



**SAMOA**

## **ELECTORAL ACT 2019**

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**2019, No. 7**

**AN ACT to provide for the conduct of elections in Samoa and related purposes.**

*[Assent and commencement date: 31 January 2019]*

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

## PART 1 PRELIMINARY

### **1. Short title and commencement:**

- (1) This Act may be cited as the Electoral Act 2019.

- (2) This Act commences on the date of assent by the Head of State.

**2. Interpretation:**

In this Act unless the contrary intention appears:

“biometrics” means a physical or behavioural feature of a person necessary for verifying personal identity and includes fingerprints, photographs or voice patterns;

“candidate” means a person who meets the requirements under Part 3;

“Commissioner” means the Electoral Commissioner appointed under an enactment to implement this Act;

“constituency” means an electoral constituency prescribed under an enactment for the purpose of Article 44(1) of the Constitution;

“Constitution” means the Constitution of the Independent State of Samoa 1960;

“costs” includes charges and expenses;

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

“eligible political Party” means a Party that has at least 8 current financial Members who are eligible to enrol as voters confirmed in a statutory declaration by such Members made under section 19 of the Oaths, Affidavits and Declarations Act 1963;

“employee” means a staff member of the Electoral Commission established under an enactment appointed as a staff member;

“faifeau” means a Member of a clergy for any Christian denomination in Samoa;

“Government Agency” includes a Government Ministry, Public Body regulated under the Public Bodies (Performance and Accountability) Act 2001, a body that reports to the Executive established under the Constitution, or a Constitutional Office;

“independent Member” means a candidate elected where the ballot paper for that Member’s election cites the Member as not a Member of any political Party;

“lodgement day” means the day a person lodges his or her nomination paper with the Commissioner within a period fixed by the Commissioner under section 45 and section 149(1)(a) for the purposes of section 46 and 47 of this Act;

“matai title” means a title registered in the Matai registry established and kept under the Land and Titles Act 1981 and does not include a matai title held as a complimentary honour;

“Member” means a Member of the Legislative Assembly;

“Minister” means the Minister responsible for the Electoral Commission established under an enactment;

“Parliamentary term” means the term for which a Member is elected which is:

- (a) every 5 years from the date of the general elections; or
- (b) the date from a by-election until the next general elections.

“polling official” means a person appointed under section 56;

“ports” means an airport or wharf where the Commissioner designates as polling place for the purpose of section 61(7);

“public place” means any place a member of the public is reasonably expected to have access to;

“Registrar General” means the Registrar General appointed under the Births, Deaths and Marriages Registration Act 2002;

“Speaker” means the Speaker of the Legislative Assembly appointed pursuant to the Constitution;

“Standing Orders” mean the Standing Orders of the Legislative Assembly;

“voter” means a person who qualifies as such under section 14.

## **PART 2**

### **POLITICAL PARTIES**

**3. Commissioner to keep political parties’ register:**

The Commissioner must establish and maintain a register known as the Register of Political Parties, containing a list of political parties registered under this Part.

**4. Application for registration:**

- (1) An eligible political Party may apply to the Commissioner to be registered for the purpose of this Act.
- (2) An application for the registration of an eligible political Party must be made to the Commissioner by the Secretary of the Party.

- (3) The application must be:
  - (a) in writing; and
  - (b) signed by the secretary; and
  - (c) must -
    - (i) set out the name of the Party;
    - (ii) set out the abbreviation of the name if the Party wishes to use an abbreviation;
    - (iii) set out the name and address of the Office of the Party or the Secretary;
    - (iv) attach a statutory declaration signed by the Secretary that the Party has a minimum of 8 financial Members who are eligible to enrol as voters;
    - (v) be accompanied by the registration fee of \$3,000.
- (4) Upon receipt of an application for the registration of an eligible political Party, the Commissioner must consider and determine whether the Party can be registered.
- (5) In determining whether a Party can be registered, the Commissioner must take into account the requirements of subsection (3) and subsection (6).
- (6) No application for registration is to be accepted:
  - (a) after the day of issuance of the Notice under section 45(2); or
  - (b) where in the opinion of the Commissioner the name of the proposed Party or a proposed abbreviation of such -
    - (i) is indecent or offensive; or



- (ii) is excessively long; or
- (iii) is likely to cause confusion or mislead voters; or
- (iv) contains a reference to a title or honour or similar form of identification.

**5. Registration:**

- (1) If the Commissioner determines that a political Party should be registered, the Commissioner must:
  - (a) register the Party by entering in the register -
    - (i) the name of the Party; and
    - (ii) if an abbreviation of the name of the Party was set out in the application, that abbreviation; and
  - (b) give written notice to advise the applicant -
    - (i) that the Party has been registered; and
    - (ii) of the required annual fee to be paid before the end of anniversary of registration; and
  - (c) cause notice of the registration of the Party to be published in the *Savali*.
- (2) If an application for registration is refused, the Commissioner must give the applicant written notice of the refusal and the reasons for such refusal.

- (3) It is the duty of the Secretary of a political Party registered to:
  - (a) supply the address for service of all correspondence under this Part to the Commissioner;
  - (b) notify the Commissioner immediately of any changes in the address for service of correspondence;
  - (c) notify the Commissioner immediately whenever a new Secretary of the Party is appointed;
  - (d) notify the Commissioner if the number of current financial Members falls below 8.
- (4) The Commissioner may amend the details of the register to record any changes submitted under subsection (3).
- (5) A registered political Party seeking to change its name or abbreviation must apply to the Commissioner and provide requirements under section 4(3) for the Commissioner's consideration.
- (6) Where the Commissioner approves the application under subsection (5) the change of name and abbreviation must be noted on the Register.
- (7) The Commissioner must not accept an application made under subsection (5) if it is in breach of section 4(6).

**6. Cancellation of registration:**

- (1) The Commissioner must cancel the registration of a registered political Party:
  - (a) as a result of a request on behalf of the Party made by the Secretary;
  - (b) where the Commissioner is informed by the Secretary of a Party that the number of current financial Members has fallen below 8; or
  - (c) if the Party fails to pay the annual registration fee of \$1000.
- (2) Where registration of a political Party is cancelled the Commissioner:
  - (a) must give written notice to the Secretary of the political Party with the reasons for cancellation; and
  - (b) cause notice of the cancellation to be published in the *Savali*.

**7. Inspection of register:**

Members of the public are entitled to inspect at no cost, the political parties' register during working hours on a day on which the Office of the Commissioner is open.

**PART 3**

**ELIGIBILITY FOR CANDIDACY**

**8. Qualification to run as a candidate in elections:**

- (1) A person is qualified to run as a candidate for elections if that person:
  - (a) is a citizen of Samoa; and
  - (b) is a registered voter of a constituency; and

- (c) is a holder of a matai title registered before lodgement day for the Constituency the person intends to represent; and
  - (d) has rendered monotaga in respect of the registered matai title under paragraph (c) within a village in a constituency for which the person intends to run as a candidate for any three (3) consecutive years before lodgement day; and
  - (e) has resided in Samoa for a minimum of three (3) consecutive years ending on lodgement day; and
  - (f) is not disqualified under the Constitution, any other Act and subsection (2).
- (2) A person is disqualified from contesting as a candidate for elections if that person does not meet requirements in subsection (1) and:
- (a) loses a qualification required to enable him or her to be registered as a voter of that constituency; or
  - (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 2 matai and a Sui o le Nu'u or Sui Tamaitai of the candidate's village

- and witnessed by a barrister and solicitor of the Supreme Court in the private sector; or
  - (iii) sworn by any other person appointed by the Commissioner under subsection (8) to confirm the monotaga requirements; or
  - (c) is an undischarged bankrupt; or
  - (d) has been -
    - (i) convicted in a Samoa or another country within the previous 8 years from the lodgement day , of an offence punishable by death or by imprisonment for a term of 4 years or more; or
    - (ii) convicted or found guilty in Samoa of a corrupt practice and whose name has not been removed from the Corrupt Practices List under section 139;
  - (e) is of unsound mind and is subject to an order of medical custody made under the Mental Health Act 2007.
- (3) Nothing in subsection (1) or (2) regarding residential requirements apply to:
- (a) a person who is appointed to a post under the Foreign Affairs Act 1976 and is outside Samoa during the course of that appointment; or
  - (b) a person who is the spouse of the person described in paragraph (a); or

- (c) a person, who is appointed to a post in an international organisation overseas under Government sponsorship or nomination; or
- (d) a person who satisfies the Commissioner that he or she -
  - (i) is required to obtain and has obtained medical treatment outside of Samoa for more than 60 days in any one (1) year for a minimum of three (3) years; and
  - (ii) has resided in Samoa immediately prior to obtaining medical treatment in subsection (3)(d)(i) above; or
- (e) a person who satisfies the Commissioner that he or she was outside of Samoa for more than 60 days in any one (1) year for the minimum of three (3) years as a primary care giver for a legally married spouse, de facto partner, sibling, child or parent seeking medical assistance overseas; or
- (f) a person who satisfies the Commissioner to be affected by travelling restrictions of a declared pandemic or natural disaster; and
- (g) a person who is temporarily absent from Samoa for official duties where the person is a -
  - (i) holder of a Government position, post or office; or

