

# ELECTORAL AMENDMENT BILL (No. 2) 2021

## SAMOA

### Explanatory Memorandum

#### 1.0 Summary:

This Bill seeks to amend the Electoral Act 2019 (“principal Act”). The overall objective of the Bill is to reflect the necessary changes required to address certain issues arising from recent Court decisions regarding eligibility for candidacy and to provide clarity for the administration required for elections and By-elections.

#### Clauses:

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - amends section 2 of the principal Act under the definition of “lodgement day” by inserting a section that makes reference to the latest day for nomination of a candidate of a By-election. This provides more clarity on the date in which the three (3) year residential requirement is counted from.
- Clause 3:** - amends section 8 of the principal Act as set out below:
- (a) to amend subsection (1) paragraph (c) by substituting the words “registered matai title for a consecutive three (3) years ending on lodgement day” with “matai title registered before lodgement day”. This provides that the registration of a matai title of a person intending to be a candidate for election does not need to be three (3) consecutive

years from lodgement day provided that the matai title is registered before lodgement day. Subsection (1) is also amended by substituting paragraph (d) which provides that the monotaga requirement of candidates is recognized if it was conducted within any three (3) consecutive year period before lodgement day. These amendments address the issues that arose during the nomination challenges for the General Election 2021 and the decisions of the Court in the matters of *Su'a v Electoral Commissioner* [2020] WSSC 80 (27 November 2020) and *Tuimauga v Electoral Commissioner* [2020] WSSC 82 (27 November 2020). The amendments provide clarity on the approach to be taken when confirming monotaga requirements;

- (b) to amend subsection (2)(b) by inserting a new paragraph (iii) to provide another category of persons that can verify by a sworn statutory declaration, that a candidate meets the monotaga requirements pursuant to subsection (1)(d). This third category of persons is in addition to Sui o le Nuu and Sui Tamaitai o le Nuu;
- (c) to amend subsection (5) by including “religious activities” in the definition of “monotaga”. This amendment ensures that monotaga also includes religious activities rendered to a religious institution that has been duly registered under the law;

- (d) to insert a new subsection (8) which permits the Commissioner appointing a third category of persons that may by a statutory declaration confirm the monotaga requirements of a candidate. This clause also provides that this person is only appointed if a Matai or Sui o le Nuu or Sui Tamaitai o le Nuu are unable or refuse to confirm a candidate's monotaga by statutory declaration. This clause also provides a guide that the Commissioner relies on for the appointment. The guide ensures that the person appointed is able to provide proof of the candidate's monotaga as required under subsection (1)(d) and that the person appointed either sits on the same village council, or holds a designated position in the same church or religious organisation as the candidate, within a village in a constituency that the candidate intends to run as a candidate.

**Clause 4:** - amends section 53 of the principal Act by inserting a new subsection (5) to ensure that a candidate who challenges the decision of the Commissioner to accept or reject a nomination of another candidate by motion in Court and whose motion is successful, cannot later withdraw his or her candidacy in the election. The exception to the general rule is if due to a serious illness the candidate is rendered unfit to be a candidate.

**Clause 5:** - amends section 54 of the principal Act to allow special booths during an election or by-election to be placed both within and outside of a constituency. This amendment revives a provision that was provided for in the repealed Electoral Act 1963 which permitted the casting of votes for a constituency from outside of the constituency. This amendment provides ease of access for voters to polling

booths particularly when voters reside outside of their constituency.

**Clause 6:** - amends section 58 of the principal Act to clarify that the date to print ballot papers is to be done on the day after the closure of withdrawal of nominations. This amendment assists with the administration and conduct of elections by ensuring that ballot papers are not re-printed after a candidate has withdrawn his or her candidacy.

**Clause 7:** - this clause intends to amend section 60 of the principal Act to provide that pre-polling is to be set for one (1) day before polling day, and that day falls on the same week as the polling day allocated by the Commissioner.

**Clause 8:** - amends section 61 of the principal Act. The intention of this amendment is to ensure that voters who cast votes during pre-polling remain anonymous which in turn prevents the probability of scrutineers inferring from the votes case, whom the voters voted for. The amendment amends section 61 of the principal Act to prevent the counting of pre-polling votes, however all that the Presiding Officer will do is, tally the number of ballot papers used.

Section 61 is also to be amended for the purpose of ensuring that the list of registered voters for pre-polling used at general elections, are to be used for by-elections that are the result of electoral petitions following the general elections.

**Clause 9:** - this clause intends to amend section 83 of the principal Act by providing that votes cast during pre-polling will only be counted during the official count.

This amendment is to coincide with the amendment made to section 61 of the Principal Act.

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(Hon FAUALO Harry Jeffery Schuster)

**MINISTER RESPONSIBLE FOR THE  
OFFICE OF THE ELECTORAL COMMISSION**