tuvalu.

82. Composition of Parliament

• Supermajority required for legislation

1. Subject to subsection (3), Parliament shall consist of such number of members as is fixed by or under an Act of Parliament and a Bill for an Act to amend the number of members so fixed shall not be passed by Parliament unless it is supported at its Third Reading by the votes of not less than two-thirds of the members of Parliament.
2. The members shall be directly elected in accordance with this Constitution and, subject to this Constitution, in accordance with an Act of Parliament.
3. The number of members of Parliament shall not be less than twelve.

• Electoral districts

4. For the purpose of the election of the members of Parliament, electoral districts shall be established, having—
   a. such boundaries; and
   b. such number of elected representatives,

as are prescribed by or under an Act of Parliament.

5. Nothing in this Constitution prevents an Act of Parliament from making special provision for the representation of a part of Tuvalu with special electoral problems, or related problems.

83. Principles of electoral apportionment

1. This section does not affect the operation of section 82(5) (which relates to special electoral provisions for particular parts of Tuvalu.)
2. Subject to subsection (1), a Bill for an Act for the purposes of section 82 (composition of Parliament) shall, so far as practicable, be based on the principle that each member of Parliament should represent approximately the same number of electors, but in the circumstances of Tuvalu account must also be taken of—
   a. geographical features; and
   b. interests or relationships of any kind that various areas—
      i. may have in common; or
      ii. may not have in common; and
   c. the boundaries of existing administrative and traditional areas; and
   d. means of communication; and
   e. density and mobility of population; and
   f. such other factors as are prescribed by an Act of Parliament for the purpose.

Division 2: The Law-making Power

84. Vesting of the law-making power

Subject to this Constitution, Parliament may make laws, not inconsistent with this Constitution, including—

a. laws having effect outside Tuvalu; and
b. laws having retrospective effect; and
c. laws providing for all matters that are necessary or convenient to be prescribed—
   i. for carrying out or giving effect to this Constitution; or
   ii. for defining or detailing, or for further defining or detailing, any matter in this Constitution.

85. Delegated legislation

Acts of Parliament may provide—

a. for the delegation to any person or authority other than Parliament of power to make regulations and other subsidiary laws; and

b. for the control of the use of any power delegated under paragraph (a), whether—

i. by means of a requirement of approval; or

ii. by means of a power to disallow,

or in some other prescribed way.

• Initiation of general legislation

86. Manner of exercise of the law-making power

1. The power of Parliament to make laws shall be exercised by means of Bills passed, in accordance with section 111 (procedure on Bills, etc.), by Parliament and assented to by the Head of State.

2. When a Bill is presented to the Head of State for assent the Head of State shall promptly assent to it.

3. A Bill that has been assented to is an Act of Parliament.

Division 3: Membership of Parliament

• Claim of universal suffrage

87. Nature of elections

• First chamber selection

1. Members of Parliament shall be elected under a system of universal, citizen, adult suffrage, in accordance with this Constitution and any law made for the purposes of section 89 (electoral laws).

• Secret ballot

2. All contested elections of members of Parliament shall be held by secret ballot.

3. The provisions of subsection (2) shall not be considered to be contravened by a law that makes reasonable provision for assistance in voting to be given, on request, to any person.

88. Holding of elections

1. There shall be a general election as soon as practicable after every dissolution of Parliament.

• Replacement of legislators

2. There shall be a bye-election as soon as practicable after the occurrence of any casual vacancy in the membership of Parliament.

• First chamber selection

89. Electoral laws

1. Subject to this Constitution, an Act of Parliament may make provision for and in relation to Parliamentary elections.

2. An Act of Parliament shall make provision for safeguarding the integrity of Parliamentary elections, especially in circumstances to which section 87(3) (special provisions for certain voters) applies.

Subdivision B: Electors

90. Right to vote

1. Subject to the succeeding provisions of this section, any person who is registered under an Act of Parliament as an elector for Parliamentary elections in an electoral district is entitled to vote, in such manner as is prescribed, in an election of a member of Parliament for that district.
2. An Act of Parliament may prohibit a person from voting in an election if—
   a. he is an electoral officer within the meaning of the Act; or
   b. he has been involved in the commission of an offence in connection with an election.
3. A person is not entitled to vote in an election if—
   a. throughout the hours and on the date or dates fixed for the polling he is under arrest or in prison; or
   b. except as prescribed, he is for any reason unable to attend in person at the place and time fixed for the polling.
4. A person is not entitled to vote in an election of a member of Parliament for an electoral district if he is not registered as an elector for Parliamentary elections in that district.

• Restrictions on voting

91. Qualifications for registration

1. Subject to section 92 (disqualification from registration), a person is entitled to be registered as an elector in Parliamentary elections if, and is not entitled to be registered as such an elector unless—
   a. he is a citizen of Tuvalu; and
   b. he has attained the age of 18 years; and
   c. he satisfies such other requirements (whether as to residence or otherwise) as are prescribed.
2. A person is not entitled to be registered as an elector in Parliamentary elections in more than one electoral district at the same time.

• Restrictions on voting

92. Disqualification from registration

1. A person is not entitled to be registered as an elector in Parliamentary elections if—
   a. subject to section 102 (calculation of sentences) and to subsection (2), he has been sentenced by a court in a Commonwealth country to death or to imprisonment (by whatever name called) for a term exceeding 12 months, and has not received a free pardon; or
   b. he is certified to be insane, or otherwise adjudged to be of unsound mind, under an Act of Parliament; or
   c. he is disqualified, under an Act of Parliament relating to offences in connection with elections, from being registered as an elector in Parliamentary elections.
2. Subsection (1)(a) does not apply if—
   a. on appeal or review—
      i. the conviction is overthrown; or
      ii. the sentence is reduced to a sentence of imprisonment for a term not exceeding 12 months, or to some other penalty; or

b. in the case of a sentence of imprisonment (whether it was the original sentence or was substituted on appeal or review)—three years have elapsed since the end of the imprisonment.

Subdivision C: Candidates

93. Candidature

1. A candidate for election to Parliament must be—

a. qualified for election as a member of Parliament; and

b. nominated in accordance with an Act of Parliament.

2. A member of Parliament is not qualified to be a candidate.

• Eligibility for cabinet
• Eligibility for head of government
• Eligibility for head of state
• Eligibility for first chamber

94. Qualifications for election

Subject to section 95 (disqualification from election) a person is qualified to be elected as a member of Parliament if, and is not qualified to be elected as a member of Parliament unless,—

a. he is a citizen of Tuvalu; and

• Minimum age of head of government
• Minimum age for first chamber

b. he has attained the age of 21 years.

• Eligibility for head of government
• Eligibility for head of state
• Eligibility for first chamber

95. Disqualification from election

1. A person is not qualified to be elected as a member of Parliament if—

a. subject to Section 102 (calculation of sentences) and to subsection (2), he has been sentenced by a court in a commonwealth country to death or to imprisonment (by whatever name called) for a term exceeding 12 months, and has not received a free pardon, or is serving a prison sentence; or

b. he is certified to be insane, or otherwise adjudged to be of unsound mind, under an Act of Parliament; or

c. he is disqualified, under an Act of Parliament relating to offences in connection with elections, from membership of Parliament; or

d. he is, by virtue of his own act, under an acknowledgement of allegiance, obedience or adherence to a country other than Tuvalu; or

e. he has been adjudged or otherwise declared bankrupt under a law of a Commonwealth country, and has not been discharged; or

• Outside professions of legislators

f. subject to such exceptions as are prescribed, he holds, or is acting in, any office or position in a State Service; or

• Outside professions of legislators

g. he is the Head of State, a Judge of the High Court or a magistrate; or

• Outside professions of legislators

h. he is a member of the Public Service Commission.

2. Subsection (1)(a) does not apply if—

a. on appeal or review—

i. the conviction is overthrown; or

ii. the sentence is reduced to a sentence of imprisonment for a term not exceeding 12 months, or to some penalty other than imprisonment; or

b. in the case of a sentence of imprisonment, whether it was the original sentence or was substituted on appeal or review, three years have elapsed since the end of the imprisonment.

Subdivision D: Members

• Removal of individual legislators

96. Tenure of office

1. The seat of a member of Parliament becomes vacant—

a. on death; or

b. on a dissolution of Parliament; or

• Attendance by legislators

c. if he is absent from the sittings of Parliament for such period and in such circumstances as are prescribed in the Rules of Procedure of Parliament; or

d. subject to subsection (2), if, not being the Speaker, he resigns his seat by written notice to the Speaker; or

e. subject to subsection (3), if, being the Speaker—

i. he announces to Parliament his resignation from his seat; or

ii. he resigns his seat by written notice addressed to Parliament and given to the Clerk of Parliament; or

f. if he ceases to be qualified for, or becomes disqualified from, election to Parliament under section 94 (qualifications for election) or 95 (disqualification from election); or

g. in the circumstances set out in section 97 (disclosure of interest) or 98 (vacation of seat on sentence); or

h. if his seat is declared to be vacant under section 99 (recall of incapacitated member); or

i. if he becomes the Head of State or a Judge of the High Court.

2. A resignation under subsection (1)(d) takes effect on the date on which it is received by the Speaker.

3. A resignation under subsection (1)(e) takes effect on the date on which it is—

a. announced to Parliament; or

b. received by the Clerk of Parliament,

as the case may be.

• Legislative committees

97. Disclosure of interest

1. An Act of Parliament or the Rules of Procedures of Parliament may make provision requiring a member of Parliament who has an interest in a matter under consideration in Parliament—

a. to disclose his interest; and

b. except with the approval of Parliament, not to take part in any proceedings in Parliament, or in a committee of Parliament, in relation to the matter.

2. An Act of Parliament or the Rules of Procedure of Parliament may provide that if a member of Parliament contravenes a provision referred to in subsection (1) his seat becomes vacant.

98. Vacation of seat on sentence

1. Subject to section 102 (calculation of sentences) and to the succeeding provisions of this section, if a member of Parliament is sentenced by a court in a Commonwealth country to death or to imprisonment (by whatever name called) for a term exceeding 12 months—

a. he shall forthwith cease to discharge his functions as a member of Parliament, and shall not attend Parliament as a member of Parliament; and

b. his seat becomes vacant at the end of 30 days after the date of sentence.

2. The Speaker may, at the request of the member, from time to time extend the period of 30 days referred to in subsection (1)(b) to enable the member to pursue any appeal (judicial or other) in respect of his conviction or sentence, but extensions totalling more than 150 days shall not be granted without the consent of Parliament, signified by resolution.
3. If before a member vacates his seat under this section—
   a. he receives a free pardon; or
   b. on appeal or review—
      i. the conviction is overthrown; or
      ii. the sentence is reduced to a sentence of imprisonment for a term not exceeding 12 months, or to some penalty other than imprisonment,

his seat does not become vacant, and he may again discharge his functions as a member.

4. A reference in this section to functions as a member of Parliament includes a reference to functions performed in any capacity arising out of membership of Parliament (including functions as Speaker or as the Prime Minister or another Minister).

99. Recall of incapacitated member

1. If more than 50 percent of the persons who are registered as electors for Parliamentary elections in an electoral district sign a petition to the Head of State stating that a member of Parliament for that district is unable to perform properly the functions of a member because of infirmity of body or mind, the succeeding provisions of this section apply.
2. If the Head of State, acting in his own deliberate judgment, is satisfied that—
   a. a petition delivered to him complies with subsection (1); and
   b. it is desirable in the interests of the good government of Tuvalu that the question of removing the member should be investigated,

the Head of State, acting in accordance with the advice of a professional medical body outside Tuvalu approved by an Act of Parliament for the purpose, shall appoint two or more medical practitioners who are legally qualified to practise medicine either in Tuvalu or elsewhere to investigate the question of the capacity of the member.

