



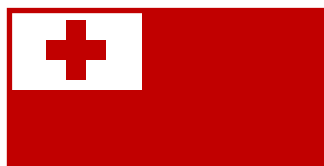
TONGA

COMMONWEALTH PARLIAMENTARY ASSOCIATION BENCHMARKS FOR DEMOCRATIC LEGISLATURES

FINAL REPORT



Foreign, Commonwealth
& Development Office



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SUMMARY

“The Parliament of Tonga has the ambition of being fit for purpose, resilient and inclusive for all”



The ambition of Tonga's Legislative Assembly is to be 'fit for purpose, resilient and inclusive for all'. This is a fitting motto, and the people of Tonga should take pride in its Legislature, as well as how it conducts much of its parliamentary business.

Overall, the Parliament meets many of the CPA's Recommended Benchmarks and considerable praise should be given to Parliament's senior leadership (at both political and staff level) for achieving these standards. The Parliament functions well in several areas and has clear Rules of Procedure, which are adhered to across various different workstreams. The Assembly also has a professional, competent and dedicated parliamentary administration, led by the Clerk, which does a commendable job of facilitating many of the Legislature's core parliamentary services.

Considering current political arrangements have only been in place since impactful Constitutional Reforms of 2010, democratic progress made by Tonga's Legislative Assembly in this time should be positively acknowledged. A major Constitutional reform involved the King relinquishing the authority to appoint an Executive Government to the Legislative Assembly. The King appoints a Prime Minister recommended by the Legislative Assembly, and the Prime Minister, in turn, nominates Ministers who are appointed by the King. Tonga follows a distinctive governance structure combining features of a Constitutional Monarchy and a Parliamentary Democracy. Elections since have been both free and fair, with the Parliament showing positive performance in terms of how its agenda is set, sessions are convened, outreach programmes are conducted and relations with external stakeholders (such as the Attorney General, Auditor General, and relevant Government agencies) managed. Those who support the work of Parliament are all committed to ensuring that the Legislative Assembly continues to take positive strides and these constructive efforts are highlighted throughout the course of this Report. It should also be stressed that many of these improvements are particularly noteworthy when set against the backdrop of 2018's Cyclone Gita, which destroyed Tonga's original Parliament House, a set of circumstances that currently sees the Legislative Assembly operating out of temporary premises, which are sub-optimal for a fully-functioning Legislature.

Arrangements are in place for the Legislative Assembly to move into a new custom-built precinct in a few years from now, and this will hopefully provide an opportunity for Parliament to improve its ways of working and make amendments to how it functions in areas where CPA Recommended Benchmarks are not currently met. These include but are not limited to improving Parliament's infrastructure, updating its Rules of Procedure, broadening Professional Development opportunities, strengthening the remit of its Committees, developing the independent Remuneration Authority, introducing Members' code of conduct and declaration of interests schemes, establishing functional human rights and anti-corruption authorities, integrating pre/post-legislative scrutiny measures, and updating its website to better communicate a range of parliamentary activities with the Tongan electorate.

That said, the burden of responsibility does not rest entirely with Parliament. Tonga's Government should also take the opportunity to increase female representation across its Cabinet posts, strongly encourage Parliament to prohibit Ministers from sitting on its

Committees and balance the need for legislative expediency against the democratic mandate of Parliament to pass laws with fuller means of and greater timeframes for considering and scrutinising draft Bills.

Overall, following the 2010 Constitutional Reforms, and 2018's Cyclone Gita, Tonga's Parliament should be praised for developing a Legislature that meets many of the CPA's Recommended Benchmarks and appears to be improving its performance on a continuous basis. While several areas for reform are identified in this Report, we hope that its recommendations will assist the Legislative Assembly in its continued journey of building a Parliament that is 'fit for purpose, resilient, and inclusive for all' citizens in Tonga.

Background

The Commonwealth Parliamentary Association (CPA) is an international community of 180 Parliaments and Legislatures working together to deepen the Commonwealth's commitment to the highest standards of democratic governance. Founded in 1911, the CPA brings together Members of Parliament and parliamentary staff to identify benchmarks of good governance and implement the enduring values of the Commonwealth. It offers vast opportunity for Parliamentarians and parliamentary staff to collaborate on issues of mutual interest and to share good practice.

In 2018, the CPA undertook a consultation and review process that resulted in the adoption of updated Recommended Benchmarks for Democratic Legislatures.¹ The Benchmarks provide a minimum standard and guide on how a Parliament should be constituted and how it should function. They play an important role in developing the effectiveness of parliamentary institutions across the 180 Parliaments and Legislatures of the CPA and contribute to the implementation of the Sustainable Development Goals.²

In November 2023, the Legislative Assembly of Tonga (Fale Alea 'o Tonga) became the 24th Commonwealth legislature to use this framework to conduct an Assessment against the Benchmarks. The Assessment was approved by the Lord Speaker, Hon. Lord Fakafanua, and organised by parliamentary staff. CPA International Secretariat Headquarters appointed Fraser McIntosh (Good Governance Project Manager, CPA HQ) and Tom Duncan (Clerk, The Legislative Assembly for the Australian Capital Territory) to undertake this Assessment from 13-17 November 2023. The Assessment took place as part of the CPA's Good Governance Project – an initiative part-funded by the UK's Foreign, Commonwealth and Development Office.

During their time in Nuku'alofa, Fraser and Tom met Lord Speaker Fakafanua and other MPs from the Tongan Legislative Assembly. They also had discussions with Ms. Gloria Pole'o, Clerk of the Parliament, and various senior parliamentary staff, as well as holding meetings with a wide range of external stakeholders including: the Auditor General, the Attorney General, the Electoral Commissioner, the Public Service Commissioner, and representatives of both Civil Society and the Media.

These meetings took place alongside a review of certain key documents including: the Constitution of Tonga³, the Standing Orders⁴ and the Rules of Procedure⁵ for the Tongan Legislative Assembly, as well as other related parliamentary materials. The report below is a summary of the main findings of the Assessment.

Acknowledgements

The Legislative Assembly of Tonga proactively chose to assess itself against the CPA Benchmarks. As such, Lord Speaker Fakafanua and Clerk of the Parliament, Ms. Gloria Pole'o, should be praised for both their willingness and enthusiasm to undertake this important piece of work. Their doing so demonstrated a positive approach to the CPA Assessment, which was consistent throughout Fraser and Tom's time in Nuku'alofa, and this commitment to continued learning and improvement is admirable.

The CPA would also like to place on record its sincere thanks to all stakeholders who participated in this Assessment and draw particular attention to the invaluable efforts of Linda Filiu (Parliament Education Officer, Tongan Legislative Assembly) for coordinating an excellent programme of meetings, facilitating key logistical arrangements, and providing such warm hospitality for the duration of Fraser and Tom's visit to Nuku'alofa. Linda, along with several other colleagues, are all a credit to the Tongan Legislative Assembly and its continued efforts to grow and improve parliamentary democracy for the people of Tonga.

- 1 Recommended Benchmarks for Democratic Legislatures. (n.d.). Available at: <https://www.cpahq.org/media/10jkk2nh/recommended-benchmarks-for-democratic-legislatures-updated-2018-final-online-version-single.pdf>
- 2 In particular Goal 16.6 (Develop effective, accountable and transparent institutions at all levels) and Goal 16.7 (Ensure responsive, inclusive, participatory and representative decision-making at all levels).
- 3 www.parliament.gov.to. (n.d.). Constitution of Tonga - Act of Constitution of Tonga (2020 Revised Edition). [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.
- 4 www.parliament.gov.to. (n.d.). Documents - Standing Orders-English Version. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/247-standing-orders-english-version>.
- 5 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

Support and Follow-Up

Following the publication and consideration of the findings of this report, and within the boundaries of financial constraints, the CPA is committed to supporting the Tongan Legislative Assembly in further strengthening its democratic processes. As such, the CPA stands ready to enable the Parliament to take forward these recommendations – where requested and appropriate – through its Technical Assistance Programme⁶ scheme and wider efforts linked to institutional parliamentary strengthening.

Political, Economic and Social Context

Tonga is in the southwestern Pacific Ocean and has a current population of approximately 108,000.⁷ It comprises around 170 islands (a quarter of which are inhabited) divided into three main groups: Tongatapu in the south, Ha'apai in the centre, and Vava'u in the north. Nuku'alofa, on the island of Tongatapu, is the country's capital, largest and most populous city. Tonga is surrounded by Fiji to the west, Niue to the east and Samoa to the north. The nearest country to the south is New Zealand (almost 1,500 miles away).

The vast majority of the population is of Polynesian ancestry and religion is an important aspect of Tongan society, with most families being active members of a Christian church. Tongan is the country's official language but English is also taught in schools and widely spoken across society. Approximately 75% of Tonga's population live in rural areas and, as such, Agriculture is key to the country's economy. Squash, coconuts, bananas and vanilla beans constitute the main cash crops, while timber production, livestock and fishing also contribute towards economic activity.

