

**SAMOA****Arrangement of Provisions**

1. Short title and commencement
  2. Section 2 amended
  - 2A. Section 4 amended
  3. Section 8 amended
  4. Section 9 substituted
  5. Section 13 amended
  6. Section 21 amended
  7. Section 43 substituted
  - 7A. Part 7 substituted
  8. Section 61 amended
  9. Section 63 amended
  10. Section 65 amended
  11. Section 73 substituted
  12. Section 101 amended
  - 12A. Section 149 amended
  - 12B. Section 152 amended
  - 12C. New section 153A inserted
  13. Consequential amendments
-

**2020, No. 13****AN ACT to provide for the amendment of the Electoral Act 2019 (“Principal Act”) and related purposes.***[04<sup>th</sup> May 2020]*

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

**1. Short title and commencement:**

This Act may be cited as the Electoral Amendment Act 2020 and commences on the date of assent by the Head of State.

**2. Section 2 amended:**

In section 2 of the Principal Act, insert the following new definition:

““election” means the election of a Member in a general election or by-election to represent a constituency;”.

**2A. Section 4 amended:**

In section 4(6)(a) of the Principal Act, for “on which the writs for general election are issued” substitute “on issuance of the Notice under section 45(2)”.

**3. Section 8 amended:**

Section 8 of the Principal Act is amended as follows:

- (a) in subsection (2), substitute “A person is disqualified” with “The Commissioner may disqualify a person”; and
- (b) for subsection (2)(b) substitute with:

“(b) does not have a statutory declaration, in the prescribed form, confirming that the candidate satisfies the requirements of subsections (1)(d) and (1)(e) -

- (i) sworn by the candidate and witnessed by a barrister and solicitor of the Supreme Court in the private sector; and
- (ii) subject to subsection (7), sworn by two (2) matai and a Sui o le Nuu or Sui Tamaitai of the candidate’s village and witnessed by a barrister and solicitor of the Supreme Court in the private sector.”; and

(c) in subsection (5) -

- (i) for the definition of “minimum of three (3) years” substitute “240” with “305”; and
- (ii) for the definition of “monotaga” omit “or religious”;

(d) subsection (6) is substituted as follows:

“(6) A person commits an offence under this section:

- (a) where he or she is a candidate who makes a false declaration under the prescribed form required under subsection (2)(b) and is liable upon conviction to a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding three (3) years and having his or her name entered onto the Corrupt Practices List;
- (b) where he or she is a matai, Sui o le Nuu or a Sui Tamaitai who without lawful excuse refuses to perform duties required under subsection (2)(b)(ii) and upon conviction is liable to a fine not exceeding 50 penalty units or to an imprisonment term not exceeding two (2) years.”;

(e) insert a new subsection after subsection (6) as follows:

“(7) For the purpose of subsection (2)(b)(ii), the two (2) matai with duties specified, must:

- (a) sit in the candidate's Village Council; and
- (b) render monota in the candidate's Village."

**4. Section 9 substituted:**

For section 9 of the Principal Act, substitute:

**"9. Review of the Commissioner's decision:**

- (1) A candidate may seek judicial review of a decision made by the Commissioner under section 8(2).
- (2) An application for judicial review of a decision of the Commissioner to disqualify a candidate under section 8(2), must be made no later than noon of the 7<sup>th</sup> day after close of nomination and in accordance with the rules of the Supreme Court.
- (3) An application for judicial review under this section must be decided within 20 working days after filing of applications made under subsection (2).
- (4) A party shall bear its own legal costs in relation to any judicial review, unless the judge considers that exceptional circumstances justify the making of an award of costs.
- (5) An order made under this section is final and is not subject to any review or appeal."

**5. Section 13 amended:**

Section 13 of the Principal Act is amended by inserting after subsection (8) new subsections as follows:

- “(9) A person applying for registration under this section, commits an offence and is liable upon conviction to a fine not exceeding 100 penalty units or imprisonment for a term not exceeding three (3) years who:
- (a) misleads the Commissioner in the compilation of a roll or cause to enter a false or fictitious name or qualification or the name of a person whom he or she knows to be dead; or
  - (b) signs the name of any other person, whether requested to do so or not, or a false or fictitious name, to a form of claim, application, declaration or objection for the purposes of this Part or Part 5 either as claimant, applicant, declarant, objector or witness; or
  - (c) signs his or her name as witness to a signature upon any such form of claim, application, declaration or objection without either seeing the signature written or hearing the person signing declare that the signature is in his or her own handwriting and that the name so signed is his or her own proper name; or
  - (d) provides any other false information that misleads the Commissioner.

