

ELECTORAL BILL 2018

SAMOA

Explanatory Memorandum

1.0 Object and reasons:

- 1.1 The Bill seeks to replace the Electoral Act 1963. The Bill is a re-write of the Act in simpler language. It comprises of provisions of the Act as well as new rules that will be used to govern and regulate the procedure for elections in Samoa.
- 1.2 The object of the Bill is to provide a more clear process for the conduct of elections in Samoa.

Clauses:

PART 1 - PRELIMINARY

- Clause 1: - provides for the short title and commencement.
- Clause 2: - provides for the definition of terms used in the Bill.

PART 2 - POLITICAL PARTIES

- Clause 3: - provides for the Electoral Commissioner to keep and maintain a 'political parties' register'.
- Clause 4: - provides the application requirements for registering a political party.

- Clause 5:** - provides for the registration process of a political party.
- Clause 6:** - provides the process for the cancellation of registration.
- Clause 7:** - provides that members of the public must without cost have access, to the political parties' register.

PART 3 - ELIGIBILITY FOR CANDIDACY

- Clause 8:** - provides for the qualifications required to become a candidate for elections.
- Clause 9:** - provides that a candidate may challenge another candidate's eligibility to become a candidate in Court.
- Clause 10:** - provides that an error of a roll is not ground for disqualifying a person's eligibility to become a candidate.
- Clause 11:** - provides for resignation requirements for public servants intending to become candidates.
- Clause 12:** - provides for resignation requirements for other Government Officers intending to become candidates.

PART 5 - VOTER REGISTRATION AND TRANSFER

Division 1 - Registration and Transfer

- Clause 13:** - provides that it is mandatory for any person who is qualified to be registered as a voter.
- Clause 14:** - provides for the qualifications of a voter.

- Clause 15:** - provides that a person can only be registered in one constituency that a person resides in.
- Clause 16:** - provides the exception to registering in a constituency a person resides in. The exceptions apply to a person who chooses to register in a constituency a person is a matai in, and not necessarily reside in that Constituency. The exception also applies to children of a candidate who opt to register in the Constituency the parent is registered in. The exception also applies to the spouse of a candidate who opts to register in the Constituency the spouse who is a candidate registers in.
- Clause 17:** - provides for the grounds on which a person is disqualified from registration as a voter.
- Clause 18:** - provides that a voter is able to transfer from once constituency to another after 10 years from the date of first registration or from the date of the most recent transfer or re-registration.
- Clause 19:** - provides for the Commissioner to consider applications for registration.
- Clause 20:** - provides for the signing and witnessing of applications for registration as a voter.

Division 2 - Residence

- Clause 21:** - provides how a person's residence is determined.

PART 5 - ROLLS

Division 1 - Compilation and Maintenance

- Clause 22:** - provides for the definitions of different types of rolls.
- Clause 23:** - provides the duty of the Commissioner to compile and maintain electoral rolls.
- Clause 24:** - provides for the removal of names from a roll by the Commissioner
- Clause 25:** - provides that an electronic roll must be maintained.
- Clause 26:** - provides for the Commissioner to prepare and print supplementary rolls.
- Clause 27:** - provides that the Commissioner may print a composite roll in the situations for which a composite roll is required.

Division 2 - Objections

- Clause 28:** - provides for voter's objections and the grounds upon which objections can be made.
- Clause 29:** - provides for the Commissioner's objections.
- Clause 30:** - provides for the procedure for which an objection hearing is to be conducted.
- Clause 31:** - provides for the time limitation for objection hearings.

Division 3 - Review of rolls

- Clause 32:** - provides that the Commissioner may use a roll containing photographs of voters to review rolls.

Division 4 - Closing and Printing

- Clause 33:** - provides for the closing of rolls on a date fixed by the Commissioner which must be six (6) months before the last possible date for general elections.

Clause 34: - provides for the Commissioner to print the main rolls for the electoral constituencies.

Clause 35: - provides that the requirement for the printing of rolls is dispensed with if the typewritten copy is re-produced.

Division 5 - Use of Rolls

Clause 36: - provides that rolls are open to inspection or viewing by members of the public at the Office of the Commissioner or any other place designated by the Commissioner.

Clause 37: - provides that the use of copies of the rolls (certified by the Commissioner) are to be supplied by the Commissioner for the purpose of conducting an election.

Division 7 - Dormant Roll

Clause 38: - provides that the Commissioner may establish and maintain a dormant roll.

Clause 39: - provides for the removal of a name of a deceased person from the dormant roll.

Clause 40: - provides for the requirements of the printing and storage of the dormant roll.