Tonga's Constitution was granted in 1875 by King George Tupou I, and from 1900 to 1970 the country had British protected state status under a bilateral Treaty of Friendship. In 1970, Tonga regained complete control of domestic and foreign affairs and became a fully independent nation within the Commonwealth. Since then, pro-democracy movements have continually taken shape with reform advocates gaining increased representation in the country's Legislative Assembly. This direction of travel culminated in 2010 when King George Tupou V surrendered his Executive Powers. In doing so, Tonga became a constitutional monarchy and a parliamentary democracy with its unicameral Legislative Assembly principally consisting of 26 members: nine representatives of traditional nobility groups (selected by their peers) and 17 representatives of the people, representing each of the 17 electoral constituencies (directly elected by all citizens aged 21 and over) for a period of four years. Alongside these MPs, the Prime Minister may include up to four additional individuals not elected to the Legislative Assembly to be part of their Cabinet, at which point they too automatically become Members of Parliament.

While the King formally withdrew from the Executive after 2010, the Monarch still holds crucial executive and royal prerogative powers. The Judicial Appointments and Discipline Panel recommends to the King in Privy Council, the appointment of qualified individuals to the Judiciary. The Privy Council consists of individuals appointed solely at the King's discretion, serving as his advisory body to offer counsel.

The most recent Tongan General Election took place in November 2021⁸ with 17 People's Representatives directly elected by first-past-the-post voting in single member constituencies. A total of 73 candidates, including 12 women, stood for office, albeit the Tongan electorate returned an all-male Parliament with a voter turnout of 62%. The Legislative Assembly met on 15th December 2021 to elect Hon. Sioasi Sovaleni as Prime Minister and to re-elect Hon. Fatafehi Fakafanua as Lord Speaker. The current Parliament was formally opened on 11th January 2022. A subsequent by-election and a Ministerial appointment by the Hon. Prime Minister introduced the only two female Members of the Legislative Assembly for the current term.

In February 2018, Tonga's original Parliament House was destroyed by Cyclone Gita, a Category 4 tropical storm. Since then, the Legislative Assembly has sat on temporary premises at the Tongan National Cultural Centre. In November 2021, the Tongan Government announced that a new Parliament building would be constructed on Nuku'alofa's waterfront but following the Hunga Tonga-Hunga Ha'apai volcanic eruption and tsunami the building will be moved further inland to the Talangaholo site at Matakī'eua. This is due for completion in a few years.

6 [www.cpahq.org](https://www.cpahq.org/what-we-do/institutional-parliamentary-strengthening/). (n.d.). How is the CPA supporting Commonwealth Parliaments? [online] Available at: <https://www.cpahq.org/what-we-do/institutional-parliamentary-strengthening/>.

7 [www.worldometers.info](https://www.worldometers.info/world-population/tonga-population/). (n.d.). Tonga Population (2023) - Worldometer. [online] Available at: <https://www.worldometers.info/world-population/tonga-population/>.

8 Moala, K. (2021). Independents the winners in Tongan election. [online] Australia Pacific Security College. Available at: <https://pacificsecurity.net/independents-the-winners-in-tongan-election/>

I. GENERAL

Elections

Members of Tonga's Legislative Assembly are popularly elected through direct and equal suffrage where all registered Tongan citizens, who are not Nobles, over the age of 21, not insane or an imbecile and not disqualified by clause 23 of the Constitution of Tonga can vote in a free and fair ballot. Electoral term lengths are four years unless Parliament is dissolved earlier by the King. These provisions are provided for in the Constitution of Tonga⁹ (clauses 64 and 77) and a separate Electoral Act.¹⁰ Recent national votes in Tonga have met international standards for genuine and transparent votes. The 2017 General Election was observed by the Commonwealth Secretariat's Observer Group¹¹ with an international team from Oceania doing likewise in the most recent General Election of 2021.

Elections are managed by Tonga's Electoral Commission. Its establishment and independence are both guaranteed under the Electoral Commission Act.¹² One of the principal roles of the Electoral Commission is monitoring and regulating expenditure incurred by candidates standing for election. In accordance with the Electoral Commission Act¹³ (section 10) and the wider Electoral Act¹⁴ (section 24), candidates are limited to spending a maximum of TOP 20,000 on their campaign. All candidates – whether successful or not – are required to submit their expenses to the Electoral Commission within 14 calendar days of an election having taken place.

For the 17 People's Representatives, there are no restrictions on candidate eligibility based on religion, gender, ethnicity, race or disability. Individuals seeking election to the Legislative Assembly must simply be a Tongan citizen, at least 21 years of age, free of any outstanding court debts, and have lived in Tonga for at least three of the six months immediately preceding a General Election. Throughout our discussions with stakeholders, no issues around elections were raised.

Whilst there are no formal measures (Constitution, law, policies) that encourage the political participation of marginalised groups, the Tongan Parliament should be commended for consistently holding initiatives like the Practice Parliament for Women, She Leads Parliament, and Tonga Youth Parliament programmes. These initiatives are particularly important given the low level of female representation in the Legislative Assembly's elected membership. The fact that the Assembly's nine Noble representatives are all male by law, means female representation in the Legislative Assembly will always be inhibited. Further measures should be taken to ensure that women are encouraged to not only stand for election, but to be more involved in the parliamentary process as a whole, including engaging with Members and Committees. Some stakeholders expressed a view that when women do stand for election, there is a reluctance to vote for them by the general public. Work has been conducted by various community groups to ascertain why this is and to identify ways in which this can be corrected. The Parliament should be commended for trying to tackle this issue through their various initiatives listed above, but further work should be done to address this. Working closely with the civil society groups that are in this area, would be advisable for the Legislative Assembly.

RECOMMENDATION 1

The Legislative Assembly should continue its work in encouraging political participation of marginalised groups and increase this ahead of General Elections to particularly maximise awareness among women of standing for election and ultimately being elected to Parliament. (Benchmark 1.2.2 – Measures to encourage the representative political participation of marginalised groups shall be drawn to accomplish precisely defined objectives).

Separation of Powers, Immunity and Natural Justice

The Constitution separates political powers between the Executive, Legislature and Judiciary. Under the Public Service Act¹⁵ (section 20), potential legislators are mandated to resign from the Public Service upon registering as a candidate. While there is no

9 www.parliament.gov.to. (n.d.). Constitution of Tonga - Act of Constitution of Tonga (2020 Revised Edition). [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.

10 www.parliament.gov.to. (n.d.). Electoral Act of Tonga (2020 Revised Edition). [online] Available at: [Electoral Act \(ago.gov.to\)](http://www.parliament.gov.to).

11 Commonwealth. (n.d.). Tonga elections conducted peacefully, say observers. [online] Available at: <https://thecommonwealth.org/news/tonga-elections-conducted-peacefully-say-observers>

12 www.parliament.gov.to. (n.d.). Electoral Commission Act of Tonga (2020 Revised Edition). [online] Available at: [Electoral Commission Act \(ago.gov.to\)](http://www.parliament.gov.to)

13 www.parliament.gov.to. (n.d.). Electoral Commission Act of Tonga (2020 Revised Edition). [online] Available at: [Electoral Commission Act \(ago.gov.to\)](http://www.parliament.gov.to)

14 www.parliament.gov.to. (n.d.). Electoral Act of Tonga (2020 Revised Edition). [online] Available at: [Electoral Act \(ago.gov.to\)](http://www.parliament.gov.to).

15 www.parliament.gov.to. (n.d.). Public Service Act of Tonga (2020 Revised Edition). [online] Available at: [Public Service Act \(ago.gov.to\)](http://www.parliament.gov.to)

rule or law explicitly prohibiting an active Member of Parliament from concurrently serving as a judicial officer, the Constitution¹⁶ (clause 28) does disqualify legislators from simultaneously serving on juries. Candidates successful in General Election campaigns are also required to make an oath before taking their seats in Parliament. This is outlined in Tonga's Constitution¹⁷ (clause 83) and the Legislative Assembly's Rules of Procedure¹⁸ (rule 18). A failure or refusal to take the required oath can result in the Member being excluded from sitting or voting in that session of Parliament until they have done so.

When in office, the Constitution¹⁹ (clause 73) protects Members of Parliament from liability for anything they say in the Legislative Assembly. With the exception of indictable offences, Members are also immune from arrest and judgement while the Assembly is sitting. These privileges do not, however, extend to other persons who participate in or directly facilitate the Legislature's proceedings, or indeed to the work of parliamentary Committees. Any individual who acts in contravention of the law in these scenarios may be legally liable.

RECOMMENDATION 2

The Legislative Assembly should enact a law that grants witnesses, submitters and members of the public immunity from prosecution in relation to their participation in or facilitating of Parliament's proceedings. (Benchmark 1.4.1 – The Legislature is protected by the freedom of speech immunity. The immunity shall protect persons from legal liability for words spoken and acts done while participating in or directly facilitating the Legislature's proceedings and shall restrict the judicial branch's use of such words and acts as evidence in judicial proceedings).

There are currently no explicit rules or laws preventing the introduction or discussion of certain information in the Legislature that is currently being adjudicated before a court. In the absence of these, the Lord Speaker has on several occasions, however, exercised his authority under the Rules of Procedure²⁰ (rule 1(2)) to make rulings of sub-judice where he decreed that matters awaiting or under adjudication in a court of law should not be referred to in any motion, debate or question in the Legislative Assembly or one of its Committees. This should be formalised to ensure that the Legislative Assembly is adhering to best international practice.