- (ii) Member or official of a representative body or organisation based in Samoa.
- (4) For the purpose of subsection (3) paragraphs (d) and (e):
  - (a) the Commissioner is satisfied of the matters referred to in that paragraph if the person provides the Commissioner with statutory declarations in the prescribed Form;
  - (b) if a statutory declaration in (paragraph (a) is false or misleading, the person claiming benefit of the statutory declaration or other information under subsection (2) or (3) forfeits the benefit.
- (5) In this section:
  - “minimum of 3 years” means a person has been in Samoa for at least 305 days in each year for a consecutive 3 year period ending on the lodgement day;
  - “monotaga” means the compulsory service, assistance or contribution (such as, contribution in form of cash, kind or goods) rendered for customary, traditional or religious activities, events, function or similar purposes pursuant to the customs of a particular village;
  - “organisation” includes:
    - (a) a Company;
    - (b) a body corporate;
    - (c) a sole trader;

- (d) a government ministry under the Ministry and Departmental Arrangements Act 2003;
  - (e) a statutory corporation or authority;
  - (f) a public body as defined by the Public Bodies (Performance and Accountability) Act 2001;
  - (g) a trust;
  - (h) a partnership;
  - (i) a joint venture;
  - (j) a religious institution that has been duly registered under the law for that purpose.
- “village” means a village, from which a Matai title was conferred, within a constituency.
- (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 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 Nu'u 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 2 years.
  - (7) For the purposes of subsection (2)(b)(ii) and section 47(1)(f) of this Act:



- (a) each matai of the two (2) matai required to depose the statutory declaration in the prescribed form must -
    - (i) hold a registered matai title, in respect of which he or she deposes the statutory declaration, for a minimum period of three (3) consecutive years ending on lodgement day; and
    - (ii) sits on the village council of the village, in which the candidate's registered matai title under section 8(1)(c) is from; and
    - (iii) sits on that village council for a minimum period of three (3) consecutive years ending on lodgement day; and
    - (iv) renders monotaga in the candidate's village for a minimum period of three (3) consecutive years ending on lodgement day; and
  - (b) the Sui o le Nu'u or Sui Tamaitai required to depose the statutory declaration in the prescribed form must be the Sui o le Nu'u or Sui Tamaitai of the candidate's village who legally holds that position on lodgement day.
- (8) For the purposes of subsection (2)(b)(iii):
- (a) the Commissioner may appoint a person if he or she is of the opinion that a person referred under subsection (2)(b)(i) and (ii) is unable or refuses to provide the statutory declaration required for the confirmation of monotaga required under subsection (1)(d); and
  - (b) the person appointed under paragraph (a) –
    - (i) is able to provide proof that the candidate meets the monotaga

- requirements pursuant to subsection (1)(d); and
- (ii) sits on the same village council or holds a designated position in the same church as the candidate within a village in a constituency for which the person intends to run as a candidate.

9. *Repealed by Electoral Amendment Act (No. 2) 2020, No.19*

10. **Errors regarding rolls not grounds for disqualification:**

- (1) A person whose name has been removed from a roll as a voter through no fault of that person is not disqualified from becoming a candidate.
- (2) If a person whose name has been removed without cause from a roll intends to run as a candidate, he or she must forward to the Commissioner a statutory declaration to the effect that he or she:
  - (a) is not disqualified as a voter; and
  - (b) still retains that qualification; and
  - (c) is not responsible for the removal of his or her name from the roll.
- (3) A person whose name was incorrectly registered as a voter for a constituency he or she did not apply to be registered on, through no fault of that person, is not disqualified as a candidate for elections or Member if elected.

**11. Requirements for public servants intending to become candidates:**

- (1) As an exception to any other enactment, if a public servant is to be nominated as a candidate for election, the public servant must resign from:
  - (a) the public service pursuant to the law that regulates public servants; or
  - (b) his or her office according to the law or rules regulating that office if he or she is included in the definition of “public servant” under subsection (3).
- (2) A public servant who does not resign pursuant to subsection (1) is taken to have resigned from the lodgement day.
- (3) In this section, “public servant” means a person appointed or engaged under the Public Service Act 2004 or the Public Bodies (Performance and Accountability) Act 2001.

**12. Requirements for other Government Officers intending to become candidates:**

- (1) If a Government Officer is to be nominated as a candidate for election, the Government officer must resign from his or her position according to the law that regulates his or her office.
- (2) In this section “Government Officer” means:
  - (a) a Judge of any Court; and
  - (b) a police officer, prison officer, Member of other disciplined force or any uniformed

- branch of any defence force established by law; and
- (c) a Member of a board of or person employed or engaged by a public body pursuant to the Public Bodies (Performance and Accountability) Act 2001; and
  - (d) a person employed or engaged by any other office of the Government or State established by law; and
  - (e) a Member of any government board, commission, committee, corporation or council, whether or not established by law; and
  - (f) any other person or a Member of an office or body, prescribed by regulations.

## **PART 4**

### **VOTER REGISTRATION AND TRANSFER**

#### *Division 1 - Registration and Transfer*

#### **13. Compulsory registration of voters:**

- (1) A person qualified under section 14 to be registered as a voter, must if that person is in Samoa, apply in the prescribed Form to the Commissioner for registration as a voter within 1 month after the date upon which he or she turns 21 years old provided that if the person turns 21 years old on or before polling day, the person must apply for registration before the date fixed

by the Commissioner for temporary closure of rolls under section 33(1).

- (2) If a person is outside of Samoa and requests to register online he or she may apply to the Commissioner in the prescribed Form and transmit the Form to the Commissioner to be confirmed upon the return of that person to Samoa.
- (3) A person who applies for registration under subsection (2) may only have his or her name entered on a roll if the registration process under section 20 is complete before the close of rolls under section 33.
- (4) A person who breaches subsection (1) commits an offence and is liable upon conviction to a fine not exceeding 20 penalty units for a first conviction and to a fine not exceeding 40 penalty units on any subsequent conviction.
- (5) No person who applies for registration as a voter is liable to prosecution for an earlier failure to apply for registration.
- (6) A person is obligated to provide further information when required by the Commissioner regarding registration.
- (7) The Commissioner must not at any time in the period that a roll is temporarily closed, register a voter if the application is received after 4pm on the day before the date fixed by the Commissioner under section 33.
- (8) For the purpose of subsection (2), “person” means a student undertaking educational

commitments outside of Samoa or a person listed in section 8(3).

- (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 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.

**14. Qualification to be registered as a voter:**

A person is qualified to be registered as a voter if the person is not disqualified under section 17 or 24, and is:

- (a) 21 years old or above 21 years old; and
- (b) a Samoan citizen.

**15. Registration in 1 constituency of residence:**

(1) A person qualified under section 14 must be registered:

- (a) in 1 constituency only; and
- (b) in the constituency in which he or she resides.

(2) If the voter is a matai from more than 1 constituency and is registered in more than 1 constituency, that voter's first registration is treated as valid and all other registrations void except where he or she requests to the Commissioner to exercise his or her right to transfer under section 18.

**16. Exception to the residential registration rule:**

(1) Subject to subsection (2) as an exception to section 15(1)(b), a person may register as a voter in a constituency that the voter does not reside in, if the voter is a:

- (a) matai who chooses to register in the constituency in which the voter is a matai;
- or

- (b) child of a candidate and the voter chooses to register in the constituency in which his or her parent is a candidate; or
  - (c) spouse of a candidate and the voter chooses to register in the constituency in which his or her spouse is a candidate.
- (2) A person does not qualify under the exceptions of subsection (1)(b) or (c) if that person holds a matai title in any other Constituency that is not the Constituency for which a parent or a spouse is a candidate.

**17. Disqualification from registration:**

- (1) The following persons are disqualified for registration as voters:
  - (a) a person who is detained in a hospital, a prison or some other place of security under the Mental Health Act 2007;
  - (b) a person detained in a prison under a conviction;
  - (c) a person whose name is on the Corrupt Practices List.
- (2) This section applies to voters applying for the first time for registration, and voters already registered who fall under any category under subsection (1).
- (3) The Commissioner of Prisons must once a month, forward to the Commissioner a list containing the names, place of residence and description of the offence for each convicted prisoner sentenced to



imprisonment at a Prison managed by the Commissioner of Prisons.

**18. Eligibility to transfer:**

- (1) Subject to sections 15 and 156 a voter is eligible to transfer registration from one constituency to another if the transfer is after 10 years:
  - (a) from the date of the first registration as a voter; or
  - (b) from the date of the most recent transfer or re-registration.
- (2) All transfers close 6 months before general elections.
- (3) A candidate or person who qualifies under section 16(1)(b) or 16(1)(c) is exempt from the period under subsections (1) and (2), provided that persons exempted under section 16(1)(b) or 16(1)(c) transfer within 7 days from the lodgement day.
- (4) A candidate exempted under subsection (3), is required to be transferred to the electoral constituency in which he or she intends to become a candidate for, before lodgement day and in doing so must satisfy the Commissioner that he or she is eligible to be transferred to the intended electoral constituency for candidacy.

**19. Commissioner to consider application for registration:**

- (1) If the Commissioner is satisfied that a person who claims to be registered as a voter or

registered by transfer from another constituency is qualified to be registered or transferred the Commissioner must within 5 days of the receipt of the claim enter the name of the applicant on the appropriate roll.

- (2) If after making inquiries the Commissioner has reason to believe that an applicant is not qualified to be registered or transferred, the Commissioner must within 5 days of receipt of the claim give notice in writing to the claimant setting out requirements where proof is required.
- (3) If the applicant fails to provide proof of qualifications satisfactorily to the Commissioner within 10 days after the giving of notice under subsection (2), the Commissioner must refuse the application and notify the applicant accordingly.
- (4) Within 14 days after giving the applicant a notice of refusal under subsection (3), the applicant may require the Commissioner to refer the claim to a District Court.
- (5) The Commissioner must notify the applicant of the time and place appointed for the hearing of the application by the District Court.