3. The persons appointed under subsection (2) shall investigate the question and make a joint professional report to the Head of State personally.
4. If after considering the report the Head of State, acting in his own deliberate judgment, is satisfied that it is desirable in the interests of the good government of Tuvalu to do so, he shall, acting in his own deliberate judgment, by written notice to—
   a. the Speaker; and
   b. the member,

declare the seat of the member concerned to be vacant.

Subdivision E: Miscellaneous

• Supreme court powers

100. Questions as to membership of Parliament

1. The High Court has jurisdiction to determine, in accordance with law, any question whether—
   a. a candidate has been validly elected as a member of Parliament; or

b. a member of Parliament has vacated his seat, or is required by section 98 (vacation of seat on sentence) to cease to perform his functions as a member; or

c. the seat of a member has been declared vacant in accordance with any Act of Parliament or Rules of Procedure of Parliament provided for by section 97 (disclosure of interest); or

d. the seat of a member has been declared vacant in accordance with section 99 (recall of incapacitated member).

2. There is not appeal from a decision of the High Court in proceedings under subsection (1).

101. Sitting, etc., while unqualified

1. A person who sits or votes in Parliament or in a committee of Parliament knowing, or having reasonable grounds for believing, that he is not entitled to do so is liable to a civil penalty not exceeding $20.00 for each day upon which he so sits or votes.

2. A penalty under subsection (1) may be recovered only by civil action in the High Court by the Attorney-General.

102. Calculation of sentences

1. This section applies to the calculation of the lengths of periods of imprisonment for the purposes of—

a. section 92 (disqualification from registration); and

b. section 95 (disqualification from election); and

c. section 98 (vacation of seat on sentence).

2. For the purposes of the provisions referred to in subsection (1)—

a. two or more terms of imprisonment that are required to be served consecutively shall be regarded as a single term of the total period; and

b. no account shall be taken of a sentence of imprisonment imposed in default of payment of a fine; and

c. "review" includes an administrative or executive review of a sentence.

Division 4: The Speaker

103. Establishment of the office of Speaker

An office of Speaker of Parliament is established.

104. Election of the Speaker

• Leader of first chamber

1. Subject to this section, the Speaker shall be elected by the members of Parliament from among their own number.

2. As soon as practicable after—

a. each general election; or

b. the occurrence of a casual vacancy in the office of Speaker, but after any necessary election of a Prime Minister, the Head of State, acting in accordance with the advice of the Prime Minister, shall call a meeting of the members of Parliament for the purpose of electing a Speaker, at a date, time and place fixed by the Head of State, acting in accordance with the advice of the Prime Minister, by notice to each member.

3. The Clerk of Parliament shall preside at the meeting, and for that purpose has all the functions of the Speaker as if the meeting were a meeting of Parliament.
4. When a Speaker is elected, the Clerk of Parliament shall so inform the Head of State, and the Head of State shall appoint the person so elected to be the Speaker.
5. At the commencement of the first sitting day of Parliament after the appointment of a Speaker, the Clerk of Parliament shall announce to the members of Parliament present the appointment of the Speaker and the person appointed shall then take his place as Speaker.

105. Tenure of office of the Speaker

1. The office of Speaker becomes vacant—
   a. on death; or
   b. when a Speaker next takes his place under section 104(5) (which relates to the Speaker taking his place after his appointment by the Head of State); or
   c. subject to subsection (2), if—
      i. he announces to Parliament his resignation from office; or
      ii. he resigns his office by written notice addressed to Parliament and given to the Clerk of Parliament; or
   d. if he ceases to be a member of Parliament for any reason other than the dissolution of Parliament; or
   e. if he becomes Prime Minister or another Minister; or
   f. if he becomes the Head of State or a Judge of the High Court; or

• Supermajority required for legislation

   g. if Parliament so resolves by resolution supported by the votes of two thirds of the total membership.
2. A resignation under subsection (1)(c) takes effect on the date on which it is—
   a. announced to Parliament; or
   b. received by the Clerk of Parliament,

as the case may be.

106. Functions of the Speaker

• Legislative committees

1. Subject to subsection (2), when he is present the Speaker shall preside at all sittings of Parliament and of committees of Parliament.
2. An Act of Parliament or the Rules of Procedure of Parliament may provide that subsection (1) does not apply—
   a. when Parliament is in a committee of the whole Parliament; or
   b. on other occasions, or in other circumstances, prescribed in the Act or the Rules.
3. Subject to any Act of Parliament made for the purposes of subsection (6), the Speaker is responsible for ensuring that the business of Parliament is conducted in accordance with this Constitution, any applicable Act of Parliament and the Rules of Procedure of Parliament.
4. The Speaker shall do his best to ensure that—
   a. proceedings in Parliament are conducted at all times with dignity, decorum and politeness; and
   b. abusive, unnecessarily violent or otherwise objectionable language is not used in Parliament; and
   c. Parliamentary privilege is not abused by the making of unnecessary personal attacks on other members of Parliament or other persons, or in any other manner.

5. The Speaker has such other functions as are provided for by this Constitution, any Act of Parliament and the Rules of Procedure of Parliament.
6. Subject to any Act of Parliament, the decision of the Speaker on any matter relating to the conduct of the business of Parliament is final.
7. The Speaker shall perform his functions impartially, and has a duty to ensure that in the conduct of the business of Parliament there is a reasonable opportunity for all members present to be fairly heard.

107. Acting Speaker

1. If the Speaker is absent from a sitting of Parliament or if there is a vacancy in the office of Speaker during a meeting, a member of Parliament (not being the Prime Minister or another Minister) elected by the members shall, until relieved by the Speaker, perform the functions of the Speaker.
2. If at any time when Parliament is not sitting—
   a. the Speaker is absent from Tuvalu or is for any other reason unable to perform his functions; and
   b. no member has been elected under subsection (1),

the Clerk of Parliament shall perform the parliamentary functions of the Speaker.

3. The Clerk of Parliament shall preside for the purposes of the election of an acting Speaker under subsection (1).
4. No question whether the need for the election of a person to perform the functions of the Speaker in accordance with this section has arisen, or has ceased, shall be considered in any court.

Division 5: Procedures in Parliament

108. Rules of Procedure

1. Subject to this Constitution and to any Act of Parliament, Parliament may make rules of procedure for the regulation and orderly conduct of its proceedings and the discharge of business at sittings of Parliament, and for related purposes.
2. The rules shall ensure that in the conduct of the business of Parliament there is a reasonable opportunity for all members to be fairly heard.

109. Quorum of Parliament

• Quorum for legislative sessions

1. Subject to subsection (3), the quorum for a meeting of Parliament is one more than one half of the total membership, ignoring any fraction which may arise in calculating one half of the total membership.
2. If at any time—
   a. the Speaker declares that a quorum in accordance with subsection (1) is not present; and
   b. after such interval as is prescribed in the Rules of Procedure of Parliament for the purpose such a quorum is again not present,

the Speaker shall adjourn Parliament until a time and date that he thinks appropriate.

3. If at the time and date fixed by the Speaker under subsection (2) a quorum in accordance with subsection (1) is not present, the number of members of Parliament actually present and qualified to take part in the proceedings is a quorum for the purposes of that day's sitting.

110. Voting in Parliament

1. Subject to this Constitution, all questions before Parliament shall be determined in accordance with a majority of the votes of the members of Parliament present and voting.
2. Subject to subsection (3), the Speaker does not have an original vote, but—
   a. has; and
   b. shall exercise,

a casting vote.

3. The Speaker has an original vote, but not a casting vote—
   a. on a motion of no confidence in the Government; and
   b. on a Bill for an Act to amend this Constitution.

• Initiation of general legislation

111. Procedure on Bills, etc

1. Subject to this Constitution, any member of Parliament may, in accordance with the Rules of Procedure of Parliament—
   a. introduce a Bill in Parliament; or
   b. propose a motion for debate in Parliament; or
   c. present a petition to Parliament,

and it shall be disposed of in accordance with this Constitution and the Rules.

2. Subject to section 2 (the area of Tuvalu), with the exception of—
   a. Appropriation Bills; and
   b. Bills certified by the Head of State, acting in accordance with the advice of the Cabinet, to be—
      i. urgent; or
      ii. not of general public importance,

Parliament shall not proceed upon a Bill after its first reading until the next session of Parliament, and after the first reading the Clerk of Parliament shall circulate the Bill to all local governments for consideration and comment.

3. Parliament shall consider and dispose of any comments received under subsection (2).

• First chamber reserved policy areas

4. Parliament shall not proceed—
   a. further than the first reading of a Bill for any purpose referred to in section 166(1) (which relates to Executive initiative); or
   b. on a motion or amendment which would have a similar effect, without the recommendation of a Minister as required by section 166(1) (which relates to Executive initiative).

Division 6: Miscellaneous

112. Oath and affirmation of members of Parliament

1. Subject to subsection (3), no member of Parliament may take part in the proceedings of Parliament (other than formal proceedings and proceedings necessary for the purpose of this section) until he has, before Parliament, made an oath, or taken an affirmation, of allegiance in the form in Schedule 4.
2. The swearing-in of a member of Parliament takes precedence over all other business (other than formal business and business referred to in subsection (3)) in Parliament.

3. Subsection (1) does not apply in relation to—
   a. proceedings for the election of a Prime Minister under section 63(1) (which relates to the election of a Prime Minister) and Schedule 2 (Election and Appointment of the Prime Minister); or
   b. proceedings for the election of a Speaker under section 104 (election of the Speaker) or of an acting Speaker under section 107(1) (which relates to the election of a member of Parliament as acting Speaker).

• Legislative committees

113. Validity of proceedings in Parliament

Subject to sections 109 (quorum of Parliament) and 110 (voting in Parliament)—
   a. Parliament or a committee of Parliament may conduct any business even if there is a vacancy in its membership; and
   b. the proceedings of Parliament, and of a committee of Parliament, are valid even if a person who was not entitled to do so took part in those proceedings.

114. Privileges of Parliament

1. The purpose of this section is to allow, as is customary in Parliaments—
   a. certain privileges and immunities to be conferred upon Parliament and members of Parliament; and
   b. certain powers to be conferred upon Parliament,

in order to facilitate the proper conduct of the business of Parliament, and to prevent improper interference with the conduct of that business.

2. Subject to subsections (4) and (5), Parliament may provide for—
   a. privileges and immunities of Parliament and members of Parliament; and
   b. powers of Parliament.
3. Any provision made by Parliament made for the purposes of subsection (2) shall be interpreted and applied only in accordance with the purpose of this section as set out in subsection (1).

• Immunity of legislators

4. No civil or criminal proceedings may be instituted against a member of Parliament—
   a. for words spoken in, or included in a report to, Parliament or a committee of Parliament; or
   b. by reason of any matter or thing brought by him in Parliament or a committee of Parliament.
5. No process issued by a court shall be served or issued within the precincts of Parliament (as defined by or under an Act of Parliament or the Rules of Procedure of Parliament).

115. Clerk of Parliament and other officers

There shall be a Clerk of Parliament and such other officers as are necessary for the proper conduct of the business of Parliament, who shall be members of a State Service.

Division 7: Summoning, Dissolution, etc

116. Meetings of Parliament

1. Subject to this section, Parliament shall meet at such places in Tuvalu, and at such times, as the Head of State, acting in accordance with the advice of the Cabinet, appoints.
2. Sessions of Parliament shall be held in such a way that no period of 12 months intervenes between the end of one session and the beginning of the next.
3. A session of Parliament shall be appointed to begin as soon as practicable after the declaration of the results of a general election, and in any event within three months after the declaration.
4. In the event of a failure to comply with subsection (2) or (3), the Speaker shall call a meeting of Parliament, unless in the meantime a meeting has been called under subsection (1).

• Extraordinary legislative sessions

117. Prorogation of Parliament

The Head of State, acting in accordance with—

a. a resolution of Parliament; or
b. subject to any resolution of Parliament, the advice of the Prime Minister,

may at any time prorogue Parliament.

118. Dissolution of Parliament

• Term length for first chamber

1. Subject to this section, Parliament is automatically dissolved at the end of the period of four years after the date of its first sitting after a general election.