RECOMMENDATION 3

The Legislative Assembly should introduce formal sub-judice provisions in its Rules of Procedure. (Benchmark 1.4.3 – The Legislature shall have protection against potential misuse of the freedom of speech immunity. References to judicially suppressed or protected information, or to matters awaiting judicial decision, shall be made only in exceptional circumstances and with due regard to the separation of powers between the Legislature and the judiciary).

The Legislative Assembly does have provisions that prohibit Members submitting a motion in Parliament not to refer to the name of any individual unless required to make the motion clear (Rules of Procedure, rule 79)²¹, and that allow any person named in a Committee report whose reputation may be damaged by its content to be given a reasonable opportunity to respond (Rules of Procedure, rule 170)²². However, there does not appear to be a formal mechanism for members of the public to respond to adverse mentions in plenary business. Positively, and according to stakeholders and records, the Lord Speaker does act when made aware of such scenarios, but there may be occasions when it is not apparent or brought to the Presiding Officer's attention that such adverse mentions have been made, and so a formal approach should be adopted. Addressing this shortcoming would empower the citizens of Tonga to act should they legitimately feel that parliamentary proceedings have brought them into disrepute.

16 www.parliament.gov.to. (n.d.). Constitution of Tonga - Act of Constitution of Tonga (2020 Revised Edition). [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.

17 www.parliament.gov.to. (n.d.). Constitution of Tonga - Act of Constitution of Tonga (2020 Revised Edition). [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.

18 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

19 www.parliament.gov.to. (n.d.). Constitution of Tonga - Act of Constitution of Tonga (2020 Revised Edition). [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.

20 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

21 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

22 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

Remuneration and Benefits

An independent Remuneration Authority determines the size and scale of remuneration, benefits and other statutory entitlements for both Members and parliamentary staff and makes recommendations to the Legislative Assembly in line with Tonga's Remuneration Act²³. This Authority consists of five individuals (not MPs) with requisite economic, financial, legal or commercial expertise who are appointed by the Cabinet upon recommendations from the Minister of Finance. Ultimately, however, the final decisions on Members' salary and other financial matters rests with Parliament as per its Standing Orders²⁴ (standing order 6) which outlines provisions relating to annual salaries, sitting stipends for Committee meetings, and travel allowances for official domestic and international visits.

It is worth noting that in 2022 the Legislative Assembly, upon endorsement from the Government of the day to provide the necessary funding, implemented two resolutions for adjusting the salaries of Members and backdating this 14% increase to 2018, which is when the resolutions were passed. It should be highlighted, that these resolutions came from recommendations in reports from two separate Parliament's Standing Committees, namely the Standing Committee on Privileges and the Standing Committee on Finance. The reports from the Privileges and Finance Committees were based on an analysis performed by an independent consultant engaged by the Legislative Assembly. This consultant scrutinized the reports submitted by the Remuneration Authority to Parliament, conducting a comprehensive examination of the operations of the Legislative Assembly and the different roles of the Members of Parliament as well as a comparative analysis with other Parliaments in the Pacific. The findings of this analysis were then presented in a report, which were then considered by the respective Committees.

Nevertheless, the independence and relevance of the Remuneration Authority and its ability to make autonomous consequential recommendations can be called into question, which is concerning. At the time of writing, a judicial review proceeding is underway in the Supreme Court challenging this development²⁵ on the grounds that the decision to increase Members' salary was not subject to sufficient public debate in Parliament and that the 14% uplift is disproportionate when compared to the 3% cost of living pay rise that all other public servants received. Increasing the independence of the Remuneration Authority and strengthening its remit to take binding decisions on the level of financial recompense for MPs and parliamentary staff, would bring Tonga's Legislative Assembly in line with best practice demonstrated by other Commonwealth Parliaments.

RECOMMENDATION 5

The Remuneration Authority should be strengthened so as to allow it (and not MPs) to set levels of remuneration and benefits for Members of Parliament and staff. (Benchmark 1.5.2 – An independent body or mechanism should determine the remuneration, benefits and other statutory entitlements of legislators).

Professional Development

The Office of the Legislative Assembly conducts induction programmes at the beginning of each session of Parliament following a General Election for newly elected MPs. According to Members and staff, these are incredibly valuable, with key information concerning the Constitution, Standing Orders, Rules of Procedure, Constituency Offices, and parliamentary duties, functions, and entitlements shared with Members to help facilitate their understanding of how the Parliament functions. Although stakeholders found these inductions useful, there is scope to increase the regularity of these programmes by holding them periodically throughout the life cycle of a Parliament. Doing so would continually develop Members' knowledge and give new officials who take up their role between General Elections a timely opportunity to improve their understanding of best parliamentary practice.

The Legislative Assembly does, however, have a strong track record of working with the CPA²⁶ and other Legislatures in the Pacific region to examine core elements of democratic governance and share best practices on issues relating to effective functioning of Parliaments. To ensure that everybody benefits from offered trainings, it is recommended that participation in these events is spread across the Members and particular attention should be given to those who are newly elected or appointed. This would further develop collective understanding of best parliamentary practice and related soft skills across Tonga's Legislative Assembly. As cost and lengthy travel distances can sometimes be a barrier for participation at international events, the Legislative Assembly should also take advantage of free online courses available through the CPA Parliamentary Academy.

23 www.parliament.gov.to. (n.d.). Remuneration Act of Tonga (2020 Revised Edition). [online] Available at: [Remuneration Authority Act \(ago.gov.to\)](http://www.parliament.gov.to)

24 www.parliament.gov.to. (n.d.). Documents - Standing Orders-English Version. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/247-standing-orders-english-version>.

25 Cass, P. (2023). Hon. Tapueluelu wins right to apply for Supreme Court review of MPs' pay rise. [online] Kaniva Tonga News. Available at: <https://www.kanivatonga.co.nz/2023/05/hon-tapueluelu-wins-right-to-apply-for-supreme-court-review-of-mps-pay-rise/>

26 www.cpahq.org. (2023). CPA Post-Election Seminar in Tonga. [online] Available at: https://www.cpahq.org/news/2023_03-tonga-pes/

RECOMMENDATION 6

The Legislative Assembly should expand its Professional Development Programmes so that these are held periodically between General Elections and ensure that such opportunities are open to all Members of Parliament. (Benchmark 1.6.2 – The Legislature shall take measures to assist legislators increase their knowledge and skills in the performance of their parliamentary duties).

Parliamentary Infrastructure

In February 2018, Tonga's original Parliament House was destroyed by Cyclone Gita, a Category 4 tropical storm.²⁷ Since then, the Legislative Assembly has sat on temporary premises at the Tongan National Cultural Centre. Authorities within the parliamentary administration should be praised for ensuring the Legislative Assembly's continued operation during this uniquely challenging period and their efforts to maximise the efficacy of interim surroundings positively acknowledged. Understandably, Parliament's current infrastructure is (in some areas) sub-optimal in terms of enabling Members and staff to fully meet their legislative responsibilities.

There is, for example, a small parliamentary library which is resourced by one librarian and, while Members do have some access to research facilities, these are currently limited to free online databases. The Assessment team noted that most, if not all, of the resources in the Parliament's library were out of date and the ICT facilities insufficient to provide necessary support to Members and staff with a platform to fully carry out their parliamentary work. This should be addressed moving forward, with a greater emphasis being placed on modern research facilities. Whilst it is recognised that resources are at a premium, improving the library in terms of additional staff and publications would help both Members and staff to perform their duties more effectively and efficiently. There are a number of online libraries and resource banks that could be utilised and these should be explored by the Legislative Assembly.

In November 2021, the Tongan Government announced that a new Parliament building would be constructed on Nuku'alofa's waterfront. Co-funded by the Governments of Australia and New Zealand, the project currently has a budget of approximately TOP 4.5 million and is due for completion in 2026. However, a decision was subsequently made to relocate further inland after the Hunga Tonga-Hunga Ha'apai volcanic eruption and subsequent tsunami because the old site on the waterfront was deemed vulnerable to future tsunamis and rising sea levels. Moving into new, purpose-built facilities will be a landmark moment for the Legislative Assembly and will hopefully enable fulfilment of its mission of being 'fit for purpose, resilient, and inclusive for all'. It is important that the new Parliament building is not only able to meet the immediate needs of core parliamentary infrastructure for Members and staff, but also be future proofed for any subsequent development or expansion that may take place in the Legislative Assembly.



CPA Secretary-General speaking at Tonga's Post-Election Seminar

27 Tonga parliament building flattened by Cyclone Gita. (2018). BBC News. [online] 13 Feb. Available at: <https://www.bbc.co.uk/news/world-asia-43039931>

II. ORGANISATION OF THE LEGISLATURE

1. PROCEDURES AND SESSIONS

Rules of Procedure

The framework of the Legislative Assembly's operations accurately reflects and supports the actual practice and culture of Parliament. Both the Constitution and the Rules of Procedure set out in detail how the Legislature operates, however the latter have not been updated since 2016. There is no systematic regular review of the Rules of Procedure, and a number of participants in the Assessment remarked that a systematic review conducted on a regular basis would be welcome. As is best practice in other Commonwealth Legislatures, Tonga's Legislative Assembly would benefit from introducing a periodic review of its Rules of Procedure. Doing so would allow the Parliament to take stock of how fit for purpose its internal arrangements are and make any changes that are deemed beneficial. There is also no current requirement that any new rules be adopted with near unanimity. Ensuring that this is the case would add democratic legitimacy to any changes made and guarantee that they are incorporated with the Assembly's will.