**20. Signing and witnessing of applications for registration as a voter:**

- (1) A person making an application or declaration in respect of registration as a voter must do so in the prescribed form.
- (2) Subsections (3) to (9) apply to this Part and Part 5.

- (3) Despite the other provisions of this Act, where there is an inconsistency between this section and Part 5, this section prevails to the extent of such inconsistency.
- (4) At the time of receiving an application for registration or re-registration or transfer of registration as a voter, the Commissioner must obtain the necessary biometrics of the person seeking registration or re-registration or transfer of registration.
- (5) Subject to subsection (6), where a person referred to in subsection (4) is registered or re-registered as a voter or whose registration as a voter is transferred in accordance with this Act, the Commissioner must record or print the person's photograph on the appropriate roll adjacent to the name of the person.
- (6) Where for a reason a person applying for registration or re-registration or transfer of registration as a voter fails or refuses or is unable to be photographed in accordance with subsection (4), the Commissioner must not register that person on a roll as a voter.
- (7) The Commissioner:
  - (a) may require a registered voter to be re-photographed under this section after 10 to 15 years from the date on which the person was last photographed under this section, at a time and place and in a manner determined by the Commissioner, by public notice; and

- (b) may require a registered voter to submit new biometrics after 10 to 15 years from the date on which the person's last biometrics were obtained under this section; and
  - (c) must substitute the photograph taken under paragraph (a) or biometrics obtained under paragraph (b) for any previous photograph or biometrics of the voter obtained, recorded or printed under this section.
- (8) A person required to be photographed or submit biometrics in accordance with this section who fails to do so without lawful excuse commits an offence and is liable to a fine not exceeding 20 penalty units.
- (9) Where a person making an application or declaration in respect of registration as a voter is physically disabled, the application or declaration may be signed on his or her behalf by a registered voter who signs by direction of the physically disabled person and who indicates on the application or declaration:
  - (a) that the applicant or declarant is a physically disabled person;
  - (b) that the application or declaration is being signed by direction of the applicant or declarant.
- (10) The place in respect of which registration is claimed must be specified in such manner as to enable it to be clearly identified.

- (11) The Commissioner may reject an application or declaration that does not comply with subsection (1) or subsection (3) or fails to supply any of the information required by the prescribed Form.
- (12) An application for registration as a voter is to be witnessed by the Commissioner or a person as delegated by the Commissioner.

*Division 2 - Residence*

**21. Determining place of residence:**

- (1) A person's place of residence is determined by:
  - (a) the place a person's residence is recorded in the population Census conducted by the Samoa Bureau of Statistics before every general election; or
  - (b) the place supported by a Statutory declaration in the prescribed Form signed by a Sui o le Nu'u, Sui Tamaitai o le Nu'u, or a faifeau; or
  - (c) any other information prescribed by Regulations to confirm paragraphs (a) and (b), required by the Commissioner if the Commissioner is not satisfied with information provided under paragraphs (a) and (b).
- (2) A person can only have 1 place of residence:
  - (a) which is determined by using information confirming that he or she has resided in a place for at least 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.
- (3) Where the property on which a person's home is located is divided between 2 or more constituencies, that person is:
  - (a) if his or her place of residence is located wholly within 1 of those constituencies, regarded as residing in that constituency; or
  - (b) in any other case, regarded as residing in the constituency -
    - (i) where the front door or main entrance of the place of residence is located; or
    - (ii) in the case of an apartment, where the front door or main entrance of the apartment building is located.
- (4) For the purpose of this section, a person detained in a prison or hospital pursuant to an Act is not to be treated as residing there.
- (5) A Samoan citizen who resides outside Samoa is taken to reside where he or she had his or her last home in Samoa; but nothing in this subsection affects the application of section 14 for the purpose of determining the qualification of a person for registration as a voter.
- (6) A person whose home is on a ship, boat, or vessel permanently located in a harbour is taken to reside in the electoral district in which the wharf or landing place in the harbour is situated.

- (7) A person required to provide a statutory declaration under subsection (1) commits an offence if he or she attests to false information and is liable upon conviction to imprisonment for a term not exceeding 2 years.

## **PART 5**

### **ROLLS**

#### *Division 1 - Compilation and Maintenance*

#### **22. Definition and use of rolls:**

For the purpose of this Part, a:

- (a) “master roll” means the roll containing all registered voters for all Constituencies to be used for scrutiny under section 80;
- (b) “main roll” is a copy of the master roll of which copies can be made for processes occurring on polling day;
- (c) “supplementary roll” means a roll containing names of voters added to a roll after the printing of the main roll and must also record names removed from the main roll;
- (d) “composite roll” means a roll used for a by-election which is a combination of the main roll and supplementary roll;
- (e) “dormant roll” means a roll containing names of individuals whose names were removed from a Constituency main roll;
- (f) “electronic roll” means the electronically stored record of each roll in paragraphs (a) - (e);

- (g) “photo roll” means a copy of the main roll containing photographs which can be used for the reviewing of rolls or for the process occurring on polling day.

**23. Compilation and maintenance of Electoral Rolls:**

- (1) For each constituency, the Commissioner must compile and at all times maintain a main roll, which the Commissioner must keep as complete and accurate as possible.
- (2) The Commissioner may print a main roll for each Constituency.
- (3) Subject to this Act, the Commissioner may make changes to a roll required, based on information received.
- (4) The Registrar of the Land and Titles Court must within a period agreed to between the Registrar and the Commissioner provide to the Commissioner changes to titles entered on the Register for Matai titles maintained by the Registrar.
- (5) The Registrar of Births, Deaths and Marriages must within 48 hours after the registration of the death of any person aged 21 or above, notify the Commissioner of such registration to enable the Commissioner to amend the roll as necessary.
- (6) Where a roll is required by this Act or any other law to be made available to the public (howsoever described), the Commissioner must provide or produce, as the circumstances require,



such roll without the photographs recorded under section 20(5).

**24. Removal of names from roll:**

- (1) The Commissioner must, at any time except as provided in subsection (3), remove from a roll:
  - (a) the name of a person not qualified to be registered as a voter who requests in writing that his or her name be removed from the roll; and
  - (b) the name of a person of whose identity the Commissioner is satisfied and whose death has been notified -
    - (i) in writing by the Registrar General of Births and Deaths; or
    - (ii) in writing by the spouse, father, mother, brother, sister or child of the deceased provided that the person so advising the Commissioner is at least 18 years of age; or
    - (iii) through a public notice or a written confirmation from the relevant faifeau.
  - (c) the name of a person whom the Commissioner upon enquiry is satisfied has ceased to be qualified to be registered on that roll if -
    - (i) the Commissioner has notified that person by delivery to him or her or (if the person cannot be

- found) by leaving at the last known address a notice of the Commissioner's intention to remove the name of that person from the roll and calling upon the person to show cause why his or her name should not be so removed; and
- (ii) after 21 days following the delivery of the notice the person has not satisfied the Commissioner that he or she remains qualified to be registered on that roll;
- (d) the name of a person whose name is entered on the Corrupt Practices List made out for that Constituency.
- (2) Despite anything in this Act, the Commissioner, on being satisfied that the name of a person has been omitted or removed from a roll by mistake or clerical error, or through false information, may restore the name of that person to the roll at any time.
- (3) Except as provided in subsection (2) it is not lawful for the Commissioner to enter on or remove from a roll the name of a person when the period for the temporary closing of the roll commences.
- (4) If the Commissioner contravenes this section he or she is liable to a fine not exceeding 20 penalty units for a name improperly entered on or removed from the poll.

- (5) In addition to other powers of alteration conferred by this Act, the Commissioner may at any time, subject to subsection (3), alter the roll:
  - (a) by correcting a mistake or omission in the particulars of the enrolment of a person;
  - (b) by striking out the superfluous entry when the name of a person appears more than once on the roll;
  - (c) if an error made by or on behalf of the Commissioner has resulted in a person being registered as a voter of a constituency other than the constituency in respect of which the person should have been registered.
- (6) Where, under this section, the name of a person is removed from the roll in the period commencing on the day after writ day and ending on the day before polling day, the Commissioner must, on removing that name, enter it on a list to be known as the "list of post-writ day deletions".

**25. Electronic roll:**

The Commissioner must establish and maintain an electronic roll for all Constituencies.

**26. Supplementary rolls:**

- (1) The Commissioner may prepare and print supplementary rolls.
- (2) A supplementary roll is regarded to be a part of the main roll to which it refers.

- (3) The names in a supplementary roll is to be numbered consecutively, starting with the number next higher than the last number on the last printed roll for voters, whether main or supplementary.