Clause 41: - provides that the dormant file may be inspected by members of the public.

PART 6 - CAMPAIGNING

Clause 42: - provides for the approved methods of campaigning.

Clause 43: - provides for the period in which campaigns for are to be prohibited.

Clause 44: - provides for the campaign offence.

PART 7 - ISSUING OF WRIT AND NOMINATIONS

Division 1 - Issuing of Writs

- Clause 45:** - provides for the issuing of the election writ by the Head of State.
- Clause 46:** - provides that the Commissioner must give public notice of the writ.

Division 2 - Nomination

- Clause 47:** - provides for the nomination of a candidate.
- Clause 48:** - provides that the Commissioner may accept the nomination of a candidate if all the necessary requirements are met.
- Clause 49:** - provides for the withdrawal of nominations.
- Clause 50:** - provides for the advertisement of nominations must be publically published by the Commissioner.
- Clause 51:** - provides for how a name of a candidate who is deceased before the close of nomination, is to be treated.
- Clause 52:** - provides for how a name of a candidate who is deceased after the close of nomination, is to be treated.
- Clause 53:** - provides for the procedure where there is no nomination for a Constituency.

PART 8 - REQUIREMENTS BEFORE POLLING DAY

- Clause 54:** - provides that the Commissioner is to issue a public notice of polling booths which requires that polling booths for a Constituency can only be designated within that Constituency.

- Clause 55:** - provides that the Commissioner is responsible for providing the necessary equipment for the sourcing of polling booths.
- Clause 56:** - provides for the appointment of officers for the conduct of poll.
- Clause 57:** - provides that the Commissioner is to designate officers to Constituencies to conduct a poll.
- Clause 58:** - provides for the form for ballot papers to be prescribed by regulations and when ballot papers are to be printed by the Commissioner.
- Clause 59:** - provides that the Commissioner is to declare the candidate's election in an uncontested election.

PART 9 - GENERAL ELECTIONS

Division 1 - Pre-polling

- Clause 60:** - provides that pre-polling can take place on the week before polling day.
- Clause 61:** - In order to qualify as a voter that can cast a vote through pre-polling a person must prove the person is traveling outside Samoa on any day during the week before polling day.

Division 2 - Voting

- Clause 62:** - provides that person registered on a roll is eligible to vote.
- Clause 63:** - provides that it is an compulsory for every registered person to cast a vote. Failure to do so will incur a penalty of \$100.00 unless valid or sufficient reasons for not voting are provided to the Commissioner.

- Clause 64:** - provides that a certain group of people may qualify as special voters who are able to cast votes outside of the Constituency they are registered in. This group includes polling officials, a person employed by essential services listed under the Public Holidays Act 2008 (such as hospital, police services etc), an admitted patient in any hospital and a patient's carer, a person employed in an elderly carer's home including employees, a person living in a shelter providing protection and includes employees.
- Clause 65:** - provides for employers to allow employees employed in services listed in clause 64 to allow employees time off during work hours to vote.

Division 3 - Polling Day

- Clause 66:** - provides for the hours of polling which commence at 8.00am and closes at 3.00pm of the same day or closes at 7pm if polling day is held on a Saturday.
- Clause 67:** - provides that a Presiding Officer is to ensure the ballot box is kept locked at all times or sealed if the lock is damaged.
- Clause 68:** - provides to manner in which ballot papers to be issued to voters by the Presiding Officer.
- Clause 69:** - provides that a voter who is blind or partially blind or unable to read or write may request assistance from the Presiding Officer on casting his or her vote.
- Clause 70:** - provides that a fresh ballot paper may be issued to a voter for a spoiled ballot paper.
- Clause 71:** - provides the method in which a vote may be cast.

- Clause 72:** - provides for the procedure to be applied when a ballot paper is issued more than once for the same name.
- Clause 73:** - provides restrictions to be applied to a person when that person uses a polling booth.
- Clause 74:** - provides that a person is not to be spoken to in a booth except in certain circumstances and only by a presiding officer or poll clerk.
- Clause 75:** - provides that certain questions may be asked by the Presiding Officer in a polling booth and the method in which questions are to be answered.
- Clause 76:** - provides that presiding officers are to maintain order at polling booths and may cause a person to be arrested without a warrant under the situations listed.

Division 4 - Preliminary count of votes

- Clause 77:** - provides for the manner in which the preliminary count of votes is to be carried out.

Division 5 - Sorting of votes

- Clause 78:** - provides for the manner in which the Commissioner is to sort the votes.

Division 6 - Custody of ballot papers

- Clause 79:** - provides for the procedure to be implemented in order to fulfil the duties to prevent the irregularities of ballot papers.