RECOMMENDATION 7

A comprehensive review of the Rules of Procedure should be undertaken by a relevant Committee of the Legislature at regular intervals and any suggested changes should only be passed if they are agreed by a clear majority of the Assembly. (Benchmark 2.1.3 – The Legislature's rules, procedures and practices shall be reviewed regularly to enhance parliamentary effectiveness and relevance).

Presiding Officers

There are clear procedures set out in the Constitution as to how a Presiding Officer should be elected, albeit the position is ring-fenced to representatives of the Noble groups. This procedure limits the pool of candidates that can put themselves forward to be Speaker, ensures that the position is always occupied by males, and is not in line with other democratic Legislatures in the Commonwealth, the vast majority of which have more open mechanisms in place for electing their Presiding Officers. Tonga's Legislative Assembly may benefit from doing likewise by allowing all Members of Parliament (Nobles and People's Representatives) to stand for the position of Speaker, however this would require legislative change. All participants involved in the Assessment remarked, however, that the current Lord Speaker ably managed sittings of the House and effectively dealt with all other matters relating to the operation of Parliament. High praise should be given to the Lord Speaker for not only how he has undertaken his role, but for his ambition to further improve the Legislative Assembly. It is important that the Parliament is led effectively from the front, and this is clearly evident in Tonga.

Convening Sessions and Setting the Agenda

The Parliament meets regularly, with 37 days of sitting held in 2023. Whilst positive, there is clear scope for Parliament to sit more often than is currently the case. Doing so would enable the Assembly to better fulfil its principal role of scrutinising legislation which, in turn, would deliver improved outcomes for the people of Tonga. The Assembly's sitting pattern is currently agreed at the beginning of the calendar year and placed on the homepage of Parliament's website so that citizens and all those involved in the work of the Parliament are aware of it. This is a clear demonstration of positive parliamentary practice and should be continued moving forward. Every effort is made to propose a calendar that ensures the Legislature meets with sufficient regularity to successfully complete its workload on an annual basis. While this is positive, there is scope for the Legislative Assembly to sit more often than it currently does. Doing so would increase the role that Parliament plays in the democratic process and increase opportunities for members of the public to engage with the law-making procedures that ultimately shapes their lives. Furthermore, there are no formal procedures for Parliament being able to call itself into extraordinary session or similarly for the Executive to convene special sittings of the Legislative Assembly as and when such circumstances arise. Currently the Prime Minister may ask the Speaker to convene the House for such sittings but this is done on an ad hoc basis.

RECOMMENDATION 8

The Legislative Assembly should update its Rules of Procedure to introduce formal provisions for the Executive or Parliament itself to convene extraordinary sittings when such needs arise. (Benchmark 2.3.3 – The Legislature shall have procedures for calling itself into extraordinary or special sessions / Benchmark 2.3.4 – Provisions and qualifying requirement for the Executive branch to convene a special session of the Legislature shall be clearly specified).

It was also noted that Hansard records of legislative proceedings are placed on the Parliament's website in a timely manner (typically 48-72 hours). Both the Clerk and wider Hansard team should be commended for producing and publishing these accounts in such a quick timeframe. Doing so enables citizens of Tonga who are interested in the proceedings of Parliament to effectively ascertain what decisions and speeches have been made.

To further enhance public engagement, however, it would be useful to also place other documents produced by Parliament (such as agenda papers) onto its website in the lead up to sittings of the Legislative Assembly. Doing so would enable more citizens of Tonga to be aware of matters that will be discussed at a sitting prior to it taking place, including civil society groups and those with a vested interest in certain areas. This previously used to be the case, however the last agenda paper currently on Parliament's website dates back to 2021. This should be addressed in 2024 and updated accordingly.

RECOMMENDATION 9

Agendas and other documents relating to the work of the Assembly should be published on the Parliament's website in a timely manner to enable citizens of Tonga to be more informed and engaged with the work of the Parliament. (Benchmark 2.4.4 – There shall be an annual parliamentary calendar to promote transparency).

Petitions

Provisions exist in the Rules of Procedure (division 6) for petitions to be presented to the Legislature and, while they are received and considered every year, further work could be done to improve the functioning of this important mechanism for Tongan citizens to participate in the democratic process. The ability to petition Parliament is a fundamental right of constituents and allows them to directly engage with the political process while, on occasions, venting any grievances they may have. The Legislative Assembly should produce and publish on its website material relating to the petitions process. This could be done by various means including, but not limited to, informative fact sheets, explanatory videos, and examples of previous petitions that have been successfully considered by Parliament.

RECOMMENDATION 10

The Parliament should introduce various means of promoting the petitions process and ensure that members of the public can easily access this information. (Benchmark 2.7.1 – the Legislature shall have procedures to allow for the meaningful consideration of petitions).

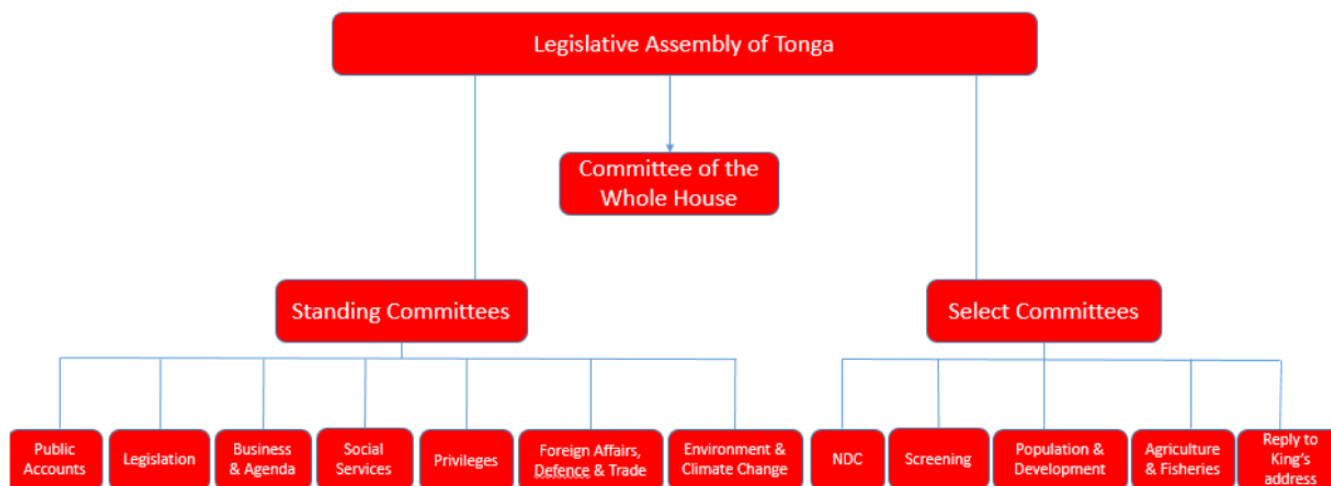


CPA Delegation meeting with Hon. Dr. Uhilamoelangi Fasi MP

2. COMMITTEES

Organisation

The Parliament has a wide-ranging Committee system, with ten (permanent) Standing Committees and four Select Committees (during this current term). Each Committee comprises six Members, with two Nobles, two Ministers and two elected MPs. The Rules of Procedure provide that the Speaker will appoint a non-Cabinet Minister to chair each Committee (including the Public Accounts Committee), with the additional stipulation that no Member can chair two separate Committees.



With a Parliament of 26 Members, the Committee system is large relative to the Legislature's overall size with some stakeholders consulted as part of the Assessment believing that this led to duplication of work carried out by different Committees and parliamentary staff tasked with supporting these Committees being overly stretched. Best parliamentary practice also dictates that Ministers should not serve on Committees. Given that one of their central functions is to scrutinise the work of the Executive, having Ministers sit on Committees can lead to a situation whereby the Government is able to 'mark its own homework'. Addressing this should be a priority matter for the Tongan Parliament. This will improve the ability of Committees to effectively scrutinise the work of Government and it will allow Ministers to fully concentrate on administering their portfolios, proving a benefit to both the Parliament and Government. However, it is important that along with removing Ministers from their Committee roles, the overall number of Committees should be reduced. This will stop non-Ministers from being over-burdened with increased committee membership and their attached workloads.

RECOMMENDATION 11

Parliament should review the number of Committees in operation and introduce provisions that ensure only non-Ministers are appointed to their membership. (Benchmark 3.1.2 – The Legislature's assignment of Committee Members on each Committee shall include both majority and minority party Members and reflect the political composition of the Legislature).

Committees in the Legislative Assembly undertake regular work in relation to draft parliamentary Bills. As per the Rules of Procedure (Rule 127)²⁸, Committees are required to conduct detailed scrutiny of Bills referred to them by the Speaker. Whilst the Assessment team were assured this work is fully undertaken, there is little evidence to support this with the Parliament's website not showing any Committee reports relating to their analysis of legislation.