**27. Composite roll:**

- (1) The Commissioner may print a composite roll for a constituency which:
  - (a) must subject to any additions alterations and deletions made to the electoral roll for a constituency contain a list of -
    - (i) names of persons whose names appears on the main roll for a constituency; and
    - (ii) names of persons whose name appears on any existing supplementary roll for a constituency; and
    - (iii) names of persons whose names do not appear on the main roll for a constituency or any existing supplementary roll for a constituency on a date to be fixed for the closing of that composite roll by the Commissioner; and
  - (b) must, subject to paragraph (a), be printed in the manner prescribed by section 35 in respect of a main roll.
- (2) If the date for the closing of a composite roll for any constituency is writ day for a by-election, the Commissioner:

- (a) must have the composite roll printed as soon as practicable after the issue of the writ for the by-election; and
  - (b) is not obliged to issue a supplementary roll under section 26 in relation to that election.
- (3) Where a composite roll for a constituency is printed under this section:
  - (a) the composite roll must, despite section 23, be considered the main roll until a new main roll is printed for the constituency under section 23 or a new composite roll is printed for a constituency under this section; and
  - (b) the main roll and any supplementary roll that were in force for a constituency immediately before the date of the closing of the composite roll ceases to be in force.
- (4) Nothing in this section:
  - (a) limits section 23; or
  - (b) prevents a main roll or supplementary roll that is no longer in force from being examined for the purpose of determining
    - 
    - (i) whether a person's name should appear on the main roll or a supplementary roll in force for a constituency; or
    - (ii) whether a person is qualified to vote in a constituency as a special voter.

*Division 2 - Objections***28. Voter's objection:**

- (1) A voter may subject to subsection (2), at any time object to the name of a person being on any roll, on any of the following grounds:
  - (a) the person is not qualified as a voter under Part 4; or
  - (b) the name should appear on some other roll; or
  - (c) the person whose name is objected to is also registered as a voter under the same or another name either on the same or another roll.
- (2) An objector must provide the objection:
  - (a) in writing to the Commissioner specifying the objection, the grounds of objection, and must serve a copy of the objection to the person objected to; and
  - (b) 90 days before closure of rolls.
- (3) Subject to subsection (5) the Commissioner must refer the objection received under this section to the District Court, and must notify the parties of the time and place appointed for the hearing.
- (4) An objection referred to the District Court under subsection (3) must be decided within 21 days after it is filed.
- (5) If within 21 days after the service of the copy of the objection the person objected to:

- (a) agrees with the Commissioner that the Commissioner may delete the entry objected to; or
- (b) satisfies the Commissioner that he or she is entitled to have the entry objected to retained on the roll, or objection is withdrawn,

the Commissioner may delete the entry objected to for paragraph (a) or retain the entry for paragraph (b).

**29. Commissioner's objections:**

- (1) The Commissioner may at any time object to the name of a person being on a roll on the basis that that person is not qualified to be registered as a voter, as the case may be.
- (2) The Commissioner must give notice in writing to the person objected to of the objection and the grounds for the objection.
- (3) Subject to subsection (4) the Commissioner must refer the objection made under this section to the District Court, and must notify the parties of the time and place appointed for the hearing.
- (4) If within 21 days after the service of the copy of the objection the person objected to:
  - (a) agrees with the Commissioner that the Commissioner may delete the entry objected to; or
  - (b) satisfies the Commissioner that he or she is entitled to have the entry objected to

retained on the roll, or objection is withdrawn.

- (5) Nothing in this section affects this Act as to the removal by the Commissioner of names from a roll.

**30. Objection hearings for rolls:**

- (1) This section applies with respect to proceedings on the referral to a District Court of a claim under section 28 or 29.
- (2) The Commissioner, a claimant, an objector, and the person objected to may appear before the Court either in person or by a lawyer qualified to do so under the Lawyers and Legal Practice Act 2014.
- (3) A person objected to may respond in writing to the Commissioner or to the Court, providing reasons why his or her name should not be removed from the roll in which the person's name is on.
- (4) Upon receipt of a response under subsection (3), the Court in determining the objection must take into account the statement provided and no grounds of objection is to be taken into account except those specified in the written objection.
- (5) If a person objected to does not either appear or forward a statement referred to in subsection (3), the Court shall make an order that the name of the person objected to, be removed from the roll.
- (6) Except as provided in this Act, the Commissioner must not remove from a roll the name of a person



objected to until the objection is determined by the Court.

- (7) In any proceedings to which this section applies the Court may make an order regarding costs as it thinks fit.
- (8) Subject to this section, the ordinary rules or procedure of the Court shall apply.
- (9) The Commissioner shall make additions, deletions, and alterations to the roll that may be necessary to give effect to the orders of the Court.

**31. Time limitation for objection hearings:**

When the roll for a Constituency is closed under section 33:

- (a) a person cannot make an objection under section 28 or 29 if the objection is made after 30 working days after closure of roll; or
- (b) an objection referred to the District Court must not be determined by the Court within the period of 90 clear days before polling day.

*Division 3 - Review of rolls*

**32. Photo rolls can be used for review of rolls:**

- (1) The Commissioner may use a roll containing photographs of voters to review rolls.
- (2) A roll referred to in subsection (1) may be viewed by any Member of the public within the Office but a copy of the roll must not be made for the purpose of providing it to any member of the public.

*Division 4 - Closing and Printing***33. Closing of rolls:**

- (1) Subject to subsection (3) the Commissioner must temporarily close all rolls on a date to be fixed by the Commissioner 6 months before the last possible date for general elections.
- (2) The Commissioner must issue a public notice of the date all rolls are to be closed under this section and such notice must be published at least 15 days before the date a roll is temporarily closed.
- (3) The Commissioner may enter names of persons onto the roll after its temporary closure under this section, if such persons are exempt under section 18(3).

**34. Commissioner to print main rolls:**

- (1) The Commissioner must have the roll for a constituency printed in the prescribed Form issued under the hand of the Commissioner.
- (2) The roll for a constituency must contain the names, numbered consecutively in alphabetical order according to the English alphabet, of all persons whose names are lawfully on the roll.
- (3) The printed rolls formed, signed, added to or altered according to this Act are the electoral constituency rolls for Samoa.

**35. Requirement for printing of rolls:**

The requirement of printing of rolls may, for the purposes of this Part, be satisfied by typewriting and a mechanical process of reproducing typewritten copies, and the term “printed” wherever used in this Part shall, where necessary, be interpreted accordingly.

*Division 5 - Use of Rolls*

**36. Inspection of rolls:**

- (1) Printed copies of the main rolls and of the supplementary rolls are to be kept for inspection by the public at the office of the Commissioner, at a Post Office in Samoa, and at such other convenient places as the Commissioner directs.
- (2) A person may inspect a roll at the Commissioner’s office without payment at any time when the office is open for the transaction of business:
  - (a) the main rolls and the supplementary rolls;
  - (b) the applications of any persons who have applied or claimed to be registered as voters but whose names are not on the relevant roll.
- (3) A printed copy of the constituency roll is to be kept for inspection by the public without payment at convenient times at the residence of a Sui o le Nuū or Sui Tamaitai o le Nuū or a faifeau holding office in the constituency concerned.

- (4) A person commits an offence and is liable on conviction to a fine not exceeding 2 penalty units if he or she:
  - (a) who charges a fee for viewing a copy of the roll under this section; or
  - (b) without the permission of the Commissioner -
    - (i) makes copies of rolls provided under this section; or
    - (ii) distributes copies of rolls provided under this section.
- (5) For the purpose of this section “main roll” and “supplementary roll” means a roll containing photos with the names of persons and rolls without photos but contains the names of persons only.

**37. Use of copies of rolls provided by the Commissioner:**

Printed copies of the main rolls and supplementary rolls, certified correct by the Commissioner, are to be supplied by the Commissioner, for the purpose of conducting an election.

*Division 6 - Dormant Roll*

**38. Commissioner to establish and maintain dormant roll:**

The Commissioner must establish and maintain a dormant roll showing the particulars of those persons whose names have been removed from the roll for a

constituency as a result of the latest revision of the roll under section 32.

**39. Removal of name from dormant roll:**

- (1) The Commissioner must remove from the dormant roll the name of a person confirmed as deceased to the Commissioner:
  - (a) by the Registrar General of Births and Deaths; or
  - (b) by the spouse, father, mother, brother, sister or child of the deceased provided that the person so advising the Commissioner is at least 18 years of age.
- (2) Despite subsection (1), the Commissioner must keep, for the purpose of the next election to be held in the constituency to which the dormant roll relates, a copy of the dormant roll as first created.
- (3) Where more than one (1) revision of the roll takes place under section 32 between 2 successive elections in a constituency, the Commissioner must keep, for the purposes of the latter of these 2 elections, copies of each of the dormant rolls as first created.

**40. Printing and storage of dormant roll:**

- (1) The Commissioner must cause to be printed a computer compiled list showing the names and other particulars of the persons whose particulars are held in a dormant roll.

- (2) Copies of a computer compiled list printed under subsection (1) are to be kept electronically by the Commissioner for the purposes of the next election to be held in any constituency to which the roll relates.
- (3) A dormant roll printed under this section may be used for the purpose of determining whether any person is qualified, under Part 9, to vote at an election held in a constituency to which the roll relates.

**41. Inspection by the public:**

- (1) A copy of the most recent electronically stored dormant roll for a constituency is to be kept for inspection by the public at the office of the Commissioner.
- (2) A person may inspect the dormant roll at the Commissioner's office without payment at any time between 9.00 am and 4.00 pm on a working day on which the Office is open.
- (3) Where the roll is made available for public inspection that roll is to be made available at such times and places as the Commissioner thinks fit if inspection is to be held at a place other than the Office.
- (4) A person is prohibited from making any copies of a dormant roll during inspection.

