

SAMOA

Arrangement of Provisions

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2005, No. 3**AN ACT to amend the Electoral Act 1963.***[31st January 2005]*

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:-

1. Short title and commencement-(1) This Act may be cited as the Electoral Amendment Act 2005 and shall be read with and form part of the Electoral Act 1963 (the Principal Act).

(2) This Act shall commence on a date nominated by the Prime Minister.

(3) Notice of commencement shall be published in Samoan and English in the Savali and one other newspaper circulating in Samoa.

2. Interpretation-(1) Section 2 of the Principal Act is amended by deleting the definitions of “Chief Electoral Officer” and “Registrar” and inserting the following definitions in correct alphabetical order:

“Electoral Commissioner” and “Commissioner” mean the Electoral Commissioner appointed under section 3, and includes any person appointed as Acting Electoral Commissioner under section 3 and any person authorised by the Electoral Commissioner or Acting Electoral Commissioner to exercise the responsibilities, functions, duties and powers of the Electoral Commissioner or Acting Electoral Commissioner, as the case may require;

“public service law” means any law in force relating to the public sector and includes -

(a) the Public Service Act 2004; and

(b) the Public Finance Management Act 2001;

“Standing Orders” means the Standing Orders of the Parliament of Samoa.

(2) The Principal Act is amended by deleting the words “Chief Electoral Officer”, “Registrar of Electors and Voters”, “Registrar”, “Chief Electoral Officer and the Registrar”, “Chief Electoral Officer or the Registrar” wherever such words appear, including the forms in the First Schedule and all headings, and substituting the word “Commissioner”, save for the forms in the First Schedule where the words “Electoral Commissioner” shall be substituted.

3. Office of Electoral Commissioner – The Principal Act is amended by deleting the heading “Officers” (after section 2) and sections 3 and 4 and substituting the following:

“Office of Electoral Commissioner

3. Electoral Commissioner-(1) Subject to this section, there shall be appointed by the Head of State, acting on the advice of Cabinet, an Electoral Commissioner who shall have and exercise the responsibilities, functions, duties and powers conferred by this Act and any applicable law.

- (2) The Commissioner shall:
- (a) hold office for a period of three years on terms and conditions approved by Cabinet;
 - (b) be paid such salary, allowances and other benefits as determined by Cabinet, following receipt by Cabinet of a report from the Remuneration Tribunal in accordance with the provisions of the Remuneration Tribunal Act 2003;
 - (c) not hold any other public office or engage in any business or other employment without the prior written approval of Cabinet;
 - (d) at the time of appointment and whilst holding the position of Commissioner, not:
 - (i) be a member of any political party; or
 - (ii) assist, support or endorse any Member, any Candidate and any person who has declared an intention to become a Candidate, other than performing the Commissioner's responsibilities, functions, duties and powers under this Act;
 - (e) be subject to public service law; and
 - (f) be eligible for re-appointment, subject to compliance with this Act and satisfactory performance.
- (3) The office of Commissioner shall be vacated immediately if the Commissioner:
- (a) breaches subsection (2)(c) or (2)(d) or (4); or
 - (b) is declared bankrupt in Samoa or elsewhere; or
 - (c) at the time of appointment and whilst holding the position of Commissioner, has a conviction or is convicted for any offence, in Samoa or elsewhere:
 - (i) under this Act; or
 - (ii) involving dishonesty or corruption; or

- (iii) where the penalty for such offence includes imprisonment for 1 year or longer (irrespective of whether such penalty has been or is imposed concerning such conviction); or
- (d) is determined by a medical practitioner to be unable to perform the Commissioner's responsibilities, functions, duties and powers due to any physical or mental incapacity; or
- (e) is absent from duty or Samoa for a period of 5 consecutive days without the Minister's written consent or other lawful excuse; or
- (f) after due enquiry, is declared by the Chief Justice of the Supreme Court to have engaged in any personal or official conduct or other behaviour in Samoa or elsewhere which the Chief Justice determines, acting in the Chief Justice's absolute discretion, could bring or has brought into disrepute or could or has cast doubt on the integrity or honesty or impartiality of:
 - (i) the office of Commissioner; or
 - (ii) the Samoan electoral process; or
 - (iii) the proper administration of this Act.

(4) Upon appointment and annually thereafter by the 30th day of June the Commissioner shall provide the Head of State, the Speaker, the Minister and the Clerk of the Legislative Assembly with a Declaration of Pecuniary Interests and Convictions in a form approved by the Attorney General.

(5) The Declarations under subsection (4) shall be available for public inspection without cost at the Office of the Clerk of the Legislative Assembly during normal business hours.

(6) Where:

- (a) the Office of Commissioner is vacant; or
- (b) the Commissioner is on leave or absent from duty; or

(c) for any other reason the Commissioner is unable or unwilling to perform the Commissioner's responsibilities, functions, duties and powers, the Head of State, acting on the advice of Cabinet, may appoint a person qualified to be Commissioner under this section as Acting Electoral Commissioner for a period no longer than 3 months.