- (10) It is the duty of the Commissioner to institute a prosecution against a person that the Commissioner believes to have breached subsection (9), or the offence of aiding, abetting, counselling, or procuring the commission of any such offence by a person.”.

**6. Section 21 amended:**

- (1) Section 21 is amended by substituting subsection (2) as follows:

“(2) A person can only have one (1) place of residence:

- (a) which is determined by using information confirming that he or she has resided in a place for at least six (6) months immediately before registration; and
- (b) use any other information prescribed under subsection (1)(c) to determine the accepted place of residence for that person.”.

- (2) Sections 21(5) is repealed and subsections (6), (7) and (8) are renumbered accordingly.

**7. Section 43 substituted:**

Section 43 of the Principal Act is substituted as follows:

**“43. Commencement and cut-off date for campaigns:**

- (1) Subject to subsection (2), the campaigning period commences within three (3) days after the close of nomination.
- (2) A candidate is prohibited from campaigning during the prohibited period.
- (3) In this section, “prohibited period” commences at 12.00pm on the day before the designated period in section 60(2) and ending after the official declaration of results.”.

**7A. Part 7 substituted:**

Part 7 is substituted as follows:

**“PART 7**

**NOMINATIONS AND ISSUING OF WRIT**

*Division 1 - Call for Nominations*

**45. Opening and closing of nominations:**

- (1) Nominations for general elections shall be made within a period fixed by the Commissioner by public Notice, six (6) months before the last possible date for general elections.
- (2) The Notice issued by the Commissioner must specify latest day for nomination of candidates being a date not earlier than the



3<sup>rd</sup> day and not later than the 14<sup>th</sup> day at 12.00 noon after the closure of rolls under section 33.

**46. Nomination of candidate:**

- (1) A person qualified under Part 3 may, with the person's consent, be nominated as a candidate for general election for a constituency by at least two (2) registered voters of that constituency, as the case may be, by a nomination paper in the prescribed Form.
- (2) Consent to the nomination of a person is to be given by that person in writing or by telegram, but need not be given at the time when the nomination paper is lodged.
- (3) A nomination paper and consent are to be given to the Commissioner no later than noon on nomination day and upon receipt, the Commissioner must give a receipt in writing for a nomination accepted by him or her.
- (4) A candidate is to be nominated by a separate nomination paper in a manner which in the opinion of the Commissioner, is sufficient to identify the candidate and may include the Candidate's other matai titles from the same Constituency in the nomination paper.
- (5) No voter may nominate more than one (1) candidate.

- (6) A registered voter may inspect a nomination paper or consent at the Commissioner's office without payment at any time when the office is open for the transaction of business.
- (7) A candidate, or a person on the candidate's behalf, must pay to the Commissioner a nomination fee of \$1000 no later than noon on nomination day.
- (8) If a name is shown on a nomination paper or other document in which a candidate lists a registered political Party, the Commissioner may require confirmation of that candidate's eligibility to claim that accreditation.
- (9) For the purpose of subsection (8), the Commissioner must not recognize a political Party not registered under Part 2.

**47. Acceptance of nomination:**

- (1) The Commissioner must accept a nomination of the candidate if it fulfils all requirements set out under subsection (2).
- (2) The Commissioner must reject the nomination of a candidate if:
  - (a) the nomination paper and the consent of the candidate are not lodged with him or her by noon on nomination day; or

- (b) the consent of the candidate does not state that he or she is qualified to be elected a Member under Part 3 and any other enactment; or
- (c) the nomination paper does not state that the candidate is a registered voter of the constituency in which he or she is to represent; or
- (d) the nomination paper is not signed by at least two (2) registered voters of the constituency in which he or she is to represent; or
- (e) the nomination fee is not paid as required by this Act; or
- (f) the nomination paper is not accompanied by a statutory declaration in the prescribed Form.

**48. Publication of nominations:**

- (1) The Commissioner must publish publically names of all candidates nominated as soon as practicable on noon on the day appointed for the nomination of candidates.
- (2) Under this section “publish publically” means to place in a place visible to the public and in a constituency, the list of nominations for that constituency.

**49. Death on or before close of nomination:**

- (1) A candidate who has been nominated, who has not withdrawn his or her nomination and who dies on or before close of nominations is to be treated as if a nomination had not been made and the paid nomination fee is to be returned to that person's representatives.
- (2) If a person referred to in subsection (1) dies before the closure of nomination, the time for close of nominations for that particular constituency is to be extended by five (5) days.