**PART 6**  
**CAMPAIGNING**

**42. Approved methods:**

- (1) A candidate must only use the approved methods of campaigning provided under subsection (2).
- (2) The approved methods for campaigning are as follows:
  - (a) handing out of pamphlets providing the candidate's -
    - (i) personal background; and
    - (ii) academic qualifications; and
    - (iii) issues for which he or she supports;
  - (b) use of billboards to provide a pictorial presentation of the candidate and issues of which the candidate wishes to inform the public; or
  - (c) oral or filmed presentations or speeches using any mode of communication available which includes electronic devices.
- (3) In this section "electronic devices" means any device that can be used to promote a candidate's message for elections.

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

- (1) Subject to subsection (2), the campaigning period commences within 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.

**44. Campaign offence:**

A candidate who breaches section 43 commits an offence and is liable on conviction to a fine not exceeding 5 penalty units or to imprisonment not exceeding 12 months or both.

## **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, 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 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 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.

**46A. Person absent from Samoa during nomination period:**

- (1) A person who intends to contest in the general elections 2021 and is absent from Samoa during the nomination period under section 45 due to the Corona Virus Disease 2019 (COVID-19) travel restriction, must nominate in writing to the Commissioner a person to execute on his or her behalf all of the requirements for the purpose of the nomination process.
- (2) A person nominated under subsection (1) must provide to the Commissioner:
  - (a) a proof of his or her identity; and
  - (b) the notarised nomination papers prepared by the absentee that are required to be submitted under sections 46 and 47; and
  - (c) the nomination fee.
- (3) This section expires the day after the Commissioner gives a public notice pursuant to section 84 to declare the results of the poll for the general elections 2021.

**47. Acceptance of nomination:**

- (1) The Commissioner must accept the nomination of a candidate who fulfils the requirements of section 8 and if:

- (a) the nomination paper and the consent of the candidate are lodged with him or her by noon on nomination day; and
  - (b) the consent of the candidate states that he or she is qualified to be elected a Member under Part 3 and any other enactment; and
  - (c) the nomination paper states that the candidate is a registered voter of the constituency in which he or she is to represent; and
  - (d) the nomination paper is signed by at least two (2) registered voters of the constituency in which he or she is to represent; and
  - (e) the nomination fee is paid as required by this Act; and
  - (f) the nomination paper is accompanied by statutory declarations by two (2) matai and a current Sui o le Nu'u or current Sui Tamaitai o le Nu'u confirming the monotaga requirement in the prescribed Form.
- (2) The Commissioner must reject the nomination lodged with him or her if the candidate does not fulfil all requirements set out under subsection (1).
- (2A) In the exercise of his or her power and duty to accept or reject a nomination under this section, the Commissioner may:
- (a) in addition to the information in the nomination paper provided by the candidate under this section, consider other information that is relevant in determining whether the candidate is

- qualified under the Constitution and this Act to become a Member;
- (b) inquire into the information in the nomination papers provided by the candidate under this section to determine whether the information is bona fide or not; and
  - (c) reject the candidate's nomination papers if the Commissioner determines that the information is not bona fide;
  - (d) exercise all the duties, powers and functions vested in the Commissioner under this Act, the Electoral Commission Act 2019 and any other enactment of Parliament, in the discharge of his or her duties under this section.
- (3) A candidate or a person who claims a right to be a candidate may by motion challenge the decision of the Commissioner to accept or reject the nomination of a candidate under this section in the Supreme Court, for an order to qualify or disqualify a candidate:
- (a) for the general elections -
    - (i) it must be filed no later than 12 noon of the 7th day after nomination and a response to the motion must be filed within five (5) working days after the filing of the motion; and
    - (ii) must be decided by the Court within twenty five (25) working days after filing of the motion; or
  - (b) for the by-election -

- (i) it must be filed no later than 12 noon of the 3rd day after nomination; and
  - (ii) must be decided by the Court within ten (10) working days after filing of the motion.
- (3A) In responding to a challenge, the Commissioner may, by motion, make an application to the Supreme Court to amend his or her decision under subsection (1) or (2) on the following grounds:
  - (a) new evidence has come before him or her that may change his or her decision to revoke or accept a nomination the subject of the challenge; or
  - (b) to correct an administrative mistake.
- (3B) The Commissioner may, by motion, file with the Supreme Court an application to amend a decision by him or her to revoke or accept a nomination under subsection (1) and (2), and seek orders to qualify or disqualify a candidate or a person who has a right to be a candidate but the Commissioner has rejected his or her nomination, on the following grounds:
  - (a) new evidence has come before the Commissioner that may change his or her decision to revoke or accept a nomination the subject of the Commissioner's application; or
  - (b) to correct an administrative mistake.
- (3C) In relation to the application under subsection (3B):

(a) for the general elections -

- (i) it must be filed no later than 12 noon of the 7th day after nomination; and
- (ii) must be decided by the Court within 25 working days after filing of the Commissioner's application; or

(b) for the by-elections -

- (i) it must be filed no later than 12 noon of the 3rd day after nomination; and
- (ii) must be decided by the Court within ten (10) working days after the filing of the application; and

(c) for Service -

- (i) where the Commissioner's application seeks orders to disqualify a candidate, that candidate must be made a party and must be served with the Commissioner's application on the same day the application is filed with the Supreme Court;
- (ii) where the Commissioner's application seeks to qualify a person whose nomination has been revoked by the Commissioner, that person and all confirmed candidate of the constituency to which the application relates to, must be

made a party and be served with the application on the same day it is filed with the Supreme Court; and

(d) all parties to the Commissioner's application may consent to the said application by the filing of a motion in response to that effect.

(3D) No costs shall lie against the Commissioner or a party in respect of any application made under subsections (3A) and (3B) above.

(4) On the hearing of a motion filed under this section, the Supreme Court:

(a) must, whether it is pleaded in the motion or not, ultimately determine whether the candidate, whose candidacy is being challenged, or the person who claims a right to be a candidate, is qualified or disqualified to be a Member under the Article 45 of the Constitution and section 8 of this Act;

(b) shall be guided by the substantial merits and justice of the case without regard to legal forms or technicalities; and

(c) may admit such evidence as in its opinion may assist it to deal effectively with the case, despite that the evidence may not otherwise be admissible in the Supreme Court.

(5) An order made under subsection (3) is final and is not subject to any review or appeal.

**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 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 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 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 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 that 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.
- (4) Despite subsection (1), the nomination of a candidate that is accepted under section 46A, is

deemed withdrawn from nominations if the candidate is not in Samoa, at 12.00 noon on the 14th day, before the polling day.

- (5) A candidate who by motion challenges the Commissioner's decision pursuant to section 47(3), and such challenge is successful, must not withdraw his or her nomination under subsection (1) as a candidate except for reason of serious illness rendering the candidate unfit for contesting in the elections.

## **PART 8**

### **REQUIREMENTS BEFORE POLLING DAY**

#### **54. Public notice of polling booths:**

- (1) The Commissioner must by public notice, given at least 14 days before polling day, appoint a sufficient number of polling places in a constituency where an election is being held, for the taking of the poll.
- (2) Subject to section 61 and 64 a polling booth for a Constituency may be designated within or outside of that Constituency.
- (3) No polling place is to be appointed either for the receipt of ordinary or special votes outside of Samoa.

#### **55. Commissioner responsible for sourcing polling booths:**

The Commissioner must provide the following for taking the poll:

- (a) one or more rooms for polling booths at a polling place, and in a booth 1 or more inner compartments, separated from each other but opening into the booth and having no other opening; and
- (b) in an inner compartment, pencils for use of the voters or other suitable facilities for the marking of ballot papers; and
- (c) in a booth, 1 or more ballot boxes having a lock and key and a slit in the upper side by which the ballot papers may be put into the box; and
- (d) in a booth, 1 or more copies of the main roll and supplementary rolls for the electoral constituency, and a sufficient number of ballot papers.

**56. Appointment of officers to conduct a poll:**

- (1) The Commissioner must appoint for a polling booth an Assistant Electoral Officer to conduct the poll at that booth and 1 or more poll clerks to assist the Assistant Electoral Officer, and may appoint such additional Assistant Electoral Officers and poll clerks and such interpreters as he or she considers necessary.
- (2) An Electoral Officer may exercise all the powers, duties, and functions of an Assistant Electoral Officer in any polling booth.
- (3) An Electoral Officer or Assistant Electoral Officer may at any time on or before polling day appoint in writing a substitute to act for him or her in

respect of that election in case of his or her absence from duty.

- (4) If the Assistant Electoral Officer fails to open the polling at a booth, or if he or she is absent from duty and has not appointed a substitute, a poll clerk at the booth may act for him or her and in that event is taken to be his or her substitute.
- (5) A substitute while acting for an Electoral Officer or Assistant Electoral Officer has all the powers, duties, and functions of that Electoral Officer or Assistant Electoral Officer.
- (6) A person employed by any Government Agency is obligated when requested by the Commissioner to become a polling official to carry out duties requested by the Commissioner under this Act.

**57. Designation of officers:**

- (1) The Commissioner must designate the constituency in which Electoral Officers, Assistant Electoral Officers, poll clerks and interpreters are to exercise their functions.
- (2) An Electoral Officer has the powers to perform any of the duties of the Commissioner in the constituency to which he or she is appointed and is subject to the authority and control of the Commissioner.
- (3) The Commissioner must exercise supervision over the functions of Electoral Officers, Assistant Electoral Officers, poll clerks and interpreters,

and may give any of the officers' directions as to the performance of their duties.