Furthermore, while the Rules of Procedure (Rule 131) allow for the public to make submissions on Bills, Committees do not appear to have formal powers to call for persons, papers and documents in the name of supporting their scrutiny of legislation. Submissions given by citizens of Tonga are not made public either, which is common practice in many other Commonwealth Legislatures. Not having formal provisions for either of these situations significantly hampers the ability of Tonga's parliamentary Committees to effectively scrutinise draft laws placed before them and closes a key avenue of encouraging public engagement in the legislative process.

28 www.parliament.gov.to. (n.d.). Documents – Rules of Procedure of the Legislative Assembly of Tonga. [online]. Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

RECOMMENDATION 12

Parliament should update its Rules of Procedure to grant Committees the power to call for persons, papers and documents and establish means of ensuring that submissions received by members of the public are actively considered as part of their legislative scrutiny. (Benchmark 3.2.1 – Committees shall have the power to summon persons, papers and records, and this power shall extend to witnesses and evidence from the Executive branch, including officials / Benchmark 3.2.5 – Committee shall seek and receive submissions from the public about the business before them and provide reasonable time for written submissions to be prepared).

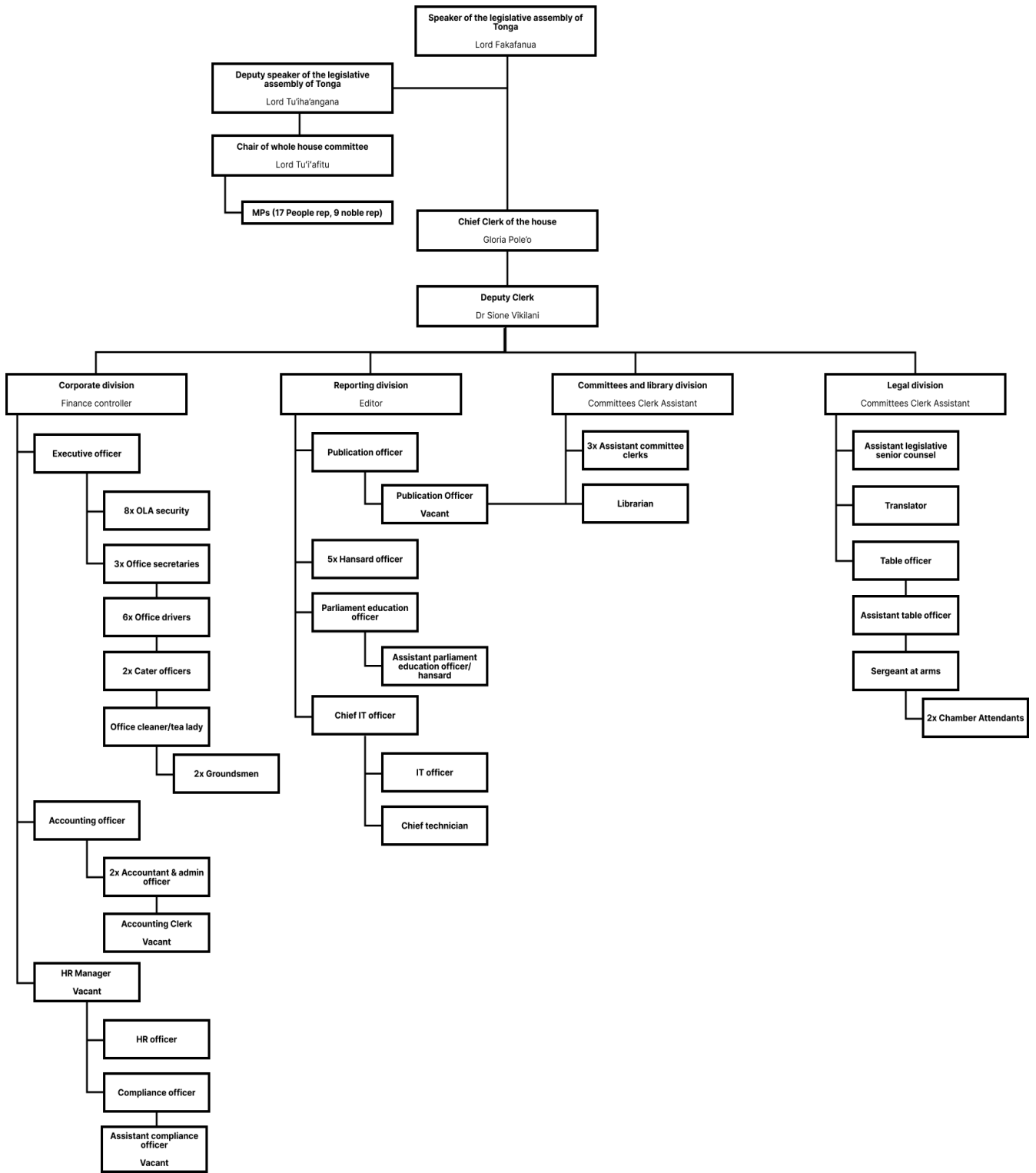
3. POLITICAL PARTIES, PARTY GROUPS, CROSS-PARTY GROUPS, AND THE OPPOSITION

Although Tonga's Constitution is comprehensive in outlining Parliament's role in the country's democratic process, there are no formal political parties within the Legislative Assembly.²⁹ While informal groupings appear to coalesce around specific issues, this happens on an ad hoc basis and there are no provisions for a Leader of the Opposition. In the event that Tonga does develop a party system, or a Leader of the Opposition is identified from amongst the Members of Parliament, sufficient facilities and resources should be provided to that Member and others that do not form part of the Government caucus.

4. PARLIAMENTARY STAFF

The Parliament currently has an administration of approximately 60 staff. This is a large number of staff in comparison with other similar sized Parliaments in the Commonwealth and should be praised. Staff of the Legislative Assembly are independent of Tonga's Public Service Commission with all issues relating to their employment under direct control of the Speaker and Clerk. This should be commended, as it strengthens the independence of Parliament from the Executive. Since the constitutional reforms of 2010, all parliamentary staff have been recruited through fair and open competition, with decisions being taken by interview committees established by the Speaker. The Legislative Assembly Act (clause 19) states that the Clerk is responsible for establishing general guidelines for staff, copies of which are freely available in Parliament's library. The guidelines were last revised in 2020 and it is recommended that the Office of the Legislative Assembly periodically reviews these to ensure that all relevant policies and procedures are both in place and fit for purpose.

29 www.parliament.gov.to. (n.d.). Constitution of Tonga – Act of Constitution of Tonga (2020 Revised Edition). [online] Available at <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.



III. FUNCTIONS OF THE LEGISLATURE

5. LEGISLATIVE FUNCTION

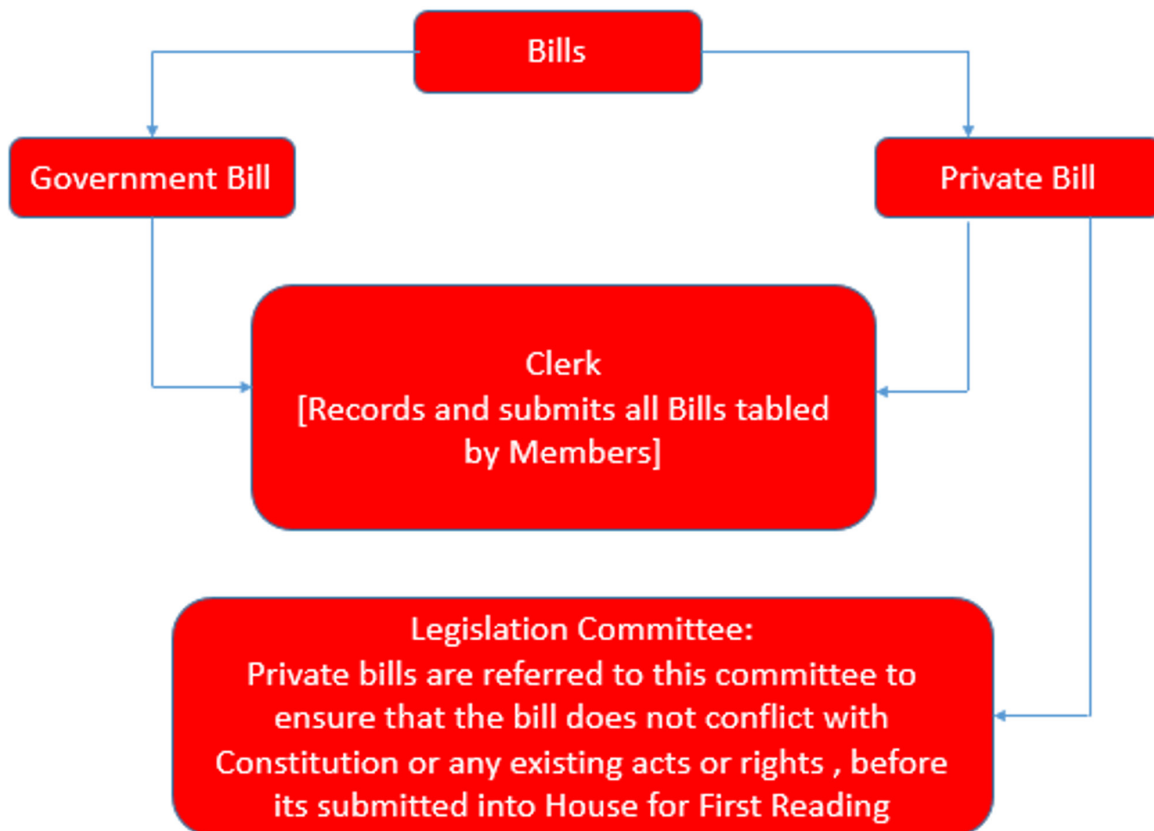
Legislative Process

Most legislation in Tonga (which are Government bills) is currently drafted by the Executive and then reviewed, approved and passed by the Legislative Assembly. Once Parliament has given its consent to a Bill, it becomes an Act and is presented to the King for his Royal Assent. Once Royal Assent has been granted, the Act becomes law and enters into force immediately on publication in the Government Gazette, or on a particular date specified in the legislation (Constitution of Tonga, clause 56).³⁰