**50. Death after close of nomination:**

- (1) If a candidate dies after the close of nominations and before the close of the poll or if the successful candidate dies after the close of the poll and before the declaration of the result of the poll, this section applies.
- (2) The election is taken to have failed and the seat is taken to be vacated.
- (3) Where the candidate dies before polling day the Commissioner must, upon being satisfied of the fact of the death, cancel the notice of the poll in that particular constituency as the case may be.
- (4) Where the candidate dies on polling day before the close of the poll the Commissioner or the Presiding Officer

must, upon being satisfied of the fact of the death, immediately close the poll and declare it to be null.

- (5) Where the candidate dies after the close of the poll and before the declaration of the result of the poll, and it is found on the completion of the count of votes or on a recount that the candidate, if still living, would have been elected the Commissioner must, upon being satisfied of the fact of the death, endorse on the report to the Head of State the fact of the death and that the candidate, if still living, would have been elected.
- (6) This Act as to equality of votes between candidates applies despite the death of 1 of those candidates after the close of the poll.
- (7) Where the poll is interrupted in consequence of the death of a candidate all ballot papers placed in the several ballot boxes are to be taken out by the several Presiding Officers and, being made up into secured packages, are to be sent unopened to the Commissioner, who must immediately destroy them in the presence of a District Court Judge or other judicial officer.
- (8) A fresh public notice is to be issued by the Commissioner immediately for a new election and, except as provided, all

proceedings in connection with the new election must be repeated.

- (9) The main roll and supplementary rolls which were to be used at the election which has failed are to be used at the new election without an amendment or addition.
- (10) It is not necessary to nominate again a candidate who at the time of the cancellation or close of the poll was a duly nominated candidate.
- (11) Subsection (10) does not prevent the withdrawal by a candidate his or her nomination which must be done no later than five (5) clear days before the new polling day.
- (12) All appointments of polling places made in respect of the election which has failed must continue in respect of the new election.

**51. Procedure where there is no nomination for a Constituency:**

If:

- (a) no candidate is nominated; or
- (b) the only candidate nominated withdraws his or her nomination,

the Commissioner must, after the expiration of three (3) months from polling day, declare the seat to be vacant after which section 148(3) is to be implemented.

*Division 2 - Issuing of Writs***52. Writ of election issued by the Head of State:**

- (1) For a general election the Head of State shall, not later than seven (7) days after the day of the dissolution or expiration of the last Parliament as the case may be, under the Head of State's hand, issue a writ of general election to the Commissioner for the conduct of the general election of Members for all Constituencies.
- (2) In a writ of general election the contents must have:
  - (a) a day for the polling to take place if a poll is required, being a Friday; and
  - (b) the latest day for the return of the writ being the date no later than the 14<sup>th</sup> day after polling day.
- (3) The Commissioner must within three (3) days of receiving the writ issued under this section, give notice of the writ.

*Division 3 - Withdrawal of Nominations***53. Withdrawal of nominations:**

- (1) A candidate must provide a written withdrawal of his or her nomination in the prescribed Form to the Commissioner no later than 14 days prior to polling day at

12.00 noon after which, the Commissioner must publically notify the candidate's withdrawal.

- (2) A withdrawal of nomination that does not comply with subsection (1) is void.
- (3) If a candidate withdraws his or her nomination in accordance with subsection (1), the candidate is not capable of being elected as a Member."

**8. Section 61 amended:**

- (1) Section 61(1) of the Principal Act is amended by inserting a new paragraph (d) as follows:

"(d) is nominated (in a method approved by the Commissioner) by a person qualified under paragraphs (b) or (c) to be his or her carer;

(e) is confirmed (in a method approved by the Commissioner) to be employed in an Office providing a service listed under section 5 of the Public Holidays Act 2008;".

- (2) Section 61(2) is amended by substituting "Friday at 4.00pm on the week before the period designated under section 60(2) for approval to pre-poll" with "14 days from polling day at 4.00pm".

**9. Section 63 amended:**

Section 63 of the Principal Act is amended as follows:

- (a) substitute subsection (2) with:



“(2) The Electoral Commissioner must within 12 months after every election publish a list of names and addresses of people who:

- (a) did not register to vote; and
- (b) registered but did not vote.”; and

(b) in subsection (3), substitute “three (3) months” with “twelve (12) months.”.