• Dismissal of the legislature

2. The Head of State, acting in accordance with a resolution of Parliament, may at any time dissolve Parliament.

• Dismissal of the legislature

3. If—
   a. the office of Prime Minister is vacant; and
   b. no person has been elected to that office within such period as the Head of State, acting in his own deliberate judgment, thinks reasonable,

the Head of State, acting in his own deliberate judgment, may dissolve Parliament.

4. Subject to subsection (5), Parliament remains dissolved until the declaration of the results of the following general election.
5. Subject to subsection (6), if the Head of State certifies that there is an urgent matter requiring the attention of Parliament at a time while Parliament is dissolved he may reconvene Parliament, and Parliament may meet and act as if it had not been dissolved.
6. The functions of the Head of State under subsection (5) shall be performed—
   a. in accordance with the advice of the Cabinet; and
   b. subject to any such advice, in his own deliberate judgment.
7. A meeting of Parliament re-convened under subsection (5) shall consider only the matter certified under that subsection and matters that, in the opinion of the Speaker, arise out of it.

PART VII: THE COURTS

Division 1: General

• Structure of the courts

119. The judicial system

The judicial system of Tuvalu consists of—

a. the Sovereign in Council (as provided for in Division 4); and

b. the Court of Appeal for Tuvalu (as provided for in Division 3); and

c. the High Court of Tuvalu (as provided for in Division 2); and

d. such other courts and tribunals as are provided for by or under Acts of Parliament.

Division 2: The High Court

Subdivision A: Establishment, etc

• Structure of the courts

120. Establishment of the High Court

1. A High Court of Tuvalu is established.

2. The High Court is a superior court of record.

• Structure of the courts

121. Composition of the High Court

The High Court is constituted by the Chief Justice of Tuvalu and any other Judges appointed under section 123 (other Judges).

• Supreme court selection
• Structure of the courts
• Ordinary court selection

122. The Chief Justice of Tuvalu

1. An office of Chief Justice of Tuvalu is established.

2. The Chief Justice shall be appointed by the Head of State, acting in accordance with the advice of the Cabinet, for such period as is specified in the instrument of his appointment.

• Supreme court selection
• Structure of the courts
• Ordinary court selection

123. Other Judges

If the Cabinet is satisfied that the appointment of an additional Judge is necessary for the proper performance of the functions of the High Court, the Head of State, acting in accordance with the advice of the Cabinet given after consultation with the Chief Justice, may appoint a person to be a Judge of the High Court—

a. for such period; or

b. in relation to such matters,

as is or are specified in the instrument of his appointment.

• Structure of the courts
• Eligibility for ordinary court judges

124. Qualifications of Judges

A person is not qualified for appointment as a Judge of the High Court unless—

a. he is or has been a judge of a court of unlimited jurisdiction in civil and criminal matters in some country that has a legal system similar to that of Tuvalu, or of a court having jurisdiction in appeals from such a court; or

b. has been qualified for at least five years to practice as a barrister or solicitor, or the equivalent, in a country referred to in paragraph (a).

• Structure of the courts

125. Remuneration, etc., of Judges

1. The salaries or other remuneration and the allowances of the Judges of the High Court are as provided for in section 169 (remuneration of certain officials).

2. Subject to this Constitution and to any Act of Parliament, the other conditions of employment of a Judge of the High Court are as agreed between the Judge and the Cabinet.

• Structure of the courts

126. Tenure of office of Judges

1. A Judge of the High Court vacates his office—

a. on death; or

b. if he is removed from office under section 127 (removal of Judges from office); or

c. subject to subsection (2), if he resigns by notice in writing to the Head of State; or

d. at the end of the period of his appointment; or

e. in the case of a Judge appointed in accordance with section 123(b) (which relates to the appointment of other Judges for certain matters)—on the conclusion of the matters in relation to which he was appointed.

2. A resignation under subsection (1)(c) becomes effective on the date on which it is received by the Head of State, or on such later date as is fixed by agreement between the Judge and the Cabinet.

• Supreme/ordinary court judge removal
• Structure of the courts

127. Removal of Judges from office

1. A Judge of the High Court may be removed from office only—

a. for inability to perform properly the functions of his office (whether arising from infirmity of body or mind, or from some other cause) or for misbehaviour; and

b. in accordance with this section.

2. A Judge of the High Court may be removed from office by Parliament, by resolution, if—

a. the question of his removal from office has been referred to a tribunal appointed under subsection (3); and

b. the tribunal has advised Parliament that he ought to be removed from office for a reason set out in subsection (1)(a).

3. If the Cabinet decides, or Parliament resolves, that the question of removing a Judge from office should be investigated, the Head of State, acting after consultation with—

a. the Prime Minister; and

b. in the case of a Judge other than the Chief Justice, the Chief Justice,

shall appoint an independent tribunal consisting of a chairman and at least one other member, each of whom is qualified for appointment as a Judge of the High Court, to investigate the question.

4. The tribunal shall investigate the question and report on it to Parliament, with its advice whether or not the Judge should be removed from office.
5. The provisions of Schedule 3 (procedure, etc., of the Public Service Commission and certain Tribunals) apply to and in respect of the tribunal.

• Structure of the courts

128. Suspension of Judges

1. If the question of removing a Judge of the High Court from office has been referred to a tribunal under section 127 (removal of Judges from office) the Head of State, acting in accordance with the advice of the Cabinet, may suspend the Judge from office.
2. A suspension under subsection (1)—
   a. may be lifted at any time by the Head of State, acting in accordance with the advice of the Cabinet; and
   b. ceases to have effect if the tribunal advises Parliament that the Judge should not be removed from office.
3. A suspension under this section takes effect without loss of remuneration or other entitlements.

• Structure of the courts

129. Completion of pending matters

Even when he vacates his office (otherwise than by removal from office under section 127 (removal of Judges from office), a Judge of the High Court may continue to perform the functions of that office in relation to any proceedings commenced before him while his appointment was in force, and while so acting he continues to be entitled to his previous remuneration and other entitlements.

Subdivision B: Jurisdiction

• Constitutional interpretation
• Structure of the courts
• Supreme court powers

130. Jurisdiction of the High Court generally

1. The High Court has jurisdiction—
   a. in relation to Part II (Bill of Rights) of this Constitution—as provided by Division 5 (Enforcement of the Bill of Rights) of that Part; and
   b. in relation to questions as to membership of Parliament—as provided by section 100 (questions as to membership of Parliament); and
   c. in relation to other questions as to the interpretation or application of this Constitution—as provided by section 131 (constitutional interpretation); and

• Right to appeal judicial decisions

   d. in relation to appeals generally—as provided by section 132 (appellate jurisdiction of the High Court); and
   e. in other matters—as provided for by sections 14(3) (which relates to the effect of Parliamentary declarations of purpose) and 133 (other jurisdiction, etc., of the High Court), and otherwise in this Constitution.
2. Subject to any Act of Parliament providing for the jurisdiction of two or more members of the High Court sitting together, the jurisdiction of the High Court may be exercised by the Chief Justice or a single Judge.

• Constitutional interpretation
• Structure of the courts
• Supreme court powers
• Constitutionality of legislation

131. Constitutional interpretation

1. Subject to subsection (2), the High Court has original jurisdiction to determine any question as to the interpretation or application of this Constitution.
2. Where—
   a. any question as to the interpretation or application of this Constitution arises in any proceedings in a subordinate court; and
   b. that court is of the opinion that the question involves a substantial question of law,

the court may, and shall if a party to the proceedings so requests, refer the question to the High Court for determination.

• Right to appeal judicial decisions
• Structure of the courts

132. Appellate jurisdiction of the High Court

The High Court has such jurisdiction to determine appeals from decisions of subordinate courts as is provided for by this Constitution or by or under Acts of Parliament.

• Structure of the courts

133. Other jurisdiction, etc., of the High Court

The High Court has such other jurisdiction, power and authority as are conferred by or under Acts of Parliament.

Division 3: The Court of Appeal

• Structure of the courts

134. Establishment of the Court of Appeal

1. A Court of Appeal for Tuvalu is established.
2. The Court of Appeal shall be constituted as provided for by an Act of Parliament.
3. Parliament shall not proceed upon a Bill for an Act referred to in subsection (2) after its first reading in Parliament unless the Speaker has obtained, and has presented to Parliament, a report from the Chief Justice on the proposal.

• Constitutional interpretation
• Structure of the courts
• Supreme court powers

135. Jurisdiction of the Court of Appeal

1. Subject to—
   a. section 41(2) (which relates to frivolous or vexatious appeals against determinations as to contraventions of the Bill of Rights); and
   b. section 100(2) (appeals on questions as to membership of Parliament); and
   c. any Act of Parliament,

the Court of Appeal has jurisdiction to determine appeals from decisions of the High Court, whether in the exercise of original jurisdiction or in the exercise of appellate jurisdiction.

2. No Act of Parliament made for the purposes of subsection (1) affects the rights of appeal provided for by Division 5 (Enforcement of the Bill of Rights) of Part II.

Division 4: The Sovereign in Council

136. Jurisdiction of the Sovereign in Council

• Right to appeal judicial decisions

1. An appeal may be made from a decision of the Court of Appeal to the Sovereign in Council—

a. with the leave of the Court of Appeal—

i. in the case of a final decision on a question as to the interpretation or application of this Constitution; or

ii. in the case of a final decision in proceedings under Division 5 (Enforcement of the Bill of Rights) of Part II;

iii. in the case of—

A. a final decision; or

B. an interlocutory decision, that is to say, a decision of a kind referred to in subsection (2),

in any proceedings, where in the opinion of the Court of Appeal the question involved in the appeal is one which, because of its great general or public importance, or otherwise, ought to be submitted to the Sovereign in Council; and

b. in such other cases and on such conditions as are provided for by or under an Act of Parliament.

2. In subsection (1)(a)(iii)(B), "interlocutory decision" refers to a decision which—

a. is made during or for the purposes of some legal proceedings; and

b. is incidental to those proceedings; and

c. does not finally dispose of those proceedings.

PART VIII: PUBLIC EMPLOYMENT

Division 1: General

137. Interpretation of Part VIII

In this Part "personnel matter" means any service decision or action concerning an individual, including—

a. appointment and confirmation of appointment; and

b. promotion and demotion; and

c. transfer from office to office or from place to place (except movement within a common cadre); and

d. disciplinary action; and

e. suspension; and

f. cessation or termination of employment (except cessation or termination at the end of the person's regular period of employment as determined according to law).

138. Application of Part VIII

1. This Part does not apply to or in relation to—
    a. consultants, advisers or agents (without executive authority or power of direction of members of a State Service) who are—
        i. employed on an honorary basis; or
        ii. remunerated by fees or commission only,

        with or without travelling or subsistence allowances, expense allowances or similar allowances; or
    b. except as provided by or under an Act of Parliament—
        i. the holders of officers listed in section 161 (application of Division 5); or
        ii. the members of the staff of statutory authorities; or
        iii. members of, or members of the staff of, local governments or authorities.
2. Nothing in this Part prevents the creation of—
    a. statutory offices; or
    b. statutory corporations or authorities; or
    c. statutory or administrative commissions, boards or committees, or similar bodies,

or the determination, in accordance with law, of conditions of employment relating to them.

139. The State Services

1. Subject to this Part, Acts of Parliament shall make provision for and in relation to—
    a. a Public Service; and
    b. the Tuvalu Police.
2. Subject to this Part, Acts of Parliament may make provision for and in relation to—
    a. a Prison Service; and
    b. other State Services of Tuvalu.

140. Creation etc., of offices, etc., in State Services

Subject to any Act of Parliament, the Cabinet may—
- a. create or abolish offices or positions in State Services; and
- b. determine the qualifications for offices or positions in State Services; and
- c. prescribe the functions of offices or positions in State Services.