**58. Form of ballot papers:**

- (1) The ballot papers to be used at an election shall be in the prescribed Form.
- (2) Immediately after the designated day for withdrawal of nominations for an election, the Commissioner must, if a poll is required to be taken, cause ballot papers to be printed in sufficient numbers for the election.
- (3) A ballot paper must contain a list in a form prescribed by regulations of all the persons nominated as candidates who have not withdrawn their nominations.
- (4) On the ballot paper:
  - (a) the names of candidates are to be arranged alphabetically in order of their matai titles; and
  - (b) the given names of the candidates must follow the candidates' matai titles; and
  - (c) the matai titles of the candidates must be in large characters and bold type; and
  - (d) the photographs of candidates to appear on the left side of the candidate's name; and
  - (e) the name of the political Party of the candidate, if any -
    - (i) is to be shown immediately below the candidate's name; and

- (ii) is to be in characters that are smaller than those used for the matai title of the candidate; and
    - (iii) must not be in bold type, and
  - (f) the registered matai title that meets the consecutive three (3) years monotaga requirement must be the first matai title in the order of matai titles on the ballot paper; and
  - (g) any other registered matai title from the same constituency that does not meet the consecutive three (3) years monotaga requirement may also be included in the ballot papers.
  - (h) such other matter, if any, as may be necessary to distinguish the names of the candidates are to be shown.
- (5) No candidate who seeks election as an independent candidate can use the name of a political Party that contested the last general election or a by-election held since the last general election, but must have the word “independent” shown on the ballot paper immediately below that candidate's name.
- (6) Subject to subsection (4) (e), no other identification, such as occupation, honor, or degree, is to be included on the ballot paper in relation to a candidate's name or political Party.
- (7) A square is to be shown on the ballot paper to the right of a candidate's name.
- (8) A ballot paper shall have a counterfoil in the prescribed Form.



- (9) There must also be printed on the top right-hand corner of a ballot paper and in the space provided in the counterfoil attached to the ballot paper, a number (called a consecutive number) beginning with the number 1 in the case of the first ballot paper printed, and on all succeeding ballot papers printed the numbers are to be consecutive, so that no 2 ballot papers for a Constituency bears the same number.
- (10) Where a question arises concerning the order or manner in which the names of the candidates or the names of political parties are to be shown on the ballot paper, the Commissioner decides the question.

**59. Commissioner to declare candidate's election in uncontested election:**

- (1) The Commissioner must, by public notice before polling day, in respect of a constituency declare that the candidate is taken to be elected and report accordingly to the Head of State if only 1 candidate is nominated for a Constituency.
- (2) As a result, the Head of State shall, by warrant under the Head of State's hand, declare that candidate to be elected.

**PART 9**  
**GENERAL ELECTIONS**

*Division 1 - Pre-polling*

**60. Pre-polling:**

- (1) The Commissioner may designate a polling place for a registered voter to cast his or her vote if the registered voter meets the requirements of this Subdivision.
- (2) The Commissioner must designate a day for voters to cast votes under subsection (1) commencing on a Monday preceding polling day at 12.00am and ending on the consecutive Thursday at 4.00pm which falls on the day before polling day.
- (3) The Commissioner must cause a public notice to be published using all communication means necessary and such notice must have:
  - (a) the designated polling place for the casting of votes; and
  - (b) the period in which the polling will take place.
- (4) For the purpose of subsection (1), a person is eligible to cast a vote under this section if he or she qualifies under section 61(1).

**61. Application and process for pre-polling:**

- (1) A person qualifies to pre-poll if the person:
  - (a) travels outside Samoa during the designated period under section 60(2);
  - (b) is 65 years old or above;
  - (c) is a person living with disabilities;
  - (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) A person who qualifies under this section must apply to the Commissioner after the day of closure of rolls ending 14 days from polling day at 4.00pm.
- (3) Upon receipt of an application the Commissioner must determine whether a person qualifies under this section to pre-poll and must notify that person of his decision and reasons for the Commissioner's decision.
- (4) Only 1 ballot box can be used for pre-polling during the designated period under section 60(2).
- (5) The ballot box is to be transported to and from the polling booth by a police officer when required for the casting of votes.
- (6) When the ballot box is not in the polling booth, it must be held in the custody of the police officer until it required to be transported to the polling booth.
- (7) At a polling booth designated under this section, the Presiding Officer must, when pre-polling ends, tally the number of ballot papers used.
- (8) Sections 55 – 58, 67 – 76, 78– 83 apply to this section.
- (9) On the day pre-polling ends, at 4.00pm, the police officer must keep the ballot box in the police officer's custody until the day notified under

section 81 in which case, the police officer must transport the ballot box to the Commissioner.

- (10) The ballot boxes used under this section are to be sealed in a manner prescribed by Regulations.
- (11) The list of voters qualified to pre-poll and who were notified by the Commissioner under subsection (3), and used in a general election must be used at a by-election arising as a result of an election declared void pursuant to sections 116 or 117.

### *Division 2 - Voting*

#### **62. Who can vote:**

A person whose name appears on the main or supplementary roll can vote for the Constituency to which that main or supplementary roll belongs.

#### **63. Compulsory voting:**

- (1) It is the duty of every voter qualifying under this Act registered as a voter, to vote at each election.
- (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.
- (3) Subject to subsection (4), the Commissioner must within 12 months after every election:
  - (a) send a penalty notice; or
  - (b) arrange for a penalty notice to be delivered by other means,

to a person whose name appears on the list in subsection (2) at that persons last known address.

- (4) The Commissioner is not required to send or deliver a penalty notice if he or she is satisfied that the voter:
  - (a) is deceased; or
  - (b) was absent from Samoa on polling day; or
  - (c) was not eligible to participate in voting; or
  - (d) has valid and sufficient reason for failing to vote.
- (5) A penalty notice is a prescribed notice informing the voter that:
  - (a) the voter appears to have failed to vote at the election; and
  - (b) it is an offence to fail to vote at an election without a valid or sufficient reason for not voting; and
  - (c) if the voter chooses to have the matter addressed outside of court, the voter may within the prescribed time -
    - (i) provide the Commissioner particulars of the voter not voting; or
    - (ii) provide the Commissioner reasons under subsection (4)(d); or
    - (iii) pay the penalty notice fine of \$100.00 to the Commissioner.
- (6) If a voter does not respond to a penalty notice issued pursuant to subsection (5), the Commissioner may send a second penalty notice.

- (7) If a voter fails to respond to a second penalty notice the Commissioner may refer the matter to Court.

**64. Special voter:**

- (1) A person who is qualified and registered to vote at an election in a constituency and wishes to cast his or her vote for that constituency may vote as a special voter at a polling place outside that constituency.
- (2) Despite anything to the contrary in this Act, a special voter may vote at such place within Samoa, at such time, in such manner, and upon or subject to such conditions that appear in this Act or are as may be prescribed by regulations.
- (3) Different methods of voting may be prescribed by regulations for different classes of special voters.
- (4) The ballot papers for use by special voters or by a class of special voters may be in such form prescribed by regulations, and the consecutive numbers of the special ballot paper for a district may be in a different series from that used for the ordinary ballot papers.
- (5) For the purpose of this section, “special voter” means a:
  - (a) person who is appointed as a polling official; or

- (b) person employed in an Office providing a service listed under section 5 of the Public Holidays Act 2008; or
  - (c) person who is an admitted patient at any National Hospital and that patient's carer; or
  - (d) a person who lives in a prescribed elderly carer's home and includes employees of the home;
  - (e) a person who is lives in a prescribed shelter providing protection for prescribed groups and includes employees of the shelter.
- (6) Regulations may be made for the implementation of this section in particular the prescription of:
- (a) mobile booths to be used to implement this section;
  - (b) elderly carers' homes;
  - (c) shelters and groups housed in a shelter.

**65. Employees time off to vote:**

- (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.

- (2) An employer is prohibited from deducting any remuneration payable to any worker due to the worker's absence from work as a result of casting his or her vote in the elections.
- (3) An employer who breaches subsection (2) commits an offence and is liable upon conviction to a fine not exceeding 4 penalty units.

*Division 3 - Polling Day*

**66. Hours of polling:**

- (1) The poll at an election must commence at 8am of polling day, and, except as provided in this Act, must finally close at 3 pm of the same day or at 7 pm of the same day if the polling day is a Saturday.
- (2) Despite subsection (1) a voter who at the close of the poll is present in a booth for the purpose of voting is entitled to receive a ballot paper and to mark and deposit the ballot paper and is treated to have voted before the close of the poll.
- (3) Where polling at a polling place cannot start or has to be suspended whether by reason of riot or open violence, natural disaster, or any other cause, the Presiding Officer must:
  - (a) adjourn the taking of the poll at that polling place to the following day, and if necessary from day to day until the poll can be taken; and
  - (b) immediately give public notice of the adjournment in appropriate manner.



**67. Ballot box to be kept locked during poll:**

- (1) The Presiding Officer at a polling booth must, before the opening of the poll, and in the sight of any of the scrutineers present, show that the ballot box is empty, and must close and lock it, and keep the key in his or her possession; and the ballot box must not again be opened until after the close of the poll.
- (2) If the lock of a ballot box is damaged or defective so that the box cannot be locked, the Presiding Officer must securely seal the box instead of locking it.