**PART 10 - OFFICIAL RESULTS
OF GENERAL ELECTIONS**

Division 1 - Scrutiny of rolls

- Clause 80:** - provides for the definition of “permitted person” for the purpose of this Part.
- Clause 81:** - provides the to procedure to be implemented for the scrutiny of rolls.
- Clause 82:** - provides for the manner in which marked copies of rolls are to be compared.

Division 2 - Official Count

- Clause 83:** - provides the procedure in which the official counting of votes is to be conducted.

*Division 3 - Official Declaration
of Results of General Elections*

- Clause 84:** - provides the manner in which the official declaration of results of the poll is to be conducted.

Division 4 - Recount

- Clause 85:** - provides the procedure that may be utilised by a candidate should he or she request for a recount of the official results to be conducted.
- Clause 86:** - provides that the Commissioner must produce ballot papers and certificate of total votes to a District Court Judge for the purpose of the recount.

PART 11 - DISPOSAL OF BALLOT PAPERS

- Clause 87:** - provides for the disposal of ballot papers and other relevant books and papers used for polling.
- Clause 88:** - provides the procedure required for the disposal of packets and parcels.

PART 12 - OFFENCES AT ELECTIONS

- Clause 89:** - provides for the offence of interference with or influencing of voters.
- Clause 90:** - provides for the offence of publishing defamatory matter during elections.
- Clause 91:** - provides for the offence of erasing or altering an official mark on a ballot paper.
- Clause 92:** - provides for fraud related offences regarding ballot papers and ballot boxes.
- Clause 93:** - provides for the offence of infringement of secrecy.

PART 13 - CORRUPT AND ILLEGAL PRACTICE

Division 1 - Corrupt Practice

- Clause 94:** - provides for what amounts to corrupt practice.
- Clause 95:** - provides for the offence of personation.
- Clause 96:** - provides for the offence of bribery.
- Clause 97:** - provides for the offence of treating.
- Clause 98:** - provides for the offence of undue influence.

Division 2 - Illegal Practice

- Clause 99:** - provides that procurement of voting by unqualified voters amounts to illegal practice.
- Clause 100:** - provides for situations that amount to illegal activities during the period of election.

*Division 3 - General provisions
relating to this Part*

- Clause 101:** - provides that “O’o and Momoli” is not considered a corrupt or illegal practice so long as it is conducted 12 months after general elections.
- Clause 102:** - provides that “tautua fa’aaauau” is not considered as an offence under this Part and provides for what amounts to “tautua fa’aaauau”.
- Clause 103:** - provides for the penalty for corrupt or illegal practice.
- Clause 104:** - provides that a person charged with corrupt practice may be found guilty of illegal practice.
- Clause 105:** - provides that the limitation period in which prosecution is to be conducted.
- Clause 106:** - provides that papers taken from parcels may be used as evidence in certain cases.

PART 14 - ELECTION PETITIONS

Division 1 - Presentation of Election Petitions

- Clause 107:** - provides the method in which an election may be questioned which must be by petition to the Supreme Court complaining of unlawful election or unlawful declaration or report.
- Clause 108:** - provides for the requirements to be met by a person in order for an election petition to be presented to the Supreme Court.
- Clause 109:** - provides for the limitation period for the presentation of election petitions to the Supreme Court which is within 10 working days after the day the Commissioner publicly notified the result of the poll.

- Clause 110:** - provides the requirements regarding the security of costs to be provided when presenting an election petition.
- Clause 111:** - provides the requirement by the petitioner to provide a statutory declaration that he or she did not engage in corrupt or illegal practices and the requirement for the petitioner's witnesses to provide statutory declarations that the petitioner did not in the witnesses' knowledge commit a corrupt or illegal practice.
- Clause 112:** - provides that if there are more than one petition relating to the same election or result, the petitions are to be dealt with as one election petition.
- Clause 113:** - provides the manner in which rules of the Court may be made.

Division 2 - Trial

- Clause 114:** - provides that all election petitions are to be tried by Judges of the Supreme Court.
- Clause 115:** - provides the manner in which a trial on an election petition is to be conducted.
- Clause 116:** - provides that the election of a candidate proven guilty of corrupt practice at a trial for an election petition is void.
- Clause 117:** - provides that the election of a candidate elected from the inferred prevalence of corrupt or illegal practices committed is void.
- Clause 118:** - provides that during a trial for an election petition, real justice is to be observed.
- Clause 119:** - provides that votes are to be struck off as a result of a trial where a candidate is reported by the Supreme Court to have been proven guilty of bribery, treating or undue influence. One vote for each person proved to have been bribed, treated or unduly influenced.