141. Appointments subject to approval, etc

1. Except as provided in this Constitution, this section does not apply to or in relation to any office or position established by this Constitution.
2. Nothing in this Part prevents an appointment to, or other service action in relation to, an office or position in a State Service from being made subject to—
    a. approval by Parliament, or by any other person or authority; or
    b. consultation with Parliament or with the members of Parliament, or with any other person or authority.

142. Localization

1. In this section "localization" means preference in public employment (either generally or in respect of an office or position, or a class of offices or positions) for—
   a. citizens of Tuvalu; or
   b. persons whose usual places of residence (apart from the requirements of employment) are in Tuvalu; or
   c. persons having some other special connection with Tuvalu, including the replacement of the holders of offices or positions who do not have the qualifications required by the policy.
2. A localization policy or programme may be laid down—
   a. by or under an Act of Parliament; or
   b. by decision of the Cabinet, approved by Parliament by resolution.
3. Nothing in a policy or programme laid down in accordance with subsection (2)(b) affects any right to termination or retirement benefits, or to compensation, otherwise possessed by any person affected by it.
4. Nothing in this Part, including Division 5 (Removal, etc., of Certain Officials), or in Part II (Bill of Rights) prevents the implementation of any localization policy or programme laid down under this section.

Division 2: The Public Service Commission

143. Establishment of the Commission

A Public Service Commission is established.

144. Composition of the Commission

The Public Service Commission shall consist of a Chairman and three other members.

145. Appointment of members of the Commission

1. The members of the Public Service Commission shall be appointed by the Head of State, acting in accordance with the advice of the Cabinet.
2. A person is not qualified for appointment as a member of the Commission if—
   a. he is a member of Parliament; or
   b. he is a candidate for election as a member of Parliament; or
   c. he is the holder of—
      i. any other office or position established by this Constitution; or
      ii. an office or position in a State Service; or
      iii. any other office or position prescribed for the purposes of this subsection by or under an Act of Parliament.

146. Remuneration, etc., of members of the Commission

1. The salary or other remuneration of the Chairman and the other members of the Public Service Commission are as provided for in section 169 (remuneration of certain officials).

2. The other conditions of employment of a member of the Commission are as prescribed by or under an Act of Parliament.

147. Tenure of office of members of the Commission

1. A member of the Public Service Commission vacates his office or position—
   a. if he is removed from office under Division 5 (Removal, etc., of Certain Officials); or
   b. subject to subsection (2), if he resigns by notice in writing to the Head of State; or
   c. if he ceases to be qualified for appointment by virtue of section 145(2) (which relates to disqualification from appointment); or
   d. at the end of the period of four years after the date of his appointment.
2. A resignation under subsection (1)(b) takes effect on the date on which it is received by the Head of State, or on such later date as is fixed by agreement between the member and the Minister responsible for Public Service matters.

148. Exclusion of members of the Commission from certain employment

1. This section does not apply to a person who has been acting temporarily in the office of a member of the Public Service Commission only for a period of less than six consecutive months.
2. Nothing in this section prevents other or additional disqualifications being imposed by or under an Act of Parliament or—
   a. a member or former member of the Public Service Commission; or
   b. a person referred to in subsection (1) ,

because of his membership or former membership of the Commission.

3. A member of the Public Service Commission is not eligible for appointment to any office or position referred to in section 145(2)(c) (which relates to certain offices and positions the holders of which are disqualified from appointment to the Public Service Commission).
4. A former member of the Public Service Commission is not eligible for appointment to any office or position referred to in section 145(2)(c) (which relates to certain offices and positions the holders of which are disqualified from appointment to the Public Service Commission) before the end of the period of two years after the date on which he ceased, or last ceased, to be a member of the Commission.

Division 3: General Functions of the Public Service Commission

149. Functions of the Commission

1. Subject to this Constitution and in particular to section 150 (independence of the Commission), and to any Act of Parliament, the Public Service Commission is responsible for—
   a. the efficient management and control of the Public Service in relation to matters referred to in paragraphs (a)–(f) of the definition "personnel matters" in section 137 (interpretation of Part VIII); and
   b. all personnel matters connected with the Public Service; and

c. such matters in relation to the other State Services and the services of other governmental bodies as are prescribed,

and has such other functions as are prescribed.

2. Subject to section 150 (independence of the Commission), the Public Service Commission—

a. may at any time; and

b. shall at the request of the Minister responsible for Public Service matters,

inform or advise the Cabinet as to any matter within the functions of the Commission.

150. Independence of the Commission

1. Subject to section 15 (independence) of Schedule 1, in personnel matters the Public Service Commission shall comply with any general directions as to policy given by the Cabinet, but otherwise is not subject to direction or control by any other person or authority.

2. A policy direction given under subsection (1)—

a. shall be published in any manner prescribed for the publication of subordinate legislation; and

b. shall immediately be forwarded by the Minister responsible for Public Service matters to the Speaker, for presentation to Parliament.

3. Except in relation to personnel matters, the Public Service Commission is responsible to the Cabinet for the performance of its functions.

151. Appeals within State Services

1. The independence conferred on the Public Service Commission by section 150 (independence of the Commission) is not affected by any provision of an Act of Parliament providing for an appeal, to an independent tribunal or authority established by an Act of Parliament, from—

a. a decision of the Commission; or

b. any recommendation or advice to the Commission; or

c. any advice proposed to be given by the Commission to the Head of State.

2. The provisions of section 150 (independence of the Commission) and of subsection (1) apply to and in relation to any tribunal or authority that may be established under subsection (1) in the same way as they apply to and in relation to the Public Service Commission.

152. Procedures, etc., of the Commission

Subject to any Act of Parliament, the provisions of Schedule 3 (Procedures, etc., of the Public Service Commission and Certain Tribunals) apply to and in respect of the Public Service Commission.

153. Delegation by the Commission

1. With the approval of the Minister responsible for Public Service matters, the Public Service Commission may, in writing, delegate to any person any of its functions.

2. A delegation under subsection (1)—

a. may apply generally, or in respect of any part of Tuvalu or of any place specified in the instrument of delegation; and

b. may be made subject to such conditions, limitations and restrictions as are so specified.

3. A delegation under this section is revocable, in writing, at will, and no delegation prevents the performance of a function by the Commission.

4. If a delegation under this section relates to personnel matters, in performing the delegated function the delegate is subject to the same freedom from direction or control as the Commission, and the provisions of sections 150 (independence of the Commission) and 151, (appeals with State Services) with the necessary modifications, apply accordingly.

Division 4: Personnel Functions

154. Application of Division 4

1. This Division applies to and in relation to any Act of Parliament made for the purposes of section 139 (the State Services) establishing a State Service, and to any regulations or other subsidiary legislation made under such an Act.

2. The provisions of this Division shall be read subject to this Constitution and in particular to—

a. section 142 (localization); and

b. Division 5 (Removal, etc., of Certain Officials).

155. The Public Service

Authority in relation to personnel matters in respect of members of the Public Service shall be vested in the Public Service Commission.

156. Magistrates

1. The provisions of this section apply in relation to a magistrate of a subordinate court irrespective of whether he is a member of the Public Service.

2. Authority in relation to personnel matters in respect of magistrates of subordinate courts in their capacity as magistrates shall be vested in the Head of State, acting in accordance with the advice of the Public Service Commission, subject to the approval, either general or specific, of the Chief Justice or a person authorized by him for the purpose.

157. The Police Force

1. An office of Chief of Police is established as an office in the Tuvalu Police.

2. The Chief of Police shall be appointed in accordance with section 159(5)(a) (which relates to the appointment of the Chief of Police).

3. Excluding the Chief of Police, members of the Tuvalu Police of or above the rank of Inspector (or the equivalent rank as defined by or under an Act of Parliament) may be appointed, removed and disciplined in the same manner, with any necessary modifications, as members of the Public Service under section 155 (the Public Service).

4. Other members of the Tuvalu Police may be appointed, removed and disciplined by the Chief of Police, subject to appeal to the Public Service Commission in the case of removal or disciplinary action.

158. Secretaries to Ministries

1. In this section—
   a. "Secretary" means the Secretary or other head of a Ministry or office of Government (being a member of the Public Service) who is directly responsible to a Minister, but does not include the Secretary to Government; and
   b. a reference to the appointment of a Secretary includes a reference to—
      i. his appointment from outside the Public Service; and
      ii. his promotion or transfer from some other office outside a common cadre.
2. Secretaries—
   a. shall be appointed only with the concurrence of the Cabinet; and
   b. form a common cadre or (as prescribed by or under an Act of the Parliament) common cadres, to which may be added other senior members (as so prescribed) of the Public Service.
3. The Cabinet may at any time request the Public Service Commission to advise the Head of State to appoint a particular person to be a Secretary.
4. If the Cabinet makes a request under subsection (3), the Public Service Commission shall consider the request and advise of its decision.
5. No Secretary shall be appointed from outside the State Services unless the Public Service Commission determines that the appointee has clearly more merit than a serving member of the State Services.

159. Special cases of appointments

1. This section shall be read subject to section 142 (localization).
2. The Auditor-General—
   a. shall be appointed by the Head of State, acting in accordance with the advice of the Public Service Commission, and with the approval of Parliament signified by resolution; and
   b. may be suspended or removed from office in accordance with Division 5 (Removal, etc., of Certain Officials).
3. The Secretary to Government—
   a. shall be appointed by the Head of State, acting in accordance with the advice of the Public Service Commission given after consultation with the Cabinet; and
   b. may be suspended or removed from office in accordance with Division 5 (Removal, etc., of Certain Officials).

• Attorney general

4. The Attorney-General—
   a. shall be appointed by the Head of State, acting in accordance with the advice of the Cabinet given after consultation with the Public Service Commission; and
   b. may be suspended or removed from office in accordance with Division 5 (Removal, etc., of Certain Officials).
5. The Chief of Police—
   a. shall be appointed by the Head of State, acting in accordance with the advice of the Public Service Commission given after consultation with the Cabinet; and
   b. may be suspended or removed from office in accordance with Division 5 (Removal, etc., of Certain Officials).

6. The functions of the Head of State under this Division in relation to the personal staff of the Governor-General who are members of a State Service shall be exercised by the Governor-General acting in his own deliberate judgment.

Division 5: Removal, etc., of Certain Officials

160. Interpretation of Division 5

In this Division—

- "the appropriate authority", in relation to an office or position to which this Division applies, means—
  - **a.** the person or authority having power to make appointments to the office or position, acting in accordance with the prescribed manner of exercise of that power; or
  - **b.** some other person or authority prescribed for a particular case;
- "member of the appropriate authority", in a case where the appropriate authority acts in accordance with the advice of, or after consultation with, any other person or authority, includes—
  - **a.** that other person or authority; and
- a member of that other authority.

161. Application of Division 5

1. This Division applies to the offices of—

- **a.** Secretary to Government; and
- **b.** Attorney-General; and
- **c.** Auditor-General; and
- **d.** Chief of Police; and
- **e.** members of the Public Service Commission,

and any other office or position to which this Division is applied by an Act of Parliament.

2. The provisions of this Division shall be read subject to section 142 (localization).

162. Removal of prescribed officials from office

1. Subject to section 164 (contract employment), the holder of an office or position to which this Division applies may be removed from office only—

- **a.** for inability to perform properly the functions of his office or position (whether arising from infirmity of body or mind, or from some other cause), or for misbehaviour; and
- **b.** in accordance with this section.

2. The holder of an office or position to which this Division applies may be removed from office by the appropriate authority if—

- **a.** the question of his removal from office has been referred to a tribunal appointed under subsection (3); and
- **b.** the tribunal has advised the appropriate authority that he ought to be removed from office for a reason set out in subsection (1)(a).