There are two types of Bills:

- (1) Government or Public Bills – these are submitted by a Government (Cabinet) Minister who will be responsible for the Bill
- (2) Private Bill – these are submitted by Members of Parliament who are not Cabinet Ministers

The way in which these two types of Bills are introduced to Parliament differs with Private Bills requiring extra scrutiny before they are initially presented to the House:³¹



All Bills must be read and voted on three times in the Legislative Assembly and, as such, Parliament has plenty of scope to consider and scrutinise legislation both on the Floor of the House and in Committees. Specific procedures for the passage of Bills through the Legislative Assembly are clearly outlined in its Rules of Procedure³² (part 5, divisions 7-10) and appear widely understood by both lawmakers and external stakeholders:³³

30 [www.parliament.gov.to](https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition). (n.d.). Constitution of Tonga - Act of Constitution of Tonga (2020 Revised Edition). [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.

31 Webmaster (n.d.). Legislation & Bills. [online] www.parliament.gov.to. Available at: <https://www.parliament.gov.to/parliamentary-business/legislation-bills>

32 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

33 Webmaster (n.d.). Legislation & Bills. [online] www.parliament.gov.to. Available at: <https://www.parliament.gov.to/parliamentary-business/legislation-bills>

Delegates taking part in the CPA post-election seminar in Tonga



Throughout the legislative process, the Legal and Committee Divisions within the Office of the Legislative Assembly provide wide-ranging assistance to Members in their drafting and amending of legislation through providing research provisions, legal advice, and consultation services with relevant stakeholders. Parliament also scrutinises secondary, delegated, and subordinate legislation albeit there do not currently appear to be any means of conducting pre-legislative (impact assessments) or post-legislative (implementation monitoring) scrutiny.

Both pre-legislative and post-legislative scrutiny are core functions of many Commonwealth Parliaments. Pre-legislative scrutiny can take various forms but has a number of benefits including: creating opportunities for Parliament to influence legislation at an early stage; drawing upon particular policy expertise that individual Members might have; and providing a key tool for civil society organisations and wider members of the public to engage with crafting the laws that shape their lives. Ultimately, all of these together act as a form of quality control to ensure that legislation is in its best possible form before entering into force. Post-Legislative scrutiny has the aim of ensuring that Acts of Parliament have done or are doing what they were originally intended to achieve. It heightens accountability that those tasked with implementing particular laws are doing so effectively and offers an opportunity to evaluate whether alternative means of reaching intended goals could be pursued. As with pre-legislative scrutiny, post-legislative scrutiny can take various forms but ultimately should lead to better legislation, better government, and better outcomes for the citizens of Tonga.

RECOMMENDATION 13

The Legislative Assembly should seek to develop means of conducting pre-legislative (impact assessments) and post-legislative (implementation monitoring) scrutiny to improve the quality of its lawmaking and ensure that it delivers maximum benefit to the citizens of Tonga. (Benchmark 6.1.5 – The Legislature shall encourage the process of equality impact assessment with respect to the development of legislation, policies and budgets / Benchmark 6.2.4 – The Legislature shall establish procedures for systematic monitoring of the effective implementation and consequences of legislation).

6. OVERSIGHT FUNCTION

The Legislative Assembly enjoys strong oversight capabilities in some areas of the political process. For example, there are provisions in the Constitution³⁴ (clause 51(2)) stipulating that Executive Members of Parliament (the Prime Minister and their

34 www.parliament.gov.to. (n.d.). Constitution of Tonga - Act of Constitution of Tonga (2020 Revised Edition). [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.

Cabinet) shall be fewer in number than half of the elected MPs including the Speaker. Cabinet Ministers are predominantly drawn from Parliament (both Nobles and People's Representatives) albeit the Prime Minister does have authority to appoint individuals who are not Members of Parliament to their Cabinet. The current Cabinet of Prime Minister Sovaleni comprises three Nobles, six People's Representatives, and two external appointees: long-serving diplomat Fekitamoeloa 'Utoikamanu (formerly Tonga's Permanent Ambassador to the United Nations) as Minister for Foreign Affairs, and Hon. Tiofilusi Tuieti (former Auditor General and CEO for Finance), as Minister of Finance.

Furthermore, the Legislative Assembly has clearly defined mechanisms of obtaining timely information from the Executive sufficient to exercise its oversight function in a meaningful and effective manner. Any MP may put questions to a Cabinet Minister requesting a verbal or written answer and Parliament's Rules of Procedure³⁵ (rules 102 and 105) outline clear timelines for how these should be addressed (verbal answers shall be given within three days and written answers within 14 days of receiving notice of the question). There is also a regular opportunity (Thursday afternoons during the third week of each month) for any Member to ask questions of the Executive in person without any prior notice – verbal answers to these are required to be provided immediately.

Two areas in which the Legislative Assembly appears to be lacking in oversight capabilities, however, are how it scrutinises work conducted by Tonga's military, security and intelligence services and monitors the country's compliance with international treaties and obligations, including international human rights instruments and the Sustainable Development Goals. There are currently no explicit laws, rules or practices that authorise Parliament to conduct formal oversight of the military, security and intelligence services, nor ensure Tonga's compliance with various international commitments. Informal measures do exist – after attending 2023's COP27 summit in Egypt, Parliament adopted a report from the Lord Speaker recommending that the Environment and Climate Change Standing Committee monitor Tonga's ongoing efforts to help mitigate the effects of international climate change – but these could be strengthened.

RECOMMENDATION 14

The Legislative Assembly should amend the terms of reference for relevant Standing Committees to include formal oversight of Tonga's military, security and intelligence services, and to ensure the country complies with its international obligations, including the Sustainable Development Goals. (Benchmark 7.1.3 – The oversight authority of the Legislature shall include effective oversight of the military, security and intelligence services / Benchmark 7.1.5 – The oversight authority of the national Legislature shall include effective oversight of compliance with international treaties and obligations, including international human rights instruments and the Sustainable Development Goals (SDGs)).

Oversight of Independent Constitutional Bodies

Tonga has a public Ombudsman³⁶ office that enjoys clear independence from the Executive in how it investigates complaints from citizens against Government Ministries and its officers. Through both the Constitution³⁷ (clause 31(B)) and separate Ombudsman Act³⁸ (section 3), the Speaker with consent from Parliament has authority to appoint the Ombudsman for a period of five years. The office of the Ombudsman has been in operation since 2016, was given full constitutional status in 2021, and functions effectively. In another demonstration of good democratic practice, Parliament receives high-quality annual reports from the Ombudsman. At the time of writing, however, Tonga has no similarly independent Human Rights Commission, nor a fully operational anti-corruption body. Both of these would be welcome additions to further strengthening the quality and integrity of Tonga's political process.

35 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

36 Office of the Ombudsman Tonga. (n.d.). Home. [online] Available at: <https://ombudsman.to/>

37 www.parliament.gov.to. (n.d.). Constitution of Tonga - Act of Constitution of Tonga (2020 Revised Edition). [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.

38 www.ago.gov.to. (n.d.). Ombudsman Act of Tonga (2016 Revised Edition). [online] Available at: [Ombudsman Act \(ago.gov.to\)](https://www.ago.gov.to)

RECOMMENDATION 15

The Legislative Assembly should establish an independent Human Rights Commission and fully operational anti-corruption body as soon as possible. Both of these organisations should have sufficient staff and resources to fully conduct their affairs. (Benchmark 7.1.7 – The Legislature shall establish a Human Rights Commission, or similar office, with the mandate to protect against human rights violations / Benchmark 7.1.8 – The Legislature shall receive annual reports and scrutinise the activities of all independent constitutional bodies, such as human rights commissions, anti-corruption bodies and ombudsmen, and where feasible, follow-up on issues arising from their reports).

Financial and Budget Oversight

The Legislative Assembly enjoys clear provisions to scrutinise and approve the Government's annual budget. As per the Rules of Procedure³⁹ (rules 183-185), the Minister of Finance must ensure that the Budget Estimate is submitted to Parliament no later than 30 days before the end of the financial year (30 June) to ensure that MPs are given adequate time to scrutinise and debate its content. Alongside the Rules of Procedure, a separate Public Finance Management Act⁴⁰ makes clear provisions for the Legislative Assembly to receive and assess both medium and longer-term budget strategies from the Executive, however Parliament appears to lack sufficient resource and staff to optimise the efficacy of its budget oversight responsibilities. The United Nations Development Programme's Pacific Floating Budget Mission⁴¹ provides valuable budget analysis and briefing papers for MPs and the Assembly's Public Accounts Committee often seeks assistance from employees of the Ministry of Finance with analysis of the Government's Budget.