(7) An Acting Electoral Commissioner appointed under subsection (6) shall:

- (a) be subject to the provisions of this Act, including this section, in so far as such provisions are consistent with subsection (6);
- (b) exercise the Commissioner's responsibilities, functions, duties and powers; and
- (c) during such appointment, be deemed for all purposes to be Commissioner.

3A. Responsibilities, functions, duties and powers of the Commissioner-(1) The Commissioner shall have the following responsibilities, functions and duties:

- (a) To exercise the responsibilities, functions, duties and powers given to the Commissioner under this Act and any applicable law;
- (b) To advise the Head of State, the Legislative Assembly and any Committee of the Legislative Assembly (through the Speaker), the Government and the Minister concerning Samoa's electoral system, policies and laws;
- (c) To provide reasonable and appropriate assistance and advice to the Speaker, Members, the Clerk of the Legislative Assembly, Candidates and persons declaring an intention to become a Candidate as to their compliance with the provisions of this Act and any applicable law;
- (d) Upon written direction from the Legislative Assembly (through the Speaker) or Cabinet

- (through the Minister) or the Minister or by the Commissioner's own determination, to initiate, sponsor, carry out and publish studies and research on Samoa's electoral system and laws;
- (e) To undertake public awareness and education programs concerning Samoa's electoral system and laws;
 - (f) Within 6 months of the end of each financial year to prepare and provide to the Minister an annual report on the work of the office of the Commissioner, such report to include financial statements and accounts and audit report on such statements and accounts in a form approved and audited by the Controller and Chief Auditor;
 - (g) Within 6 months from the date of each General Election and each by-election to prepare and provide to the Speaker a report on the conduct and result of such election;
 - (h) To provide, in cases approved by Cabinet, assistance in matters relating to elections and referendums (including the secondment of personnel and the supply or loan of materials) to authorities of foreign countries and international and regional organisations; and
 - (i) To perform such other responsibilities, functions, duties and powers conferred on the Commissioner under any other law.
- (2) Upon receipt of a report under:
- (a) subsection (1)(f), the Minister shall lay the report before the Legislative Assembly forthwith;
 - (b) subsection (1)(g), the Speaker shall lay the report before the Legislative Assembly forthwith.
- (3) The Commissioner shall have the power to exercise all of the responsibilities, functions and duties conferred by this Act and any applicable law.

3B. Officers of the Commissioner-(1) Subject to subsection (5), the Public Service Commission may appoint on the recommendation of the Commissioner:

- (a) An Assistant Electoral Commissioner and other Officers and Assistants as required;
- (b) Returning Officers, Deputy Returning Officers, polling officers, Deputy Registrars and such other officers and clerks as required to carry out the provisions of this Act; and
- (c) Substitutes for any persons appointed under paragraph (a) to act in case of their sickness, absence, death or removal.

(2) Substitutes appointed under subsection (1)(b) shall have all the responsibilities, functions, duties and powers of the persons for whom they are acting.

(3) For all purposes the fact that a substitute so acts shall be sufficient evidence that the substitute is authorised so to act.

(4) All persons appointed under this section shall be subject to the authority and direction of the Commissioner.

(5) Subject to subsection (4), every:

- (a) Deputy Returning Officer shall have and may exercise in and about the polling place for which the officer is appointed all of the responsibilities, functions, duties and powers of a Returning Officer; and
- (b) Deputy Registrar shall have and may exercise all of the responsibilities, functions, duties and powers of the Commissioner.

4. Duty to report suspected breaches-(1) All persons employed in the office of the Commissioner or under the authority or direction of the Commissioner shall promptly report to the Commissioner any breach or suspected breach of any of the provisions of this Act or any applicable law.

(2) Where:

- (a) the Commissioner receives a report under subsection (1); or

(b) the Commissioner becomes aware of any breach or suspected breach of the provisions of this Act or any applicable law,
the Commissioner shall ensure that such breach or suspected breach is reported to the appropriate authority for investigation, prosecution or other action, as the case requires.”

4. Political Parties - Part IIA of the Principal Act is amended by inserting the following after section 15E:

“15F. Election of Candidates - Notwithstanding any other law, including but not limited to Standing Orders:

(1) Subject to subsections (3), a Candidate elected as a Member, where the ballot paper for such election cites the Candidate’s membership of a political party, shall sit in the Legislative Assembly as a member of that political party during the term for which the Candidate was so elected.

(2) Subject to subsection (4), a Candidate elected as a Member, where the ballot paper for such election cites the Candidate as independent (meaning the Candidate is not a member of a political party at the time of election), may, prior to taking the oath of allegiance, join a political party in the manner provided by Standing Orders and thereafter such elected Candidate shall sit in the Legislative Assembly as a member of that political party during the term for which the Candidate was so elected.