3. If the Cabinet or the appropriate authority decides that the question of removing from office the holder of an office or position to which this Division applies should be investigated under this section, the Head of State, acting after consultation with the Prime Minister, shall appoint an independent tribunal consisting of—
   a. a chairman who is qualified for appointment as a Judge of the High Court; and
   b. not less than one other member, with qualifications or experience relevant to the particular matter.
4. A person is not qualified to be appointed under subsection (3)(b) if he—
   a. is the Governor-General; or
   b. is a member of Parliament; or
   c. is a member of the appropriate authority in relation to the person concerned; or
   d. is, or has been within the preceding 12 months, a subordinate of the person concerned; or
   e. has been involved in formulating advice on the question.
5. The tribunal shall investigate the question and report on it to the appropriate authority, with its advice whether the person concerned should be removed from office.
6. The provisions of Schedule 3 (Procedure, etc., of the Public Service Commission and Certain Tribunals) apply to and in respect of the tribunal.

163. Suspension of prescribed officials

1. If the question of removing a person from office has been referred to a tribunal under section 162 (removal of prescribed officials from office), the appropriate authority may suspend him from office.
2. A suspension under subsection (1)—
   a. may be lifted at any time by the appropriate authority; and
   b. ceases to have effect if the tribunal advises the appropriate authority that the person concerned should not be removed from office.
3. A person suspended under this section shall receive remuneration or other entitlements in accordance with the policy in force for the time being in the Public Service and provided for in General Administrative Orders.

164. Contract employment

If—

   a. the holder of an office or position to which this Division applies is employed in that office or position under a contract (whether with the Government or otherwise); and
   b. the contract provides for his removal or suspension from office,

nothing in the preceding provisions of this Division prevents his being removed or suspended in accordance with the contract.

PART IX: FINANCE

Division 1: Parliament and Finance

• Budget bills

165. Parliamentary responsibility for finance

1. Notwithstanding anything in this Constitution (other than section 169 (remuneration of certain officials), the raising and spending of money by the Government (including the imposition of taxation and the raising of loans) is subject to authorization and control by Parliament, and shall be regulated by an Act of Parliament.

2. For each financial year there shall be—

- **a.** a National Budget, comprising estimates of—
  - **i.** money proposed to be raised by the Government; and
  - **ii.** money proposed to be spent by the Government,

  in respect of the financial year; and
- **b.** appropriations for the service of the financial year,

and there may be such supplementary Budgets and supplementary appropriations as are necessary.

3. Nothing in subsection (2) prevents an appropriation being expressed—

- **a.** to continue after the end of the financial year; or
- **b.** to lapse before the end of the financial year.

• First chamber reserved policy areas

166. Executive initiative

1. Except on the recommendation of a Minister, Parliament shall not provide for—

- **a.** the imposition or increase of taxation, or the raising of money by the Government; or
- **b.** the imposition or increase of any charge on the public funds of Tuvalu; or
- **c.** the alteration of any charge on the public funds of Tuvalu otherwise than by reducing it; or
- **d.** the compounding or remission of any debt due to the Government.

2. Parliament may reduce the amount of any proposal—

- **a.** for taxation; or
- **b.** for the raising of public revenue; or
- **c.** for any expenditure of public money.

3. Parliament may not—

- **a.** increase the amount of any proposal; or
- **b.** change the effect of any proposal; or
- **c.** change the purpose of any proposal,

referred to in subsection (2)(a), (b) or (c).

167. The Consolidated Fund

1. There shall be a Consolidated Fund of Tuvalu, into which, subject to any Act of Parliament, all public money shall be paid.

2. Acts of Parliament may make provision for or in respect of other public funds not forming part of the Consolidated Fund, which shall be administered and dealt with in accordance with Acts of Parliament.

168. Accounting, etc., for public money

1. All money of or under the control of the Government shall be dealt with and properly accounted for in accordance with law.
2. No money of or under the control of the Government shall be spent except as provided by this Constitution or by or under an Act of Parliament.

• Compensation of legislators

169. Remuneration of certain officials

1. This section applies to the offices of—
   a. Governor-General; and
   b. Speaker; and
   c. Prime Minister and other Ministers; and
   d. other members of Parliament; and
   e. Judges of the High Court; and
   f. Attorney-General; and
   g. Auditor-General; and
   h. Chief of Police; and
   i. members of the Public Service Commission.
2. Subject to this section, the holders of the offices to which this section applies shall be paid such salaries or other remuneration and such allowances as are specifically prescribed by an Act of Parliament.
3. The remuneration and allowances referred to in subsection (2) are charged on and shall be paid out of the Consolidated Fund without appropriation otherwise than by this section.

• Protection of judges' salaries

4. Subject to subsections (5) and (6), the remuneration and allowances payable to the holder of an office to which this section applies (other than allowances which are specifically excluded by Act of Parliament from the operation of this subsection) shall not be altered to his disadvantage after his appointment.
5. Subsection (4) does not apply in respect of any reduction in remuneration or allowances which is part of a general reduction applied proportionately to—
   a. all offices to which this section applies; and
   b. all other offices the remuneration of which is specifically prescribed by Act of Parliament.
6. For the purposes of subsection (4), where any remuneration or allowance to which that subsection applies is based, whether in law or in practice, on a choice made by the holder of the office in question, the remuneration or allowance which he chooses shall be considered to be more advantageous to him than any other which he might have chosen.

Division 2: The Auditor-General

170. Establishment of the office of Auditor-General

1. An office of Auditor-General for Tuvalu is established.
2. The Auditor-General shall be appointed in accordance with section 159(2)(a) (which relates to the appointment of the Auditor-General).

171. Independence of the office of Auditor-General

Subject to section 15 (independence) of Schedule 1, in the performance of his functions under this Constitution and any other law the Auditor-General is not subject to the direction or control of any other person or body.

172. Functions of the Auditor-General

1. The Auditor-General shall inspect and audit, and report at least once in every financial year to Parliament on—
   a. the public accounts of Tuvalu; and
   b. the control of public money and property of Tuvalu; and
   c. all transactions with or concerning public money or property of Tuvalu,

and has such other functions as are, subject to subsection (4), conferred on him by an Act of Parliament.

2. Unless other provision is made by or under an Act of Parliament in respect of the inspection and audit of them, subsection (1) extends to the accounts, finances and property of—
   a. each branch, department, agency and instrumentality of the Government; and
   b. each body set up by an Act of Parliament, or by executive or administrative act of the Government, for governmental or official purposes.
3. Even if other provision for inspection or audit is made as referred to in subsection (2), the Auditor-General may, if he thinks it proper to do so, inspect and audit, and report to Parliament on, any accounts, finances or property of an organization referred to in that subsection so far as they or it relate to, or consist of or are derived from, public money or property of Tuvalu.
4. An Act of Parliament may—
   a. expand, and provide in more detail for, the functions of the Auditor-General under the preceding provisions of this section; and
   b. confer on the Auditor-General additional functions (including functions of the nature of an efficiency audit or value-for-money audit), not inconsistent with the performance of the functions conferred by those provisions.
5. Subject to any Act of Parliament, the functions of the Auditor-General may be performed—
   a. in person; or
   b. through officers responsible to him, acting in accordance with his general or specific instructions,

and references to the Auditor-General include references to officers so acting.

PART X: TRANSITIONAL

173. Transitional provisions

The transitional provisions specified in Schedule 5 shall have effect notwithstanding anything contained in this Constitution.

SCHEDULES

SCHEDULE 1: Rules for the Interpretation of the Constitution (Section 4)

1. Application of Schedule 1

1. The provisions of this Schedule apply in the interpretation of this Constitution, except where in relation to a particular provision of this Constitution the context indicates otherwise.
2. Except where otherwise stated in this Constitution, the provisions of this Schedule do not apply to any other law unless they are adopted by law for the purpose.
3. This Schedule shall be read subject to section 4 (interpretation of the Constitution).

2. General definitions

1. In this Constitution—
   - "act" includes omission and failure to act:
   - "Act" or "Act of Parliament" means, in accordance with section 86 (manner of exercise of the law-making power), a Bill passed by Parliament and assented to by the Head of State;
   - "alteration", in relation to all or any provisions of this Constitution or any other law, includes—
     a. their repeal, with or without re-enactment or the substitution of new provisions; and
     b. the modification of them or of their application; and
     c. their suspension, in whole or in part, or the lifting of any suspension; and
     d. the making of any provision that is inconsistent with them;
   - "appropriation" means the action of setting public money aside, in accordance with law, for a specified purpose;
   - "Appropriation Bill" means a Bill dealing only with appropriations of public money and matters incidental to appropriations of public money;
   - "the Attorney-General" means the Attorney-General for Tuvalu whose office is provided for by section 79 (the Attorney-General);
   - "the Auditor-General" means the Auditor-General for Tuvalu whose office is provided for by section 170 (establishment of the office of Auditor-General);
   - "Bill" means a proposed Act of Parliament that has been introduced into Parliament;
   - "bye-election" means an election of a member of Parliament consequent on a casual vacancy;
   - "caretaker government" means a Cabinet continuing in office under section 71 (caretaker governments);
   - "the Chief Justice" means the Chief Justice of Tuvalu whose office is provided for by section 122 (the Chief Justice of Tuvalu);
   - "the Clerk of Parliament" means the Clerk of Parliament whose office is provided for by section 115 (Clerk of Parliament and other officers);

- "committee of Parliament" means a committee—
  - **a.** appointed in accordance with the Rules of Procedure of Parliament, or in accordance with an Act of Parliament; and
  - **b.** consisting of members of Parliament with or without other persons, and includes—
  - **c.** a committee of the whole Parliament; and
  - **d.** a subcommittee of a committee of Parliament as described in the preceding provisions of this definition;
- "Commonwealth country" means a country declared by or under an Act of Parliament to be a Commonwealth country, and includes a dependency of such a country;
- "the Court of Appeal" means the Court of Appeal for Tuvalu established under section 134 (establishment of the Court of Appeal);
- "the Deputy Prime Minister" means the holder of the office allowed for by section 62(4) (which allows one of the Ministers to be appointed Deputy Prime Minister), and includes—
  - **a.** a person appointed under section 69 (acting Ministers) to perform temporarily the functions of the Deputy Prime Minister; and
  - **b.** a person performing the functions of the Deputy Prime Minister in a caretaker government;
- "disciplinary law" means a law regulating a disciplined force;
- "disciplined force" means—
  - **a.** a naval, military or air force, or a coastguard or maritime surveillance service, whether of Tuvalu or of some other country; or
  - **b.** the Tuvalu Police or any other police force established by Act of Parliament; or
  - **c.** any separate Prison Service established by Act of Parliament;
- "electoral district", means an electoral district for the purpose of the election of members of Parliament, established under section 82 (composition of Parliament);
- "final decision", in relation to any judicial proceedings, means a decision that finally disposes of the proceedings, whether or not it is subject to appeal or review;
- "financial year" means the period of 12 months ending on 31 December in any year, or such other period of 12 months as is fixed by or under an Act of Parliament;
- "function" includes power, duty and responsibility;
- "general election" means a general election of the members of Parliament consequent on the dissolution of Parliament;
- "the Government" means the executive government of Tuvalu;
- "governmental body" means—
  - **a.** the Government; or
  - **b.** a local government or authority; or
  - **c.** a department, branch, agency or instrumentality of the Government or of a local government or authority; or
  - **d.** a body set up by law, or by administrative or executive act, for governmental or official purposes;