RECOMMENDATION 16

The Legislative Assembly should look to establish a Parliamentary Budget Office which can provide Members with independent support and analysis of budgetary and financial issues. This office should be fully resourced and receive capacity development from relevant authorities. (Benchmark 7.2.6 – The Legislature shall have access to sufficient financial scrutiny resources and/or independent budget and financial expertise to ensure that financial oversight is conducted effectively).

Workstreams relating to Tonga's Auditor General appear to work well. Under the Constitution⁴² (clause 31C) and the Public Audit Act⁴³ (section 24), the Office of the Auditor General is an independent constitutional body required by law to submit an annual report of public audits undertaken to the Speaker and Prime Minister by 31 March each year. The Office is allocated an annual budget and has broad authority to conduct its audits in a timely manner. Under the Public Audit Act, the Auditor General has full access to all documents, books and accounts necessary for the performance of their functions, as well as the ability to summon persons, call for the production of receipts, and enter any building to conduct a property inspection. All reports produced by the Auditor General are referred to Parliament's Public Accounts Committee as per the Legislative assembly's Rules of Procedure⁴⁴ (rule 174).

No Confidence and Impeachment

The Legislative Assembly has clear mechanisms to impeach or censure the Executive and express no-confidence in the Government. The Constitution (clause 50B) permits Parliament to pass a Vote of No Confidence Motion in the Prime Minister which, if approved by MPs, revokes the appointment of the Prime Minister and members of their Cabinet. Within 48 hours of the revocation, the Legislative Assembly may pass a motion recommending to the King that another Member of Parliament be appointed Prime Minister. If the House does not deliver this nomination to the Sovereign within 48 hours, then the King will dissolve Parliament and a General Election is held within 90 days.

39 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

40 www.ago.gov.to. (n.d.). Public Finance Management Act of Tonga (2020 Revised Edition). [online] Available at: [Public Finance Management Act \(ago.gov.to\)](http://www.ago.gov.to)

41 UNDP. (n.d.). Pacific Floating Budget Office: A Beacon of Transparency and Innovation. [online] Available at: <https://www.undp.org/pacific/stories/pacific-floating-budget-office-beacon-transparency-and-innovation#:~:text=The%20PFBO%20operates%20on%20a>

42 www.parliament.gov.to. (n.d.). Constitution of Tonga - Act of Constitution of Tonga (2020 Revised Edition). [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/constitution-of-tonga/file/487-act-of-constitution-of-tonga-2020-revised-edition>.

43 www.ago.gov.to. (n.d.). Public Audit Act of Tonga (2016 Revised Edition). [online] Available at: [Public Audit Act \(ago.gov.to\)](http://www.ago.gov.to)

44 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

7. REPRESENTATION FUNCTION

Representation of Constituents

Following 2018's Cyclone Gita that destroyed Tonga's original Parliament House, the Legislative Assembly has sat on temporary premises at the Tongan National Cultural Centre. Whilst commendable efforts have been made to continue facilitating Parliament's functionality during this time, it is clear that current facilities and resources limit Members in fulfilling their representative function. Whilst the temporary plenary chamber is sufficiently spacious and makes impressive use of technology to facilitate its proceedings, Parliament only has one Committee room, limited office space for MPs, an under-resourced library and (in some areas) insufficient staff numbers, all of which hinder MPs and their ability to represent their electorates effectively. Many stakeholders in Tonga acknowledged these shortcomings, but praised parliamentary officials for their efforts, and were confident that moving into new, purpose-built surroundings in 2026 would provide Parliament with a significant uplift in the quality of its facilities that will enable its Members and staff to best represent priorities of the Tongan electorate.

In the meantime, one area in which the Legislative Assembly does make effective use of its representative function is the distribution of Constituency Development Funds.⁴⁵ Since 2016, Parliament has been responsible for their management and every year allocates every one of the 17 elected representatives with TOP 350,000 for use in their constituency. Of this, TOP 50,000 is ringfenced to community policing, but the remaining TOP 300,000 is available to support small scale projects that would not otherwise be addressed through national Government infrastructure and programme spending. This new legislation saw management of the system transferred to the Parliament of Tonga. The policy has been revised several times since and now covers a grant funding agreement, with the terms and conditions for disbursement, use, and reporting. Most recently, a grant funding agreement was put in place to create stronger checks and balances, as well as a more comprehensive monitoring and evaluation framework.

All Constituency Development Fund projects are monitored by the Auditor General's office every year and various stakeholders in Tonga believed they were an essential way of connecting Parliament to its people (particularly for citizens based in more rural or remote areas of the country).

Representation of Women

Female representation in the Tongan Parliament is low and compares unfavourably to other democratic countries in the Pacific region. Currently, just one of the 17 People's Representatives (7.2%) and one of the 10 Cabinet Ministers (10%) are women, the latter of whom (Minister of Foreign Affairs) is a non-elected member who was appointed by the King on the recommendation of the Prime Minister. There are no laws that limit the participation of women in the political process, however a variety of cultural and institutional factors such as the reservation of nine parliamentary seats for Nobles – all of whom are men – do contribute towards their underrepresentation as legislators. Addressing these shortcomings should be a top priority for the Legislative Assembly. Undertaking a CPA Gender Sensitive Assessment⁴⁶ or establishing a parliamentary Committee on Gender Equality would both help with these efforts. Having a political membership that more accurately represents national demographics would improve the quality of legislation, increase engagement with women across Tonga, and bring the Assembly closer in line with other democratic Parliaments throughout the Commonwealth.

Away from elected office, several top positions within Tonga's wider political process are held by women. Among others, the country's Attorney General, Public Service Commissioner, Civil Society Executive Director, and Clerk of the Legislative Assembly are all female. Parliament is also committed to improving its women's representation and is investing both time and resources towards this ambition.



Young women take part in the Legislative Assembly's 'She Leads' parliamentary programme

45 UNODC. (n.d.). UNODC and GOPAC Pacific Regional Conference: Constituency Development Funds. [online] Available at: [CDF_conference_report.pdf \(unodc.org\)](https://www.unodc.org/documents/pacific/conference/2018/04/cdf-conference-report.pdf)

46 GENDER SENSITISING PARLIAMENTS GUIDELINES: STANDARDS AND A CHECKLIST FOR PARLIAMENTARY CHANGE. (n.d.). Available at: <https://www.cpahq.org/media/s20j1lws/cwp-gender-sensitizing-guidelines.pdf>

8. PARLIAMENTARY ASSISTANCE, NETWORKING AND DIPLOMACY

Commonwealth Connections

Tonga established its CPA Branch in 1958 and has been an active member of the network for many years. The Legislative Assembly has a strong track record of sending delegates to regional and global CPA conferences (albeit doing so is often limited to the Lord Speaker alongside other senior Members) and, last year, hosted a CPA Post-Election Seminar for other Pacific Legislatures.⁴⁷ Tonga enjoys close and positive relationships with a range of its neighbours including Fiji, Kiribati, Samoa and Tuvalu and there appears to be regular contact at both the political and official level across these Parliaments.

The Legislative Assembly also has an official 'twinning arrangement'⁴⁸ with the Parliament of South Australia. This twinning programme, initiated by the CPA in 2007, is designed to promote collaboration and understanding between Parliaments to ensure they fulfil their legislative, oversight and representative roles. Stakeholders in Tonga believed its twinning relationship with the Parliament of South Australia had been somewhat positive in helping navigate common challenges and allowing the Legislative Assembly to reflect on its own practices and procedures, however voiced a desire for more to be done. Further deepening its twinning arrangement with the Parliament of South Australia would increase opportunities for wider Members and staff of the Legislative Assembly to exchange essential best practices and critical soft skills linked to improving parliamentary operations for the benefit of Tongan citizens.

Similar feedback was provided in relation to Tonga's relationship with the United Nations Development Programme's Pacific Office. While the country has enjoyed ongoing close cooperation regarding climate change and the Parliament hosted a successful UNDP summit on Digital Democracy⁴⁹ in July of last year, various stakeholders voiced a desire for these institutional links to be strengthened even more.



47 www.cpahq.org. (2023). CPA Post-Election Seminar in Tonga. [online] Available at: https://www.cpahq.org/news/2023_03-tonga-pes/

48 Anon, (2021). Twin Peeks: A closer look at parliamentary 'twinning'. [online] Available at: <https://cpaaus.org/twin-peek-a-closer-look-at-parliamentary-twinning/>

49 UNDP. (n.d.). 'Unleashing Tonga's Digital Destiny: Pacific Digital Democracy Project paves the way'. [online] Available at: <https://www.undp.org/pacific/press-releases/unleashing-tongas-digital-destiny-pacific-digital-democracy-project-paves-way>

IV. VALUES OF THE LEGISLATURE

9. ACCESSIBILITY, OPENNESS AND ENGAGEMENT

Public Engagement

Conversations with representatives of the Media indicated that they were generally happy with their level of access to the proceedings of Parliament, as well as their access to Members. An excellent guide for journalists has been produced by the Legislative Assembly (Tonga Parliamentary Reporters' Handbook)⁵⁰ which sets out valuable information and tips on how to research, gather and craft stories that cover parliamentary proceedings in a simple, fair and balanced manner.