**68. Issuing of ballot paper:**

- (1) A Presiding Officer must, in accordance with this section, issue ballot papers to all voters who apply to vote at the booth in respect of which he or she is appointed.
- (2) The voter must state his or her name to the Presiding Officer and must give such particulars as may be necessary to identify the entry in the printed rolls relating to the voter.
- (3) If the name of the voter appears in the roll, a line is to be drawn through his or her name and number.
- (4) If the name of the voter appears in the roll the Presiding Officer must then issue to the voter a ballot paper after he or she has prepared it in the following manner:

- (a) unless a consecutive number has been printed on the ballot paper and on the counterfoil, he or she must enter on both the counterfoil and the back of the ballot paper in the spaces provided a number (called a consecutive number), beginning with the number 1 in the case of the first ballot paper issued by him or her, and on all succeeding papers issued by him or her the numbers must be consecutive, so that no 2 ballot papers issued in the same booth bears the same number;
  - (b) he or she must then fold over the corner of the ballot paper on which the consecutive number appears and must firmly fix a piece of gummed or glued paper over that corner so as effectively to conceal the consecutive number;
  - (c) on the counterfoil of the ballot paper he or she must write his or her initials, and the number appearing in the roll against the name of the voter;
  - (d) he or she must place the official booth stamp on the perforation between the counterfoil and the back of the ballot paper.
- (5) A Presiding Officer who fails to perform a duty imposed by this section is liable to a fine not exceeding 40 penalty units.
- (6) Where the failure relates to the duty of fixing a piece of gummed or glued paper over the consecutive numbers so as effectively to conceal

it, it is sufficient defence if the Presiding Officer satisfies the Court that he or she took all reasonable precautions to secure the same.

**69. Voter who is blind or unable to read:**

- (1) Despite section 71, a voter who is wholly or partially blind, or is unable to read or write (whether because of a physical handicap or otherwise) to vote without assistance, may vote in accordance with this section.
- (2) At the request of any voter who has received a ballot paper the Presiding Officer must accompany him or her into 1 of the inner compartments provided for the marking of ballot papers, and the ballot paper may there be marked by the voter with the assistance of the Presiding Officer or may be marked by the Presiding Officer in accordance with the instructions of the voter.
- (3) The Presiding Officer assisting the voter must sign his or her name on the back of the ballot paper and must add the words "Witness for blind or partially blind person" or "Witness for person unable to read or write", as the case may be, and must fold the ballot paper so that its face cannot be seen before depositing it in the ballot box.
- (4) A poll clerk or some other person nominated by the voter may also accompany him or her into the inner compartment and may, if so desired by the voter, inspect the ballot paper before it is deposited in the ballot box.

- (5) A person who is present under this section or under any regulations when a voter votes and who communicates at any time to a person any information obtained as to the candidate for whom the voter is about to vote or has voted, or as to the number on the ballot paper given to the voter, commits an offence, and is liable to a fine not exceeding 30 penalty units or to imprisonment for a term not exceeding 3 months, or both.

**70. Spoilt ballot papers:**

- (1) A fresh ballot paper may be supplied to a voter:
  - (a) if the ballot paper has not been placed in the ballot box; and
  - (b) if the ballot paper given initially to the voter is spoilt; and
  - (c) if the Presiding Officer is satisfied that the voter spoilt the ballot paper negligently; and
  - (d) only after the spoilt ballot paper has been returned to the Presiding Officer.
- (2) The Presiding Officer must:
  - (a) cancel every spoilt ballot paper by writing across the face of it the words "Spoilt by voter, and a fresh ballot paper issued" and writing his or her initials on the spoilt ballot paper;
  - (b) if a ballot paper is unintentionally spoilt by the Presiding Officer or any other official, cancel it by writing across the face

- of it the words "Spoilt by official" and also the words "and a fresh ballot paper issued" if that is the case, and writing his or her initials on the spoilt ballot paper;
- (c) retain all spoilt ballot papers in his or her possession until the close of the poll.
- (3) The Presiding Officer must make up into separate packets and deliver to the Commissioner as soon as practicable after the close of the poll all spoilt ballot papers at the polling booth at which he or she presided.

**71. Method of voting:**

- (1) The voter, having received a ballot paper, must immediately go into one of the inner compartments provided for marking his or her vote, and must there alone and secretly indicate on the ballot paper the candidate he or she desires to vote for by marking a tick (✓) in a square set opposite to the name that candidate.
- (2) A ballot paper is not void on the ground that the marking in the square set opposite the name of the candidate is not marked as a tick but is marked in a manner that clearly indicates the candidate that the voter voted for.
- (3) A voter must before leaving the inner compartment, fold the ballot paper so that the contents cannot be seen, and must deposit the ballot paper so folded, in the ballot box made available.

**72. Procedure when ballot paper issued more than once for the same name:**

- (1) Subject to subsection (2) if a person proposing to vote at an election gives as his or her name the name of a person to whom a ballot paper has already been given at the same election, he or she must be treated as any other voter.
- (2) The ballot paper of a person referred to under subsection (1) must not be deposited in the ballot box and must not be allowed by the Presiding Officer to be deposited in the ballot box but the Presiding Officer must ensure such ballot paper is set aside for separate custody.

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

- (1) A Presiding Officer must ensure that:
  - (a) only 6 voters are allowed in a polling booth at the same time; and
  - (b) only 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 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 2 years.

**74. Person not to be spoken to in booth:**

- (1) Any person is prohibited from speaking to a voter in a polling booth either before or after the voter has given his or her vote, except the Presiding Officer or poll clerk (with an interpreter if necessary), to ask the questions he or she is authorised to ask, and give general directions that may assist a voter to give his or her vote, and in particular may on request inform a voter orally of the names of all the candidates in alphabetical order.
- (2) A person who breaches subsection (1) commits an offence and is liable on summary conviction to a fine not exceeding 20 penalty units, and may be at once removed from the booth by order of the Presiding Officer.

**75. Question that can be put to a voter:**

- (1) The Presiding Officer may if required by a scrutineer, before allowing a person to vote, put to him or her the following questions:
  - (a) are you the person whose name appears as A.B. in the roll now in force for the (Name) constituency, as the case may be?
  - (b) do you still possess the qualifications in respect of which you are enrolled?
  - (c) have you already voted at this election?
- (2) In every such case the Presiding Officer must require the questions to be answered in writing signed by the person to whom they are put.
- (3) A person to whom those questions are put who does not answer them, or answers the first and



second and the third question in the negative, must not be permitted to vote.

- (4) A person who wilfully and knowingly makes a false answer to any of the questions that the Presiding Officer asks him or her under this section is liable upon conviction to pay a fine not exceeding 40 penalty units.

**76. Presiding officers to maintain order:**

- (1) A Presiding Officer must maintain order and keep the peace at the polling place or booth where he or she is conducting the poll, and may without a warrant:
  - (a) cause to be arrested and taken before a District Court Judge a person reasonably suspected of committing or attempting to commit at the polling place or booth any of the offences in Part 12; or
  - (b) cause to be removed a person who obstructs a polling booth, or wilfully and unnecessarily obstructs the proceedings at the polling, or conducts himself or herself in a disorderly manner, or causes a disturbance, or wilfully acts in any manner in defiance of the lawful directions of the Presiding Officer.
- (2) A police officer must aid and assist the Presiding Officer in the performance of his or her duty under this section.

*Division 4 - Preliminary count of votes*

**77. Preliminary count of votes:**

- (1) At a polling booth the Presiding Officer must, as soon as practicable after the close of the poll, in the presence of scrutineers that choose to be present and the poll clerks, but of no other person, perform the following duties:
  - (a) make up into separate parcels -
    - (i) the certified copies of the main roll and supplementary rolls on which the fact of any person having received a ballot paper has been noted; and
    - (ii) all the counterfoils of ballot papers that have been issued to voters; and
    - (iii) all the spoilt ballot papers; and
    - (iv) all the unused ballot papers;
  - (b) open the ballot boxes and, taking from it all the ballot papers in it, proceed to count the number of votes received by a candidate;
  - (c) set aside as informal all ballot papers which do not clearly indicate the candidate for whom the voter desired to vote;
  - (d) shall announce the result of the voting at the polling booth at which he or she presides and arrange for the result of the voting to be transmitted as soon as possible to the Commissioner;
  - (e) make up into separate parcels -

- (i) the used ballot papers, together with (but in separate enclosures) the ballot papers set aside as informal, and the ballot papers set aside under section 72; and
  - (ii) a certificate signed by himself or herself of the number of votes received by a candidate, the number of ballot papers set aside as informal, the number of ballot papers set aside under section 72, the number of spoilt ballot papers, the number of unused ballot papers, and the number of ballot papers originally delivered to him or her.
- (2) The Commissioner (and his or her assistants) or such Returning Officers as designated by the Commissioner to scrutinise the particular roll, is to be present at the scrutiny in addition to one other person appointed as scrutineer by a candidate.
- (3) The Presiding Officer accompanied by a police officer must forward all the parcels mentioned in this section to the Commissioner.

*Division 5 - Sorting of votes*

**78.     Sorting of votes:**

- (1) When the Commissioner receives parcels submitted under section 61(8), 77(3), and votes cast by special voters pursuant to section 64 the Commissioner must sort them into the required distribution based on Electoral Constituencies.
- (2) In sorting the votes under subsection (1), the Commissioner must do so in the following order:
  - (a) sort ordinary votes;
  - (b) sort pre-pollled votes;
  - (c) sort special votes.
- (3) When the Commissioner has completed the sorting process under subsection (2), the Commissioner may proceed with the process under Part 10.