- "the Governor-General" means the Governor-General of Tuvalu whose office is provided for by section 54 (establishment of office of Governor-General), and includes—
  - **a.** a person appointed in accordance with section 56(2) (which relates to the appointment of an acting Governor-General); or
  - **b.** the Speaker, performing under section 56 (acting Governor-General) any of the functions of the Governor-General;
- "the Head of State" means—
  - **a.** the Sovereign; or
  - **b.** the Governor-General, as the representative of the Sovereign;
- "the High Court" means the High Court of Tuvalu established by section 120 (establishment of the High Court);
- "the Independence Constitution" means the Constitution set out in the Schedule to the Tuvalu Independence Order 1978 of the United Kingdom;
- "Independence Day" means 1 October 1978;
- "Judge", or "Judge of the High Court", means the Chief Justice, or a Judge of the High Court appointed under section 123 (other Judges);
- "meeting", in relation to Parliament, means any period of sitting days during which Parliament—
  - **a.** is not prorogued; and
  - **b.** does not adjourn indefinitely or to the call of the Speaker;
- "member", in relation to a disciplined force, includes a person who, under the disciplinary law of that force, is subject to the discipline of that force;
- "Minister" means the Prime Minister or another Minister appointed under section 67 (the other Ministers), and includes—
  - **a.** a person appointed under section 69 (acting Ministers) to perform temporarily the functions of a Minister; and
  - **b.** a person performing the functions of a Minister in a caretaker government;
- "month" means calendar month;
- "offence" means a contravention of or a failure to comply with a law of Tuvalu;
- "Parliament" means the Parliament established for Tuvalu by section 81 (establishment of Parliament);
- "person" includes—
  - **a.** any body of persons, corporate or unincorporate; and
  - **b.** the holder (whether substantive or other) of—
    - **i.** any office or position in a State Service; or
    - **ii.** any office or position established by this Constitution or by or under an Act of Parliament;
- "prescribed" means prescribed by this Constitution, or by or under an Act of Parliament;
- "the Prime Minister" means the Prime Minister whose office is provided for by section 62(1) (which relates to the establishment of an office of Prime Minister), and includes—
  - **a.** a Minister performing the functions of the Prime Minister under section 68 (acting Prime Minister); and
  - **b.** a person performing the functions of the Prime Minister in a caretaker Government;
- "prorogation" means the prorogation of Parliament under section 117 (prorogation of Parliament);

- "public officer" means a member of the Public Service;
- "Public Service" means the permanent civil administrative Ministries controlled by the Secretary to Government or a Secretary and subject to Executive supervision;
- "rules of court" means any law made by a competent authority for regulating the practice and procedure of a court;
- "the rules of Procedure of Parliament" means any rules made under section 108 "(Rules of Procedure)";
- "the Secretary to Government" means the Secretary to Government whose office is provided for in section 78 (Secretary to Government);
- "session", in relation to Parliament, means the series of sitting days occurring during the period—
  - **a.** commencing with the first sitting day after Parliament is prorogued, or after a general election; and
  - **b.** ending on the day on which Parliament is next prorogued or dissolved without being prorogued;
- "sign" includes mark;
- "sitting day" means a day on which Parliament actually meets;
- "the Sovereign" means the Sovereign of Tuvalu;
- "the Sovereign", in the sense of the Sovereign of Tuvalu, has the meaning given to that expression by section 13 (references to the Sovereign of Tuvalu) of this Schedule;
- "the Sovereign", in the sense of the Sovereign of the United Kingdom, has the meaning given to that expression by section 14 (references to the Sovereign of the United Kingdom) of this Schedule:
- "the Sovereign in Council" means the Sovereign of the United Kingdom, acting by and with the advice of the Judicial Committee of his Privy Council and in accordance with the laws of England from time to time applicable in relation to appeals to the Privy Council or to the Judicial Committee;
- "the Speaker" means the Speaker of Parliament whose office is provided for by section 103 (establishment of the office of Speaker), and includes a member of Parliament performing the functions of the Speaker under section 107 (acting Speaker);
- "State Service" means a service referred to in section 139 (the State Services);
- "subordinate court" means a court other than—
  - **a.** the Sovereign in Council; and
  - **b.** the Court of Appeal; and
  - **c.** the High Court;
- "superior court", in relation to another court, means a court which has jurisdiction to determine appeals from, or to review, decisions of the other court;
- "taxation" includes rates, charges, fees and imposts of any kind;
- "the Tuvalu Police" means the State Service provided for by section 139(1)(b) (which relates to the establishment of the Tuvalu Police);
- "the United Kingdom" means the United Kingdom of Great Britain and Northern Ireland;
- "writing" includes any method of reprinting or reproducing words in a visible form;
- "year" means any period of 12 months.

2. Unless the context requires otherwise, where an expression is defined for any purpose in this Schedule or otherwise in this Constitution then for that purpose all grammatical variations and cognate and related expressions are to be understood in the same sense.
3. Unless the context requires otherwise, a reference in this Constitution to an institution, office, position or thing is a reference to the appropriate institution, office, position or thing provided for by this Constitution.

3. Form of the Constitution

1. The Preamble forms part of this Constitution, and establishes principles upon which this Constitution, and the conduct of the public affairs of Tuvalu, are to be based.
2. The Schedules to this Constitution form part of this Constitution.
3. The head-notes to the sections of this Constitution do not form part of this Constitution, but other headings do form part of it.
4. A reference in this Constitution to a subdivision of this Constitution without further identification shall be read as a reference to the corresponding subdivision of the body of this Constitution (that is, excluding the Preamble and the Schedules).

4. Meaning of language used

1. This Constitution is intended to be read as a whole.
2. All provisions of this Constitution, and all words, expressions and statements in this Constitution, shall be given their fair and liberal meaning, without unnecessary technicality.

5. Gender and number

In this Constitution—

a. the masculine gender includes the female gender; and
b. the feminine gender includes the masculine gender; and
c. the singular number includes the plural; and
d. the plural number includes the singular.

6. Time limits

1. Where no time is prescribed by this Constitution within which an act is required or permitted to be done, the act shall, or may, as the case requires, be done with all convenient speed and as often as is necessary.
2. Where—
   a. a time limit is imposed by this Constitution for any purpose; and
   b. in a particular case it is not practicable to comply with the limit, the limit shall be deemed to be extended by whatever period is necessary to make compliance practicable.
3. The operation of subsection (2) is not excluded by a provision that unqualifiedly specifies a time limit or a maximum time limit.

7. Attainment of age

For all purposes of this Constitution, a person attains a particular age at the first moment of the relevant anniversary of his birth.

8. Powers of majority, and quorums

1. Where this Constitution requires or permits an act to be done by more than two persons, a majority of them may do it.
2. Subsection (1) does not affect any requirement of a quorum, and, subject to subsection (3), where no quorum is prescribed by this Constitution the quorum is the total membership.
3. A power conferred by this Constitution to determine the procedures of a body includes power to determine a quorum (not being fewer than a majority of the total membership).

9. References to "total membership

A reference in this Constitution to the total membership of a body or authority is a reference to the total number of seats or places on the body or authority, irrespective of whether any of them are vacant.

10. Performance of constitutional functions

1. Where this Constitution confers a power or imposes a duty, the power may be exercised or the duty shall be performed, as the case may be, from time to time as occasion requires.
2. Where this Constitution confers a function on the holder of an office or position as such, the function may be performed by the holder (whether substantive or other) of the office or position from time to time.
3. Where this Constitution confers a power to make an instrument or a decision (other than a judicial decision), that power includes power, exercisable in the same manner and subject to the same conditions (if any), to revoke, vary or alter the instrument or decision.

11. Appointments, etc., requiring prior approval

1. Where by any provision of this Constitution an appointment or other act requires the prior approval of Parliament or of any other person or authority, and—
   a. it is for any reason not practicable to apply for the approval immediately; and
   b. there is an immediate need to make the appointment or to do the act,

the appointment may be made, or the act may be done, as the case may be, subject to later approval being applied for at the first reasonably available opportunity.

2. If later approval is refused, the refusal takes effect as a disallowance of the appointment or act.
3. The decision of the person or authority whose approval is required as to what is the first reasonably available opportunity for the purposes of subsection (2) is final.

12. Official appointments, etc

1. The succeeding provisions of this section shall, in relation to any office or position, be read subject to any provision of this Constitution relating to that office or position.

2. In this Constitution, a reference to the holder of an office or position by reference to the description of his office or position includes a reference to any person who is for the time being lawfully acting in, or performing the functions of, the office or position.
3. Where this Constitution confers power to make an appointment to act in, or to perform the functions of, an office or position, the power includes power—
    a. to remove or suspend a person so appointed; and
    b. to appoint another person temporarily in the place of a person so removed or suspended; and
    c. where the holder of the office or position is—
        i. unavailable; or
        ii. unable to perform the functions of the office or position; to appoint a person temporarily in his place; and
    d. if the office of position is vacant, to appoint a person to act in it until it is filled on a substantive basis,

subject to compliance with any conditions to which the exercise of the original power of appointment was subject.

4. In a case to which subsection (3)(c) applies, no question whether the need for the exercise of the power has arisen, or has ceased, shall be considered in any court.
5. A reference in this Constitution to a power to remove from office the holder of an office or position includes a reference to a power—
    a. to require the holder of the office or position to retire; or
    b. to terminate any contract under which the holder of the office or position is employed; or
    c. to determine whether any contract referred to in paragraph (b) should be renewed,

but nothing in this section confers any power to require a Judge of the High Court, the Auditor-General or the Chief of Police to retire.

6. Except where this Constitution provides otherwise the holder of an office or position established by this Constitution may resign from the office or position by written notice to the Secretary to Government, and the resignation takes effect—
    a. on a date specified in the notice; or
    b. when the notice is received by the Secretary to Government,

whichever is the later, but the resignation may be withdrawn, with the consent of the Secretary to Government, at any time before it takes effect.

7. When the holder of an office or position is on leave of absence pending relinquishment of the office or position—
    a. another person may be appointed to the office or position; and
    b. the person so appointed shall, for the performance of the functions of the office or position, be considered to be the sole holder of the office or position.
8. For the purposes of this Constitution, a person shall not be considered to be the holder of, or to be acting in, an office or position by reason only of the fact that—
    a. he is on leave of absence pending relinquishment of the office or position; or
    b. he is on leave without pay from the office or position; or
    c. he is receiving a pension or some other similar allowance; or
    d. he is a retired or reserve member of a naval, military or air force, or a special constable; or
    e. he is a member of the staff of a local government or authority; or

f. he is the holder of an office or position in the service of the Government, or is performing functions on behalf of the Government, if the only renumeration that he receives for it is by way of travelling or subsistence allowance, expense allowance or any similar allowance.

9. Subject to any provision of this Constitution relating to qualifications for, or disqualifications from, appointment, a person who has been the holder of an office or position is eligible for reappointment to that office or position.

13. References to the Sovereign of Tuvalu

1. Subject to subsection (2), a reference in this Constitution or any other law to the Sovereign of Tuvalu includes a reference to—

a. the Heirs and Successors of the Sovereign as declared or ascertained by or under an Act of Parliament; and

b. any person exercising the whole or the relevant part of the sovereignty of Tuvalu in accordance with an Act of Parliament.

2. Until an Act of Parliament is made for the purposes of subsection (1)(a) or (b), a reference to the Sovereign of Tuvalu shall be read as including a reference to—

a. the Sovereign of the United Kingdom; or

b. any person exercising the whole or the relevant part of the sovereignty of the United Kingdom,

as the case requires, in accordance with the law in force in England.

14. References to the Sovereign of the United Kingdom

A reference in this Constitution or in any other law to the Sovereign of the United Kingdom includes a reference to any person exercising the whole or the relevant part of the sovereignty of the United Kingdom in accordance with the law in force in England.

15. Independence

Where this Constitution provides that any person or authority is not subject to the direction or control of any other person or authority, that provision does not prevent-

a. direction or control by a court in the performance of judicial functions conferred on it by law; and

b. the regulation, by or under an Act of Parliament, of the performance of the functions of the person or authority.

16. Regulation of acts, etc

Where any provision of this Constitution provides for the regulation of an act or thing, unless the context indicates otherwise that provision does not authorize the prohibition of the act or thing, whether in law or in practice.

17. Impracticability of obtaining advice, etc

1. In this section—

- "the authorizing provision" means the relevant provision of this Constitution referred to in subsection (2)(a).
- "the prescribed authority" has the meaning given to it by subsection (2)(a).