In terms of accessibility to Parliament for persons with disabilities, it was accepted that they were adequate for the temporary building that is currently occupied by Parliament, but that better access was expected when permanent new parliamentary premises are completed in 2026.

Significant work has been undertaken by the parliamentary administration to promote the public's understanding of the work of the Legislature, and the Legislative Assembly's Education Office appears to be conducting invaluable work with its outreach programmes to various outer islands of Tonga. In terms of relations with civil society, more information on Parliament's website detailing Committee reports presented, daily agendas, and other information about the proceedings in the Legislative Assembly would be welcomed, so that these stakeholders can be more aware of and engage more effectively with parliamentary operations.

The Legislative Assembly does in theory provide opportunities for members of the public to input into the legislative process. As per the Rules of Procedure⁵¹ (rule 131), Parliament will not process a Bill beyond its First Reading for a period of at least two weeks (but often longer) so as to allow public submissions to the Standing Committee on Legislation. The Assessment team were told by several stakeholders, however, that in reality instances of this are few and far between.

This appears largely due to the fact that the Legislative Assembly falls short in how it provides members of the public with topical and timely information regarding matters that are currently under consideration by Parliament. Whilst debates on the Floor of the House concerning Bills are broadcast live (principally via radio but also online), work undertaken in Committee meetings is completely private. This working practice falls well short of those in other Commonwealth Parliaments where Committee business is principally conducted in public as a key facet of open, accountable and engaged democratic Legislatures. In some instances, it is right to hold meetings in private, for instance when the material discussed is commercially sensitive, however this should be the exception not the norm. Changing this set-up would have the twin benefits of: (1) promoting to a wider audience the valuable scrutiny work conducted by Parliament's Committees; and (2) providing increased opportunities for members of the public to engage in the political process. It would also highlight to the public that the Parliament is an open and transparent institution that works for them. It is vital that the current practice of holding all meetings in private is amended immediately.

RECOMMENDATION 17

As standard practice, Committees of the Legislative Assembly should hold their meetings in public to promote their work, increase citizens participation in the political process, and uphold a core element of fully functioning democratic Legislatures. (Benchmark 6.3.1 – Opportunities shall be given for public input into the legislative and Committee process, including the budget process).

Linked to this, Parliament's website could be better utilised as a means of promoting work currently under consideration by the Legislative Assembly. While certain areas of the website are well maintained (including Hansard Records, Press Releases, and the Annual Calendar), others (relating to, for example, Legislation, Committees, and Members' Interests) would benefit from further development and continuous updating. The website is often the first interaction that some citizens will have with Parliament – it is key that it is both welcoming and easy to use.

50 Tonga Parliamentary Reporters' Handbook. [online] Available at: <https://live-production.wcms.abc-cdn.net.au/adf4de285bda9541c6f604203efdbf99>.

51 www.parliament.gov.to. (n.d.). Documents - Rules of Procedure of the Legislative Assembly of Tonga. [online] Available at: <https://www.parliament.gov.to/parliamentary-business/documents/file/244-rules-of-procedure-of-the-legislative-assembly-of-tonga>.

RECOMMENDATION 18

The Legislative Assembly should seek to update and improve its website, ensuring it is regularly updated and user-friendly. (Benchmark 6.3.2 – Information shall be provided to the public in a timely manner regarding matters under consideration by the Legislature).

10. ETHICAL GOVERNANCE

Transparency and Integrity

There is currently no code of conduct for Members of the Legislative Assembly, although the Rules of Procedure do have protocols for dealing with articles of impeachment against a Minister, Noble or People's Representative. Almost everyone that the Assessment team spoke to were in favour of the Parliament adopting a code of conduct for its Members.

There is also no scheme where Members are required to publicly declare their interests, and, like the code of conduct, almost everyone the Assessment team spoke to were in favour of its introduction. A public register of interests would increase transparency within the Legislative Assembly and reassure the public that Parliament is conducting its business in an open and transparent manner.

RECOMMENDATION 19

The Parliament should introduce a code of conduct and public register of interests for all Members which together would increase transparency, improve public trust in Parliament and bring Tonga in line with international best practice. (Benchmark 11.1.1 – Legislators should maintain high standards of accountability, transparency, responsibility and propriety in the conduct of all public and parliamentary matters including strict adherence to codes of conduct, and interest disclosure rules).



RECOMMENDATIONS

RECOMMENDATION 1

The Legislative Assembly should continue its work in encouraging political participation of marginalised groups and increase this ahead of General Elections to particularly maximise awareness among women of standing for election and ultimately being elected to Parliament.

RECOMMENDATION 2

The Legislative Assembly should enact a law that grants witnesses, submitters and members of the public immunity from prosecution in relation to their participation in or facilitating of Parliament's proceedings.

RECOMMENDATION 3

The Legislative Assembly should introduce formal sub-judice provisions in its Rules of Procedure.

RECOMMENDATION 4

The Legislative Assembly should amend its Rules of Procedure to allow for a citizens rights of reply scheme in relation to adverse mentions of individuals in the Assembly.

RECOMMENDATION 5

The Remuneration Authority should be strengthened so as to allow it (and not MPs) to set levels of remuneration and benefits for Members of Parliament and staff.

RECOMMENDATION 6

The Legislative Assembly should expand its Professional Development Programmes so that these are held periodically between General Elections and ensure that such opportunities are open to all Members of Parliament.

RECOMMENDATION 7

A comprehensive review of the Rules of Procedure should be undertaken by a relevant Committee of the Legislature at regular intervals and any suggested changes should only be passed if they are agreed by a clear majority of the Assembly.

RECOMMENDATION 8

The Legislative Assembly should update its Rules of Procedure to introduce formal provisions for the Executive or Parliament itself to convene extraordinary sittings when such needs arise.

RECOMMENDATION 9

Agendas and other documents relating to the work of the Assembly should be published on the Parliament's website in a timely manner to enable citizens of Tonga to be more informed and engaged with the work of the Parliament.

RECOMMENDATION 10

The Parliament should introduce various means of promoting the petitions process and ensure that members of the public can easily access this information.

RECOMMENDATION 11

Parliament should review the number of Committees in operation and introduce provisions that ensure only non-Ministers are appointed to their membership.

RECOMMENDATION 12

Parliament should update its Rules of Procedure to grant Committees the power to call for persons, papers and documents and establish means of ensuring that submissions received by members of the public are actively considered as part of their legislative scrutiny.

RECOMMENDATION 13

The Legislative Assembly should seek to develop means of conducting pre-legislative (impact assessments) and post-legislative (implementation monitoring) scrutiny to improve the quality of its lawmaking and ensure that it delivers maximum benefit to the citizens of Tonga.

RECOMMENDATION 14

The Legislative Assembly should amend the terms of reference for relevant Standing Committees to include formal oversight of Tonga's military, security and intelligence services, and to ensure the country complies with its international obligations, including the Sustainable Development Goals.

RECOMMENDATION 15

The Legislative Assembly should establish an independent Human Rights Commission and fully operational anti-corruption body as soon as possible. Both of these organisations should have sufficient staff and resources to fully conduct their affairs.

RECOMMENDATION 16

Recommendation 16: The Legislative Assembly should look to establish a Parliamentary Budget Office which can provide Members with independent support and analysis of budgetary and financial issues. This office should be fully resourced and receive capacity development from relevant authorities.

RECOMMENDATION 17

As standard practice, Committees of the Legislative Assembly should hold their meetings in public to promote their work, increase citizens participation in the political process, and uphold a core element of fully functioning democratic Legislatures.

RECOMMENDATION 18

The Legislative Assembly should seek to update and improve its website, ensuring it is regularly updated and user-friendly.

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Hon. Lord Speaker Fakafanua and Clerk of the Legislative Assembly (Ms. Gloria Pole'o) with CPA Delegation

STAKEHOLDERS

MEMBERS OF PARLIAMENT

Hon. Lord Fakafanua

Lord Speaker, Tongan Legislative Assembly

Hon. Dr. Uhilamoelangi Fasi MP

Member of Parliament

Hon. Dr. Aisake Valu Eke MP

Member of Parliament

Hon. Johnny Grattan Vaea Taione MP

Member of Parliament

CIVIL SERVANTS

Ms. Linda Folaumoetui'i

Attorney General

Mr. Sefita Tangi

Auditor General

Mr. Pita Vuki

Elections Supervisor, Tongan Electoral Commission

Ms. Victorine Kioa

CEO, Tongan Public Service Commission

PARLIAMENTARY STAFF

Ms. Gloria Pole'o

Clerk of the Parliament

Dr. Sione Vikilani

Deputy Clerk

Ms. Malia Ma'asi

Head of Finance, Tongan Legislative Assembly

Ms. Sulia Makasini

Head of Committees, Tongan Legislative Assembly

Ms. Linda Filiai

Education Officer, Tongan Legislative Assembly

MEDIA CONTACTS

Mr. Siaoosi Lavaka

Representative, Tongan Media

CIVIL SOCIETY ORGANISATIONS

Ms. Keasi Pongi

Executive Director, Civil Society Forum of Tonga



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CPA Headquarters Secretariat
Richmond House, Houses of Parliament
London SW1A 0AA
United Kingdom

Telephone: +44 (0)20 7799 1460
Email: hq.sec@cpahq.org
Website: www.cpahq.org