**10. Section 65 amended:**

Section 65 of the principal Act is amended by substituting subsection (1) as follows:

“(1) A voter is to be given reasonable time off during work hours to cast his or her vote:

- (a) for general elections, if he or she is employed in the services and places of employment in section 5 of the Public Holidays Act 2008; or
- (b) for by-elections if he or she is required by his or her employer to work on polling day.”.

**11. Section 73 substituted:**

Section 73 is substituted as follows:

**“73. Restriction applying to a person when using polling booths:**

(1) A Presiding Officer must ensure that:

- (a) only six (6) voters are allowed in a polling booth at the same time; and

- (b) only one (1) voter is allowed in an inner compartment; and
  - (c) no person is allowed to remain in a polling booth except the Presiding Officer and his or her clerks, and any approved scrutineers, an interpreter, and a police officer.
- (2) For the purpose of this section, “approved scrutineer” means:
  - (a) a person appointed in writing by a candidate as his or her scrutineer; and
  - (b) a person that produces a statutory declaration made in the prescribed form and witnessed by an Electoral Officer, an Assistant Officer or a person authorised to take a statutory declaration under section 21 of the Oaths, Affidavit and Declarations Act 1963 to be a scrutineer for a candidate whom appointed him or her as such.
- (3) A scrutineer who leaves the polling booth to which he or she is assigned, during the hours of polling, without the permission of the Presiding Officer at that polling booth, is prohibited from re-entering the polling booth.
- (4) A candidate is prohibited from acting as scrutineer under this section.

- (5) A person who breaches this section:
  - (a) in the case of a person that is not a candidate, commits an offence and is liable upon conviction to pay a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding two (2) years;
  - (b) in the case of a candidate commits an offence and is liable upon conviction to pay a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding two (2) years.”.

**12. Section 101 amended:**

In Section 101 of the Principal Act:

- (a) for “two (2)” substitute “three (3)”;
- (b) for “of a poll under section 84” substitute “for a general election”.

**12A. Section 149 amended:**

Section 149 of the Principal Act is substituted as follows:

**“149. Writ of by-election issued by Commissioner:**

- (1) The Commissioner must not later than 21 days after the date of the receipt of the warrant from the Speaker, issue a writ for election to supply the vacancy, and the writ must specify:

- (a) the latest day for nomination of candidates being a date not earlier than the 5<sup>th</sup> day and not later than the 7<sup>th</sup> day from writ day; and
  - (b) the latest day for the withdrawal of nominations which is to be the 7<sup>th</sup> day from nomination day; and
  - (c) a day for the polling to take place if a poll is required, being a Friday; and
  - (d) the latest day for the return of the writ being the 14<sup>th</sup> day after polling day.
- (2) Polling day must not be earlier than the 19<sup>th</sup> and not later than the 21<sup>st</sup> day after nomination day.
  - (3) In issuing the writ, the Commissioner must give public notice of the writ.
  - (4) Despite subsection (1), in any case in which it appears appropriate, the Head of State may, by Order, authorize the Commissioner to postpone the issue of a writ until a day specified in the Order being not later than 42 days after the date of the receipt by the Commissioner of the warrant.”.

**12B. Section 152 amended:**

In section 152 of the Principal Act, for “45(2) to 138” substitute with “48-51 and 54-138”.

**12C. New section 153A inserted:**

The Principal Act is amended by inserting section 153A after section 153 as follows:

**“153A. General offence:**

Any person who without lawful excuse obstructs the Electoral Commissioner or a delegate in the implementation or enforcement of this Act commits an offence and is liable upon conviction to a fine not exceeding 50 penalty units, or imprisonment term not exceeding two (2) years, or both.”.

**13. Consequential amendments:**

The Acts listed in column 1 in the table below are amended in accordance with column 2:

Column 1	Column 2
Public Holidays Act 2008	In Section 5(n) of the Public Holidays Act 2008 substitute with:  “(n) for the purpose of elections - (i) the Electoral Commissioner, his or her staff and assistants working during elections; or (ii) the General Manager and staff of the Electric Power Corporation working during elections for the provision of electricity services;                 ”

	(iii) the General Manager and staff of the Samoa Water Authority working during elections for the water supply and waste water services;”.
Electoral Commission Act 2019	In section 2 of the Electoral Commission Act 2019, insert the following new definition:  ““election” has the same meaning under section 2 of the Electoral Act 2019.”.
Principal Act	In section 90 substitute “46” with “52”.  In section 18(3) and (4) substitute “47” with “46”.

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The Electoral Amendment Act 2020 is administered  
by the Office of the Electoral Commissioner.

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