

ELECTORAL AMENDMENT BILL 2021

SAMOA

Explanatory Memorandum

1.0 Summary:

The Bill seeks to amend the Electoral Act 2019 ("principal Act"). The overall objective of the Bill is to improve electoral requirements and processes for by-elections that may arise after the 2021 general elections.

Clauses:

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - amends section 2 of the principal Act to omit the definition of the term "approved form" and insert new definition for "lodgement day".
- Clause 3:** - amends section 8 of the principal Act:
- (a) by amending subsection (1)(c), to insert after the word "for" the words "a consecutive three (3) years ending on lodgement day for" to clarify that matai title for the candidate should be registered for consecutive three (3) years by the date in which Nomination was lodged;

- (b) by substituting the words in subsection (1)(d)(ii) “in which the nomination paper is lodged with the Commissioner” with “lodgement day” for consistency of wording regarding the lodgement of nomination paper as a result of electoral challenge cases of 2020;
- (c) by amending subsection (1)(e) to substitute “years ending with the day on which the nomination paper is lodged with the Commissioner” with “consecutive years ending on lodgement day” for consistency of wording regarding the lodgement of nomination paper as a consequence to the proposed amendments in subsection (1)(d)(ii);
- (d) by omitting the words “or section 9 of this Act” in subsection (1)(f) as the section 9 referenced has been repealed;
- (e) by amending subsection (2)(d)(i) to substitute the words “date nomination is made” with the words “lodgement day” for consistency of terms used regarding the lodgement of nomination papers as a consequence of the proposed amendments in subsection (1)(d)(ii);
- (f) by amending subsection (3) -
 - (i) to omit the words “or monotaga” for clarity of the provision; and
 - (ii) to substitute paragraph (d) with a new paragraph to clarify the eligibility of a person who is exempted from residential requirement for medical reasons;

- (iii) to substitute paragraph (e) with a new paragraph to exempt a person/candidate that was a carer for a person seeking medical assistance overseas;
- (iv) to insert new paragraphs (f) and (g). Paragraph (f) provides for an exemption of a person who satisfies the Commissioner that he or she was affected by travelling restrictions of a declared pandemic or natural disaster. Paragraph (f) what was previously under subsection (5) regarding temporary absence from Samoa as a new paragraph (g) to exempt from the residential requirement a person temporarily absent from Samoa for official duties and is a holder of a Government position, post or office; or a member or official of a representative body or organisation based in Samoa;
- (g) by amending subsection (5) -
 - (i) in the definition of “minimum of three (3) years” substitute the words “nomination day but does not include temporary absence from Samoa of a person who is overseas for official duties where the person is a:
 - (a) holder of a Government position, post or office; or
 - (b) Member or official of a representative body or organisation based in Samoa.” with “lodgement day”. This amendment is made for consistency. The exemption

will now be provided in subsection (3) where all other exemptions are provided, thus there is no need for the exemption to be included in the definition of “minimum of three (3) years”;

- (ii) to insert the definition of “organisation” to assist the Court in determining what the meaning of “organisation” is, for the purpose of section 8(3)(f) of the Electoral Act;
- (h) by substituting subsection (7) with a new subsection to clarify for the purpose of section 8(2)(b)(ii) and section 47(1)(f) of the Principal Act, the two (2) matai who are to depose the statutory declaration prescribed form, must meet the requirements set out in this new subsection before they can depose a statutory declaration. The requirements are, the two (2) matai must hold a registered matai title for consecutive three (3) years ending on the day of lodgement of the nomination, must have rendered monotaga for consecutive three (3) years ending on the day of lodgement of the nomination, must sit in the same village council as the Candidate for consecutive three (3) years ending on the day of lodgement of the nomination. The rationale for this clarification is to ensure that the matai who depose affidavits are in a position to verify the

monotaga of the candidate because they consistently attend village council meetings and render monotaga themselves in the same village that the candidate renders monotaga in.

In addition the clarification made regarding the Sui o le Nuu or Sui Tamaitai o le Nuu who are to depose the statutory declaration prescribed form, is only those who legally hold such position (i.e. appointed as such under the Internal Affairs Act 1995 or the Ministry of Women Affairs Act 1990) at the time of the lodgement of the nomination are permitted to depose the statutory declaration.

Clause 4: - amends section 11(2) of the principal Act by substituting “date of filing his or her nomination” with “lodgement day” for consistency of wording regarding the lodgement of nomination paper as a consequence to the proposed amendments in subsection (1)(d)(ii).

Clause 5: - amends section 18 of the principal Act:

- (a) by amending subsection (3) to substitute the words “date a candidate’s nomination is made under section 46” with “lodgement day”; and
- (b) by amending subsection (4) to substitute “his or her nomination is made under section 46” with “the lodgement day”.

These proposed changes are to ensure consistency of wording regarding the lodgement of nomination paper and as a consequence to the proposed amendments in subsection (1)(d)(ii).

- Clause 6:** - amends section 47 of the principal Act:
- (a) by substituting subsections (1) and (2) to reconcile with qualifications criteria under section 8;
 - (b) by inserting a new subsection (2A) to provide for matters to be considered by the Commissioner when exercising his or her power and duty to accept or reject a nomination under section 47 of the principal Act;
 - (c) by inserting in subsection (3)(a)(i) after the word “nomination” the words “and a response to the motion must be filed within five (5) working days after the filing of the motion”;
 - (d) by substituting in subsection (3)(a)(ii) the number “twenty (20)” with “twenty five (25)” as a consequence of the proposed amendment in subsection (3)(a)(i);
 - (e) by substituting in subsection (3)(b)(ii) the number “five (5)” with “ten (10)” as a consequence of the proposed amendment in subsection (3)(a)(i) above;
 - (f) by inserting new subsections (3A) to (3D) to provide:
 - (i) for subsection (3A), grounds for amending the Commissioner’s decision under subsections (1) and (2) of the principal Act in response to a challenge;
 - (ii) for subsection (3B), provides for other powers of the Commissioner relating to amending a decisions by him or her to revoke or accept

a nomination through the filing of an application to the Supreme Court;

(iii) for subsection (3C), provides for the various timeframes for application under subsection (3B);

(iv) for subsection (3D), to clarify that the Government is not liable for any costs in relation to any application made under subsections (3A) and (3B);

(g) by inserting new subsection (4) to provide for matters for the Supreme Court to take into account when hearing a motion filed under this section and renumber the current subsection (4) as subsection (5).

Clause 7:

- amends section 156 of the principal Act as follows:

(a) in subsection (1) -

(i) for paragraph (c)(i) by inserting after the words 'consecutive three (3) years' the words 'ending on lodgement day';

(ii) by inserting a new paragraph (c)(ii)(B) and renumber the current provision as paragraph (c)(ii)(C);

(iii) in subsection (c)(ii)(C), by inserting after the words "consecutive three (3) years" the words "ending on lodgement day" to accurately reflect the intention of the transitional arrangements;

(b) in subsection (2) -

(i) in paragraph (b), by omitting the fullstop after the year '2021' and substitute it with "; and";

- (ii) insert new paragraph (c) to clarify that the requirements under this subsection does not apply to any by-elections that may take place after the general elections 2021 including by-elections that may take place as a result of a void election under sections 116 and 117 of the principal Act. This amendment is to ensure for clarity that the transitional arrangements for monotaga of candidates contesting in Electoral Constituencies that were divided, will not apply after the 2021 general elections.

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(Hon FAAOLESA Katopau T. Ainuu)

MINISTER OF JUSTICE AND COURTS ADMINISTRATION AND
MINISTER RESPONSIBLE FOR THE ELECTORAL COMMISSION