2. This section applies in a case where—
   a. a provision of this Constitution requires or permits the Head of State, or any other person or authority, (referred to in this section as "the prescribed authority") to act—
      i. in accordance with the advice of some other person or authority; or
      ii. after consultation with some other person or authority; or
      iii. subject to the approval of some other person or authority; and
   b. the prescribed authority, acting in his or its own deliberate judgment, certifies in writing that he or it is satisfied that it is impracticable, in the circumstances, to comply, or to comply fully, with the authorizing provision.
3. In a case to which this section applies the prescribed authority, acting in his or its own deliberate judgment, may act after consultation with such persons (including any available persons, and any available members of the authority, referred to in subsection (2)(a)(i), (ii) or (iii) as he or it, acting in his or its own deliberate judgment, thinks proper to consult.
4. If in a case to which this section applies the prescribed authority acts as provided for by subsection (3)—
   a. he or it shall, as soon as practicable, report the circumstances to—
      i. the relevant person or authority referred to in subsection (2)(a)(i), (ii) or (iii); and
      ii. the Speaker, for presentation to Parliament; and
   b. as soon as practicable, and to the extent that it is practicable, the authorizing provision shall be complied with.

18. Acts in "deliberate judgment

Where this Constitution requires or permits an act to be done in the deliberate judgment of a person or authority—
   a. the exercise of the judgment must not be arbitrary or capricious; and
   b. except to the extent of paragraph (a), no question as to the exercise of the judgment shall be considered in any court.

19. Effect of repeal

1. In this section, "repeal" includes revocation, cancellation, suspension and expiry.
2. The repeal of any provision of this Constitution does not—
   a. revive anything that was not in force or existing immediately before the repeal took effect; or
   b. affect the previous operation of the repealed provision, or anything duly done or suffered under it; or
   c. affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed provision; or
   d. affect any penalty, forfeiture or punishment incurred in respect of an offence against the repealed provision; or
   e. affect any investigation, legal proceedings or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment.
3. Any investigation, legal proceedings or remedy referred to in subsection (2)(e) may be instituted, continued or enforced, and any penalty, forfeiture or punishment referred to in that paragraph may be imposed, as if the repealed provision had continued in force.

4. If a provision of this Constitution is repealed and re-enacted (with or without modification), a reference in any other law to the repealed provision shall, unless the context indicates otherwise, be read as a reference to the substituted provision.

20. Effect of disallowance

Where this Constitution provides that a law or any other thing may be disallowed, the disallowance takes effect in the same way as a repeal, revocation or cancellation would take effect, except that if the disallowed law or thing altered any other law or thing the disallowance revives the other law, or the previous situation, as the case may be as in existence immediately before the disallowance.

21. Multiple oaths, etc

1. A reference in this section to the holding of an office or position includes a reference to the temporary performance of the functions of the office or position.
2. If on or before commencing to hold an office or position established by this Constitution the holder is required to take an oath, or make a declaration, of allegiance, he is not required to do so again for any purpose during any continuous term for which he holds the office or position.
3. Where—
   a. the holder of an office or position established by this Constitution is required or permitted to perform temporarily the functions of another such office or position; and
   b. it is a requirement of the second office or position that the holder takes an oath or makes an affirmation,

then, in addition to the effect of subsection (2), no matter how often he performs temporarily those functions during any continuous period for which he holds the first office or position he is not required to take the oath or make the affirmation referred to in paragraph (b) more than once.

• Head of government selection

SCHEDULE 2: Election and Appointment of the Prime Minister (Section 63)

1. Functions of the Governor-General

The functions of the Governor-General under this Schedule shall be performed in his own deliberate judgment.

2. Election meetings

1. As soon as practicable after—
   a. a general election; or
   b. subject to section 71 (caretaker governments) of this Constitution, the occurrence of a vacancy in the office of Prime Minister,

the Governor-General shall call a meeting of the members of Parliament for the purpose of electing a Prime Minister.

2. If the vacancy occurred because of—
   a. the death of the Prime Minister; or

b. the Prime Minister's ceasing to be a member of Parliament for any reason other than the dissolution of Parliament, the meeting shall not be called until after the declaration of the result of the consequent bye-election.

3. The Governor-General shall issue to each member of Parliament a notice stating—

a. the date, time and place of the meeting; and

b. the date and time on or before which, and the place at which, nominations are to be delivered to the Governor-General.

4. The date fixed for the purposes of subsection (3)(b) shall be at least one day before the date fixed for the election meeting.

5. The election meeting shall consider only the election of a Prime Minister.

3. Nominations

1. All members of Parliament are eligible for nomination as candidates for election as Prime Minister.

2. No member may nominate more than one candidate.

3. A candidate may withdraw his candidature at any time before the commencement of voting at the election meeting.

4. Cancellation of proceedings

1. If at any stage of the proceedings a candidate—

a. dies; or

b. becomes, in the opinion of the Governor-General, seriously incapacitated,

the provisions of subsection (3) apply.

2. If—

a. at or after the time fixed under section 2(3)(b) (which relates to the time for nominations) of this Schedule there is no candidate for election; or

b. for any other reason the Governor-General is satisfied that the election cannot be, or is unlikely to be, successfully completed in accordance with this Schedule,

the provisions of subsection (3) apply.

3. In a case referred to in subsection (1) or (2), the Governor-General may either—

a. cancel the proceedings and commence them again; or

b. suspend the proceedings until a later time or date.

5. List of candidates

A list setting out all candidates and their nominators shall be given by or by direction of the Governor-General to each member of Parliament before the election meeting opens.

6. Quorum

1. The quorum for an election meeting is a majority of the total membership of Parliament.

2. If a quorum is not present at the time fixed under section 2(3)(a) (which relates to the time for the election meeting) of this Schedule, the Governor-General shall adjourn the meeting until a time, date and place fixed by him and announced at the failed meeting.

3. If at the time and place fixed under subsection (2) a quorum is again not present, the Governor-General shall cancel the proceedings and commence them again.

7. Conduct of the election meeting

1. The election meeting shall be presided over by the Governor-General, and the election shall be conducted by him.
2. Each member of Parliament has one vote at each ballot held in accordance with section 8 (conduct of the election) of this Schedule.
3. For the purpose of the counting of votes and for any other purpose relating to the conduct of the election, the Governor-General may request the assistance of such persons as he thinks necessary.
4. No person other than—
   a. the Governor-General; or
   b. a member of Parliament; or
   c. a person whose assistance is being given as requested under subsection (3),

shall be present at the election meeting.

5. Subject to this Schedule, the election meeting and the election shall be conducted in such manner as the Governor-General determines.

8. Conduct of the election

1. If there are more candidates than one, such number of ballots shall be held as is required to determine the result in accordance with this section.
2. The ballots shall be secret ballots.
3. Subject to the succeeding provisions of this section, if no candidate receives in a ballot the votes of a majority of the total membership of Parliament—
   a. the candidate who has the lowest number of votes shall be excluded; and
   b. a fresh ballot shall be held for the remaining candidates.
4. If in a case to which subsection (3) applies there is a tie between two or more candidates for the lowest number of votes in a ballot—
   a. not more than two special ballots shall be held to exclude one of them; and
   b. if after the second special ballot neither candidate has been excluded, the Governor-General shall decide by lot which one of them is to be excluded.
5. When in a ballot, whether the first ballot or a subsequent ballot, there are only two candidates, not more than—
   a. that ballot; and
   b. two further ballots,

shall be held, and if at the end of those ballots no candidate has received the votes of a majority of the total membership of Parliament the Governor-General shall cancel the election and commence the election procedure again.

9. Declaration of the result

1. If only one candidate is nominated, the Governor-General shall declare that candidate elected.
2. When the count has been completed in each ballot, the Governor-General shall—
   a. announce the number of votes received by each candidate; and
   b. if a candidate has received the votes of a majority of the total membership of Parliament—declare that candidate to be elected.

3. Upon the election of a Prime Minister under this Schedule, the Governor-General shall cause the election and the name of the Prime Minister—
   a. to be made known to the public in such manner as he thinks appropriate; and
   b. to be published in any manner prescribed for the publication of subordinate legislation.

10. Disputes

Any dispute arising out of or in connection with the calling or conduct of an election meeting, or the conduct of an election, under this Schedule shall be determined by the Governor-General, whose decision is final.

11. Saving of power to dissolve

Nothing in this Schedule affects the power of the Head of State to dissolve Parliament in accordance with section 118(3) (which relates to dissolution when a Prime Minister is not elected within a reasonable period).

SCHEDULE 3: Procedure, etc., of the Public Service Commission and Certain Tribunals (Sections 127, 152, 162)

1. Application of Schedule 3

This Schedule applies to the following authorities:—
   a. the Public Service Commission; and
   b. a tribunal appointed under section 127 (removal of Judges from office) to investigate the question of the removal of a Judge of the High Court; and
   c. a tribunal appointed under section 162 (removal of prescribed officials from office) to investigate the question of the removal of the holder of an office to which Division 5 (Removal, etc., of Certain Officials) of Part VIII applies.

2. Rules

Subject to this Constitution and to any Act of Parliament, an authority to which this Schedule applies may make rules for regulating its procedures and the performance of its functions.

3. Voting

All matters before a meeting of an authority to which this Schedule applies shall be decided in accordance with the majority of the votes of the total membership of the authority, and in the event of an equality of votes on a matter the person presiding has a casting vote, as well as an original vote.

4. Absence, etc

Subject to section 3 (voting) of this Schedule, the validity of the proceedings of an authority to which this Schedule applies is not affected by—
   a. any absence from a meeting; or

b. the fact that some person who was not entitled to do so took part in the proceedings.

5. Powers of certain tribunals

The tribunals referred to in section 1(b) and (c) (application of this Schedule) of this Schedule have the same powers as the High Court in respect of the attendance and examination of witnesses abroad, and in respect of the production of documents.

6. Procedures generally

Subject to any rules made under section 2 (rules) of this Schedule, an authority to which this Schedule applies may determine its own procedures.

SCHEDULE 4: Oaths and Affirmations (Sections 57, 72 and 112)

1. Oath, etc., of Allegiance

I, ,do swear(or solemnly affirm) that I will be faithful and bear true allegiance to the Sovereign of Tuvalu.

(So help me God)

2. Oath, etc., of Office of Governor-General

I, ,do swear(or solemnly affirm) that I will well and truly serve the Sovereign of Tuvalu in the office of Governor-General of Tuvalu (or in the performance of the functions of the Governor-General of Tuvalu under Section 52 of the Constitution).

(So help me God)

3. Oath, etc., of Office of Member of Cabinet

I, , being a member of the Cabinet for Tuvalu, do swear (or solemnly affirm) that—

I will to the best of my judgment, at all times when required to do so, freely give my counsel and advice for the good management of the affairs of Tuvalu.

I will not on any account, at any time whatsoever, disclose the counsel, advice, opinion or vote of any member of the Cabinet.

I will not, except with the authority of the Cabinet and to such extent as may be required for the good management of the affairs of Tuvalu, or as otherwise required or permitted by law, directly or indirectly reveal the business or proceedings of the Cabinet or any matter coming to my knowledge in my capacity as a member of the Cabinet.

In all things I will be a true and faithful member of the Cabinet.

(So help me God)

SCHEDULE 5: Transitional provisions (Section 173)

1. Interpretation

In this Schedule—

- "appointed day" means the day determined pursuant to section 4 of the Ordinance for the coming into effect of this Constitution;
- "existing laws" means any Acts of the Parliament of the United Kingdom, Orders of Her Majesty in Council, Ordinances, rules, regulations, orders or other instruments having effect as part of the law of Tuvalu (whether or not they have been brought into operation) immediately before the appointed day, but does not include the Tuvalu Independence Order 1978 or the Independence Constitution;
- "the Ordinance" means the Constitution of Tuvalu Ordinance 1986.

2. Existing laws

1. Subject to this section, on and after the appointed day all existing laws shall have effect as if they had been made in pursuance of this Constitution.
2. All existing laws shall be construed with such changes as to names, titles, offices, persons and institutions, and to such other formal and non-substantial changes, as are necessary to adapt them to the provisions of this Constitution.
3. The Governor-General may, by order published in the Gazette, at any time before 1 January 1988, make such amendments to any existing law (other than the Ordinance) as may appear to him to be necessary or expedient for bringing that law into conformity with any provision of this Constitution.
4. Nothing in this section shall be construed as affecting the operation of section 3 (the Constitution as supreme law) in relation to any existing law.