- Clause 120:** - provides that certain irregularities do not invalidate an election.
- Clause 121:** - provides that decisions of the Supreme Court under this Part are final and not subject to appeal.
- Clause 122:** - provides that the Supreme Court may in addition to providing a certificate, report to the Speaker listed facts about the corruption or illegal practice.
- Clause 123:** - provides that the Supreme Court may make a Special Report to the Speaker.
- Clause 124:** - provides for the signature and effect of certificates and reports of the Supreme Court.
- Clause 125:** - provides that a report is to be provided to the Attorney General where the Supreme Court reports a person was proven at a trial of an election petition to being guilty of a corrupt or illegal practice.

Division 3 - Witnesses

- Clause 126:** - provides for the summons and examination of witnesses.
- Clause 127:** - provides that a certificate of indemnity may be granted to a witness and the effect of such is that such witness may not be prosecuted for information provided by that witness that is otherwise incriminating against him or her.

Division 4 - Costs

- Clause 128:** - provides for expenses of witnesses, how they are determined and that they are taken as part of the expenses of the Court or costs of the petition.
- Clause 129:** - provides for the costs payable by persons proven guilty of corrupt or illegal practice.
- Clause 130:** - provides for costs of petitions and who is to bear the payment of the costs.

Division 5 - Withdrawal and abatement of petition

- Clause 131:** - provides the manner in which an election petition is to be withdrawn.
- Clause 132:** - provides the manner in which the substitution of a new petitioner is to be made.
- Clause 133:** - provides that the Supreme Court must make a report to the Speaker if it is in the opinion of the Supreme Court, the withdrawal of the petition was the result of a corrupt arrangement and the circumstances regarding the withdrawal.
- Clause 134:** - provides for the circumstances in which a petition may be abated.
- Clause 135:** - provides that it is an offence to pay money to stop or withdraw an election petition.
- Clause 136:** - provides for the service of notices.
- Clause 137:** - provides that the Commissioner is exempt from Court fees.
- Clause 138:** - provides for the validation of irregularities.

PART 15 - CORRUPT PRACTICES LIST

- Clause 139:** - provides for the Establishment and Maintenance of the Corrupt Practice's List.

PART 16 - MEMBERSHIP OF A POLITICAL PARTY WITHIN THE LEGISLATIVE ASSEMBLY AND VACANCIES

Division 1 - Membership of a Political Party within the Legislative Assembly

- Clause 140:** - provides that before undertaking the oath an Independent Member may join a political party or remain an Independent Member or a Member of a party with insufficient numbers to form a political party may join another political party or become an independent Member.

Division 2 - Vacancies

- Clause 141:** - provides for situations in which a seat of a Member becomes vacant.
- Clause 142:** - provides for the manner in which a Member may be charged with vacation of the Member's seat.
- Clause 143:** - provides for situations that amount to proof of vacation of a Member's seat.
- Clause 144:** - provides for duty of the Registrar of Courts to provide notice to the Speaker or Deputy Speaker that a vacancy exists as a result of a Court proceeding.
- Clause 145:** - provides that it is an offence for a Member whose seat is proven to be vacant to continue to sit as a Member of Parliament.

- Clause 146:** - provides the situations in which the Speaker may accept a notice of the death of a Member for the purpose of this Part.

PART 17 - BY-ELECTIONS

- Clause 147:** - provides that for the purpose of by-elections, a writ cannot be issued if there is a pending election petition in Court.

- Clause 148:** - provides for the situations in which the Speaker is to issue a Warrant for the issuing of a writ for by-election to fill a vacancy.

- Clause 149:** - provides the when the Speaker has issued a Warrant, the Commissioner is to issue a writ for by-elections.

- Clause 150:** - provides for the rolls to be used in a by-election when an election is declared void by the Supreme Court.

- Clause 151:** - provides for the manner in which the rolls are to be closed.

- Clause 152:** - provides that sections 47 to 138 of the Act are to apply to this Part with the necessary modifications to by-elections instead of general elections.

PART 18 - MISCELLANEOUS

- Clause 153:** - provides that the Head of State may make regulations for the purpose of giving full effect to the Act.

- Clause 154:** - provides for the consequential amendment to the Land and Titles Act 1981 prohibiting the de-registration of matai titles for the purpose of elections.

- Clause 155:** - provides for the repeal of the Electoral Act 1963.

Clause 156: - provides for the transitional and savings provisions.

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(Hon FA'AOLESA Katopau T. Ainuu)

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