(3) Subject to subsection (4), a Candidate elected as a Member, where the ballot paper for such election cites the Candidate’s membership of a political party and upon election, but prior to taking the oath of allegiance, it appears that such political party does not have sufficient membership to be recognised as a political party in the Legislative Assembly under Standing Orders, may, prior to taking the oath of allegiance, join another political party or become an independent in the manner provided by Standing

Orders and thereafter the elected Candidate shall sit in the Legislative Assembly as a member of such other political party or as an independent, as the case may require, during the term for which the Candidate was so elected.

(4) Where:

(a) a Candidate elected as a Member is or becomes, as the case may be, a member of a political party in accordance with subsection (1) or (2) or (3); and

(b) the Candidate resigns subsequently from such political party and becomes a member of another political party during the term for which the Candidate was so elected,

the seat of such Candidate as a Member of Parliament shall become vacant and such Candidate shall be disqualified from holding such seat.”

(2) Section 10 of the Principal Act is amended by inserting the following in correct alphabetical order:

“(j) If the Member acts in accordance with the provisions of section 15F(4)(a) and (b); or.”

5. Identity of electors and voters-(1) The Principal Act is amended by inserting the following after section 25B(1):

“(1A) Subsections (1A) to (1K) inclusive shall apply to Parts III, IV and V of this Act.

(1B) Despite the other provisions of this Act, where there is any inconsistency between this section and the provisions in Parts III, IV and V, this section shall prevail to the extent of such inconsistency.

(1C) At the time of receiving an application for registration or re-registration or transfer of registration as an elector or voter, the Commissioner shall photograph or cause to be photographed the person seeking such registration or re-registration or transfer of registration, as the case may require.

(1D) Subject to subsection (1J), where a person referred to in subsection (1C) is registered or re-registered as an elector or voter or whose registration as an elector or voter is transferred in accordance with this Act, the Commissioner shall record or print the person's photograph on the appropriate roll adjacent to the name of the person.

(1E) Where a roll is used in a General Election or By-election, the Commissioner and all electoral officials shall use rolls prepared in accordance with subsection (1D).

(1F) Where a roll is required by this Act or any other law to be available for public or other inspection or use (howsoever described), the Commissioner shall provide or produce, as the circumstances require, such roll without the photographs required under subsection (1D).

(1G) Where for any reason a person applying for registration or re-registration or transfer of registration as an elector or voter fails or refuses or is unable to be photographed in accordance with subsection (1C), the Commissioner shall not register such person on a roll as an elector or voter.

(1H) Every person registered as an elector or voter as at the date of commencement of the Electoral Amendment Act 2005 shall be required to re-apply for such registration in accordance with the provisions of this Act and this section at a time and place and in such manner determined by the Commissioner by Public Notice.

(1I) Every person registered and photographed in accordance with this Act and this section shall be required to be re-photographed in accordance with the provisions of this section at time intervals of not less than 9 years and not more than 10 years from the date on which the person was last photographed under this section at a time and place and in such manner determined by the Commissioner by Public Notice.

(1J) The Commissioner shall substitute photographs of electors and voters taken in accordance with subsection (1I) for previous photographs of electors and voters taken, recorded or printed in accordance with the provisions of this section, as the case may require.

(1K) Every person required to be photographed in accordance with this section who fails to do so without lawful excuse commits an offence punishable by a fine not exceeding 1 penalty unit.”

(2) The Principal Act is amended by:

- (a) deleting from section 5(1) the words “is the holder of a Certificate of Identity pursuant to section 135A of that Act”;
- (b) deleting from section 22(2) all words after the words “individual voters’ roll”;
- (c) deleting section 25C(6);
- (d) deleting from section 70A the words “to section 70B and”;
- (e) deleting section 135A; and
- (f) deleting section 70B.

6. Qualification of electors—(1) Section 16 of the Principal Act is amended by deleting subsections (2)(b)(d)(e)(f), (3), (4), (5), (6), (7) and (8) and substituting the following:

“(2)(b) If the elector is not the holder of a Matai title, the elector shall be registered in:

- (i) the constituency in which the elector resides; or
- (ii) if the elector is the spouse or parent or child or brother or sister of a Matai and such elector chooses, the constituency in which such Matai is registered.”

(3) Subject to this Act, an elector shall be eligible to transfer the constituency in which the elector is registered once only between general elections.”

(2) Section 19 of the Principal Act is amended by deleting from subsection (1)(b)(i) the word “grandchild”.

7. Conduct of “O’o” and “Momoli” – The Principal Act is amended by inserting the following after section 97:

“97A. Conduct of “O’o” and “Momoli” – Despite the other provisions of this Act, the traditional presentation of “O’o” and “Momoli” by a Member or Candidate for Parliament or a person acting on behalf of such Member or Candidate shall not be considered as treating or bribery or an illegal or corrupt activity or practice provided that the presentation is made within the period commencing with the 180th day and ending with the 90th day from expiry of the then Parliament at 5 years from the date of the last preceding General Elections.”

**The Electoral Amendment Act 2005 is administered in the
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