3. Prescribed matters

Where any matter that falls to be prescribed or otherwise provided for under this Constitution by or under an Act of Parliament is prescribed or otherwise provided for by or under an existing law (including any amendment to any such law made pursuant to section 2 (existing laws) of this Schedule, that prescription or provision shall, as from the appointed day, have effect (with such modifications, adaptions, qualifications and exceptions as may be necessary to bring it into conformity with this Constitution) as if it had been made by or under an Act of Parliament.

4. The Governor-General

1. The person who immediately before the appointed day holds office as Governor-General under the Independence Constitution shall, as from that day, hold office as Governor-General as if he had been appointed thereto under section 55 (appointment, etc., of the Governor-General).
2. The person who holds office as Governor-General by virtue of subsection (1) shall be deemed to have complied with section 57 (oaths and affirmations by the Governor-General).
3. For the purpose of calculating the period of four years referred to in subsection (3)(f) of section 55 (appointment, etc., of the Governor-General) in relation to the person who holds office as Governor-General by virtue of subsection (1), that period shall be deemed to have commenced on the appointed day, but without prejudice to the operation of any of the other provisions of subsection (3) of that section.

5. Ministers

1. Any person who immediately before the appointed day holds office as Prime Minister or any other Minister under the Independence Constitution shall, as from that date, hold office as Prime Minister or other Minister, as the case may be, as if he had—
   a. in the case of the Prime Minister, been elected thereto under section 63 (the Prime Minister); or
   b. in the case of any other Minister, been appointed thereto under section 67 (the other Ministers).
2. Any person holding office as Prime Minister or other Minister by virtue of subsection (1) who before the appointed day was assigned, and immediately before that date held, responsibility for any business of the Government shall be deemed to have been assigned responsibility for that business under section 75 (assignment of responsibilities to Ministers).

6. Parliament

1. Unless and until the number of members of Parliament is fixed pursuant to section 82 (composition of Parliament) by or under an Act of Parliament, the number of members is 12.
2. Any person who immediately before the appointed day is a member of the former Parliament shall on that day become a member of Parliament and shall be deemed to have complied with the requirements of section 112 (oath and affirmation of members of Parliament) and shall hold his seat in Parliament in accordance with the provisions of the Constitution.
3. The person who immediately before the appointed day holds the office of Speaker of the former Parliament shall on that day become Speaker of Parliament and shall hold office as such in accordance with the provisions of this Constitution.
4. The rules of procedure of the former Parliament as in force immediately before the appointed day shall, except as may be otherwise provided under section 108 (rules or procedure) have effect after that day as if they had been made under that section but shall be construed with such modifications, adaptions, qualifications and exceptions as may be necessary to bring them into conformity with this Constitution.
5. For the purpose of the first determination after the appointed day of the period of four years referred to in section 118(1) (which relates to the automatic dissolution of Parliament), that period shall be deemed to have commenced after the date of the first sitting of the former Parliament after the last general election preceding the appointed day.
6. Any Bill which, before the appointed day, was before the former Parliament—
   a. shall not lapse; and
   b. shall on and after the appointed day, be treated as a Bill for an Act before Parliament; and
   c. may be proceeded with accordingly—
      i. any stage of the Bill completed before the former Parliament being treated as having been completed before Parliament; and
      ii. any stage of the Bill commenced before the former Parliament being continued before Parliament.
7. Any business commenced before the former Parliament may, on and after the appointed day, be continued before Parliament.
8. In this section, "the former Parliament" means the Parliament of Tuvalu established by the Independence Constitution.

7. Public Officers

1. Every person who immediately before the appointed day holds or is acting in a public office shall, as from that day, hold or act in that office or the corresponding office established by this Constitution as if he had been appointed to do so in accordance with the provisions of this Constitution and shall be deemed to have taken any oaths required upon such appointment by any existing law.
2. Any person who holds office by virtue of subsection (1) and who would, under the Independence Constitution or any existing law, have been required to vacate office at the expiration of any period or on the attainment of any age shall vacate his office under this Constitution upon the expiration of that period or upon the attainment of that age.
3. The provisions of this section shall be without prejudice to any power conferred by or under this Constitution upon any person or authority to make provision for the abolition of offices and for the removal from office of persons holding or acting in any office.
4. In this section, "public office" shall be construed as including the office of member (including Chairman) of the Public Service Commission established by the Independence Constitution.

8. Legal Proceedings

1. All proceedings commenced or pending before the appointed day before the High Court or the Court of Appeal established by the Independence Constitution may continue on and after that day before the High Court or the Court of Appeal, as the case may be, established by this Constitution.
2. Any decision given before the appointed day by the High Court or the Court of Appeal established by the Independence Constitution shall for the purposes of the enforcement or, in the case of a decision given by the High Court, for the purpose of any appeal therefrom, have effect on and after that day as if it were a decision of the High Court or the Court of Appeal, as the case may be, established by this Constitution.

9. Financial

1. In this section, "the relevant financial year" means the financial year ending on 31 December 1986.
2. Section 165 (Parliamentary responsibility for finance) shall not apply, and the following provisions shall apply in relation to the relevant financial year:—

"A. (1) The Minister responsible for Finance shall cause to be prepared and laid before Parliament before or not later than 60 days after the commencement of the relevant financial year estimates of the revenues and expenditure of the Government for that year.

"(2) The heads of expenditure contained in the estimates (other than statutory expenditure) shall be included in a Bill to be known as an Appropriation Bill which shall be introduced into Parliament to provide for the issue from the Consolidated Fund of the sums necessary to supply those heads and the appropriation of those sums for the purposes specified therein.

"(3) If in respect of the relevant financial year it is found that the sum appropriated by the Appropriation Act for any purpose is insufficient or that a need has arisen for expenditure for a purpose for which no sum has been appropriated by that law, a supplementary estimate showing the sum required shall be included in a Supplementary Bill for appropriation.

"(4) Where in respect of the relevant financial year the Minister responsible for Finance is satisfied that an urgent and unforeseen need has arisen to authorise for any purpose advances from the Consolidated Fund for expenditure in excess of the sum appropriated for that purpose by an Appropriation Act, or for a purpose for which no sum has been so appropriated, he may, subject to the provisions of any law for the time being in force in that regard, authorise such advances by warrant and shall include such amount in a Supplementary Appropriation Bill for appropriation at the meeting of Parliament next following the date on which the warrant was issued.

"(5) If at the close of account for the relevant financial year it is found that any moneys have been expended on any head in excess of the sums appropriated for that head by an Appropriation Act or for a purpose for which no money has been appropriated, the excess or the sum expended but not appropriated, as the case may be, shall be included in a statement of heads in excess which shall be presented to Parliament.

"B. If the Appropriation Act in respect of the relevant financial year has not come into operation at the beginning of that financial year, Parliament by resolution may empower the Minister responsible for Finance to authorise the issue of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the state services at a level not exceeding the level of the public services in the previous financial year, until the expiration of 4 months from the beginning of the relevant financial year or the coming into operation of the Appropriation Act, whichever is the earlier.

• Budget bills

"C. (1) No money shall be issued from the Consolidated Fund except upon the authority of a warrant under the hand of the Minister responsible for Finance.

"(2) No warrant shall be issued by the Minister responsible for Finance for the purpose of meeting any expenditure unless—

"(a) the expenditure has been authorised for the relevant financial year by an Appropriation Act; or

"(b) the expenditure has been authorised in accordance with the provisions of paragraph A(4), B or C; or

"(c) it is statutory expenditure in which event, it shall not be voted on by Parliament but, without further authority of Parliament, shall be paid out of the Consolidated Fund and a warrant may issue for that purpose."

3. Any—

- **a.** estimates laid before Parliament; or
- **b.** Appropriation Ordinance enacted; or
- **c.** resolution passed by Parliament; or
- **d.** other thing done,

before the appointed day, pursuant to the Independence Constitution and in respect of the relevant financial year, shall have effect after that day as if laid or, as the case may be, enacted, passed or done pursuant to this section in respect of the relevant financial year; and the reference in this section to an "Appropriation Act" shall be deemed to include a reference to any Ordinance so enacted.

Topic index

A

Attendance by legislators 51
Attorney general 45, 69

B

Budget bills 72, 92

C

Cabinet removal 41, 43
Claim of universal suffrage 48
Constitutionality of legislation 12, 62
Conditions for revoking citizenship 35
Constitution amendment procedure 12
Compensation of legislators 73
Constitutional interpretation 61, 62

D

Dismissal of the legislature 58
Duty to serve in the military 18
Deputy executive 40, 42

E

Equality regardless of race 14, 28
Eligibility for ordinary court judges 60
Eligibility for first chamber 50
Extraordinary legislative sessions 58
Electoral districts 47
Emergency provisions 31, 32
Eligibility for head of government 50
Eligibility for head of state 37, 50
Equality regardless of religion 14, 28
Equality regardless of origin 14, 28
Equality regardless of skin color 14, 28
Extradition procedure 17
Establishment of cabinet/ministers 43
Eligibility for cabinet 40, 50
Equality regardless of gender 14, 28

F

First chamber reserved policy areas 56, 72
Freedom of association 26
Freedom of religion 24

Freedom of expression . . . 25
Freedom of opinion/thought/conscience . . . 24, 25
Freedom of movement . . . 26
First chamber selection . . . 48
Freedom of assembly . . . 26

G

General guarantee of equality . . . 14, 28
God or other deities . . . 10
Guarantee of due process . . . 21

H

Head of state powers . . . 39
Head of state selection . . . 35, 37
Head of government removal . . . 37, 40
Head of government's role in the legislature . . . 40
Human dignity . . . 10, 15, 16
Head of government replacement . . . 42
Head of state immunity . . . 39
Head of government selection . . . 40, 84
Head of state term length . . . 37
Head of state replacement . . . 38
Head of state removal . . . 37

I

Immunity of legislators . . . 57
Initiation of general legislation . . . 48, 56

L

Legislative committees . . . 51, 54, 57
Legal status of treaties . . . 12
Leader of first chamber . . . 53

M

Minimum age for first chamber . . . 50
Minimum age of head of state . . . 37
Minimum age of head of government . . . 50
Motives for writing constitution . . . 10

N

Name/structure of executive(s) . . . 37, 39

O

Outside professions of legislators . . . 50
Ordinary court selection . . . 59

P

Protection of environment 27
Prohibition of slavery 18
Protection from ex post facto laws 22
Protection from self-incrimination 22
Protection of judges' salaries 73
Power to pardon 46
Principle of no punishment without law 22
Protection from expropriation 19
Power to deport citizens 17
Presumption of innocence in trials 21
Powers of cabinet 43
Political theorists/figures 10, 35
Prohibition of capital punishment 16
Prohibition of torture 19
Prohibition of cruel treatment 19
Prohibition of double jeopardy 22

Q

Quorum for legislative sessions 55

R

Right to renounce citizenship 35
Right to privacy 21
Right to examine evidence/ witnesses 22
Right to counsel 22
Right to join trade unions 26
Right to fair trial 21
Restrictions on voting 49
Removal of individual legislators 51
Right to transfer property 19
Replacement of legislators 48
Requirements for birthright citizenship 34, 35
Right to appeal judicial decisions 22, 61, 62, 63
Right to form political parties 26
Right to life 16
Requirements for naturalization 35
Right to speedy trial 21
Right to public trial 23
Right to conscientious objection 18

S

Supreme court powers 52, 61, 62
Supreme/ordinary court judge removal 60

Source of constitutional authority 10
Supreme court selection 59
Secret ballot 48
Structure of the courts 59, 60, 61, 62
Scheduling of elections 37
Supermajority required for legislation 12, 47, 54
Structure of legislative chamber(s) 46

T

Term length for first chamber 58
Type of government envisioned 11
Telecommunications 25
Treaty ratification 12, 17
Trial in native language of accused 21