*Division 6 - Custody of ballot papers*

**79. Duty to prevent irregularity of ballot papers:**

- (1) In order to prevent the commission at an election of irregularities in respect of the improper possession of ballot papers the following apply:
  - (a) the Commissioner must give to the person printing ("printer") the ballot papers a receipt specifying the total number of ballot papers received by him or her, and it is the duty of the printer to see that all copies of the ballot papers in his or her possession and not delivered to the Commissioner are immediately destroyed;
  - (b) a Presiding Officer must give to the Commissioner a receipt specifying the total

number of ballot papers received by him or her, and is to be personally responsible for the safe custody of all such ballot papers from the time they are received by him or her until they are disposed of in accordance with this Act;

- (c) a Presiding Officer is to be personally responsible for the safe custody of all ballot papers used at the polling booth at which he or she presides from the time a ballot paper was placed in the ballot box by the voter until the parcel of used ballot papers has been delivered to the Commissioner according to this Act and the Presiding Officer has obtained from the Commissioner a receipt in writing for the parcel, which receipt the Commissioner is in all cases required to give on such delivery;
- (d) in like manner the Commissioner is to be personally responsible for the safe custody of all ballot papers used at the polling booth at which he or she presides, and of all parcels of used ballot papers for which he or she has given a receipt to a Presiding Officer, until they have been sent by him or her to the Registrar of the Supreme Court;
- (e) a person who fails to take reasonable steps to secure the safe custody of all ballot papers for which he or she is responsible, which results in the removal of a ballot paper from that person's custody, commits an offence and is liable on conviction to a fine not exceeding 50

penalty units or to imprisonment for a term not exceeding 1 year.

- (2) A person commits an offence and is liable on conviction to:
- (a) a fine not exceeding 50 penalty units who wilfully or negligently allows a copy of a ballot paper printed by him or her to come into the possession of a person other than the Commissioner;
  - (b) a fine not exceeding 40 penalty units who obtains possession of or has in his or her possession a ballot paper other than the one given to him or her by the Commissioner or a Presiding Officer for the purpose of recording his or her vote, or retains a ballot paper in his or her possession after leaving a polling booth.

## **PART 10**

### **OFFICIAL RESULTS OF GENERAL ELECTIONS**

#### *Division 1 - Scrutiny of rolls*

#### **80. Definition of “permitted person”:**

- (1) For the purpose of this Part “permitted person” means the Commissioner, the Commissioner’s assistant or one scrutineer appointed by a candidate who chooses to be present.
- (2) For the purpose of Division 2, the definition under subsection (1) may extend to observers as

confirmed by the Commissioner, and representatives of the media.

- (3) A person included under the definition of “permitted person” under this section may only observe the process being carried out, but is not allowed to make a report of the process or results or take photographs to the process or results.

**81. Arrangement for the scrutiny of rolls:**

- (1) The Commissioner must make arrangements for a scrutiny of the rolls as soon as practicable after the close of the poll, and must give at least 3 clear days' notice in writing to each of the candidates of the time and place at which he or she will commence the scrutiny.
- (2) No person other than a permitted person is to be present at the scrutiny.
- (3) A candidate is prohibited from acting as scrutineer under this section.
- (4) A scrutineer may be appointed under this section by telegram or any other electronic means.

**82. Marked copies of rolls to be compared:**

- (1) On the day appointed under section 81 the Commissioner or an employee delegated by the Commissioner must:
  - (a) together with another employee compare a certified copy of the main roll and supplementary roll to note each person who has casted a vote; and

- (b) on the unmarked Master Roll draw a line through the number and name of a voter who is shown on the certified copy of the roll to have received a ballot paper.
- (2) If during the comparison in subsection (1) it is found that the same voter was issued a ballot paper twice, the Commissioner or person delegated by the Commissioner must note it to be addressed during the counting of the votes under section 83.
- (3) In addition to the Commissioner or employee delegated by the Commissioner, only a permitted person may be present during the implementation of the process under this section.
- (4) This section may be implemented by the Commissioner with the assistance of the Commissioner's full time staff.

*Division 2 - Official Count*

**83. Procedure for counting of votes:**

- (1) For the implementation of this section, only a permitted person and a Returning Officer may be present.
- (2) On completion of the scrutiny under Division 1 and in the presence of those referred to under subsection (1) the Commissioner must:
  - (a) select and open one of the parcels of used ballot papers referred to in sections 77(1)(e) and 61(7); and



- (b) mark each ballot paper in that parcel with a number in consecutive order, beginning with the number 1, so that no 2 ballot papers in that parcel bear the same number.
- (3) When the ballot papers from the parcel selected have been marked under subsection (2), the Commissioner must make a record of the last number marked, and must then, in the presence of a permitted person only, deal with the ballot papers as follows:
- (a) subject to subsection (5) select from a parcel the ballot paper that was noted under section 82(2) and must reject as disallowed every ballot paper issued to the same person;
  - (b) subject to subsection (5) the Commissioner must reject as informal a ballot paper -
    - (i) that does not bear the official mark if there is reasonable cause to believe that it was not issued to a voter by a Presiding Officer; or
    - (ii) that does not clearly indicate the candidate for whom the voter desired to vote; or
    - (iii) that has anything not authorised by this Act written or marked on it by which the voter can be identified; or

- (iv) that purports to vote for more candidates than the number of candidates to be elected;
- (c) the Commissioner must then count the number of votes received by each candidate, and the number of votes rejected as informal, and compare the result of that count with the certificate of the Presiding Officer in respect of the preliminary count, and must, where necessary, amend that certificate, and every certificate must be initialled by the Commissioner;
- (d) the Commissioner must then make up and secure the parcel anew, and endorse with the Commissioner's signature on the parcel a memorandum specifying -
  - (i) the number of ballot papers contained in the parcel; and
  - (ii) the number of votes received by each candidate; and
  - (iii) the number of informal ballot papers; and
  - (iv) the name of the polling place; and
  - (v) the number of the booth at which the votes were recorded.
- (4) The Commissioner must not reject:
  - (a) as disallowed a ballot paper noted under section 82(2) if the Commissioner is satisfied that the name of the voter was marked incorrectly on a roll or

- supplementary roll when the ballot paper was issued for that voter; or
- (b) as informal a ballot paper by reason only
- 
- (i) of some informality in the manner in which it has been dealt with by the voter and if in the opinion of the Commissioner the intention of the voter in voting is clearly indicated; or
- (ii) of some error or omission on the part of an official, if the Commissioner is satisfied that the voter was qualified to vote at the election.
- (5) After the ballot papers from one parcel have been dealt with under this section, ballot papers from the remaining parcels are to be successively dealt with in the same manner and the marking of the ballot papers to commence with the number "1" in the case of each parcel.
- (6) The final count of the number of votes under this section is to be conducted by the Commissioner and if he or she so chooses, with the assistance only of the Commissioner's full time staff.

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

**84. Declaration of result of poll:**

- (1) When all the ballot papers have been dealt with under Division 2, the Commissioner, having ascertained the total number of votes received by each candidate, must immediately declare the result of the poll including the number of votes received by each candidate by giving public notice in the prescribed Form and report the result of the poll to the Head of State.
- (2) Upon receipt of the report under subsection (1), the Head of State shall:
  - (a) receive from the Commissioner the return of the writ issued by the Head of State to the Commissioner to conduct elections; and
  - (b) by warrant under his or her hand declare the successful candidate or candidates to be elected.
- (3) Where there is an equality of votes between candidates and the addition of a vote would entitle one of those candidates to be declared elected, the Commissioner must immediately apply to a District Court Judge for a recount under section 85, and that section applies accordingly, except that no deposit is necessary.

*Division 4 - Recount*

**85. Application to District Court for recount:**

- (1) Where any candidate has reason to believe that the declaration by the Commissioner of the number of votes received by a candidate is

incorrect, and that on a recount the first-mentioned candidate might be found to be elected, he or she may, within 3 days after the public notice of the result of the election, apply to a District Court Judge for a recount of the votes.

- (2) An application is to be accompanied by a deposit of \$500.
- (3) The District Court Judge must cause a recount of the votes to be commenced within 3 days after receiving the application, and must give notice in writing to the Commissioner and to each of the candidates or their scrutineers of the time and place at which the recount is to be made.
- (4) The recount is to be made in the presence of the District Court Judge or of an officer appointed by him or her for the purpose, and must as far as practicable be made in the manner provided in the case of the original count with the exception that no person is to be present at the recount except the District Court Judge or the officer appointed by the Judge, his or her assistants (if any), the Commissioner and permitted persons.
- (5) In a case where on a recount under this section there is an equality of votes between candidates and the addition of a vote would entitle one of those candidates to be declared elected the Commissioner must determine by lot which candidate is to be elected.
- (6) The District Court Judge has all the powers that the Commissioner had on the original count, and may reverse a decision made by the Commissioner in the exercise of those powers.

- (7) If on the recount the District Court Judge finds that the declaration of the result of the poll was incorrect the Judge shall order the Commissioner to make an amended declaration of the result of the poll through public notice in the prescribed Form and to give an amended report of the result of the poll to the Head of State.
- (8) Upon receipt of an amendment report under subsection (7), the Head of State shall, by warrant under the Head of State's hand, revoke the previous warrant and declare the successful candidate to be elected.
- (9) The District Court Judge:
  - (a) may make such order as to the costs of and incidental to the recount as the Judge regards just; and
  - (b) subject to any such order, shall direct the deposit made under this section to be returned to the person who paid it.

**86. Commissioner to produce ballot papers and certificate of total votes:**

- (1) At a recount the Commissioner must produce to the District Court Judge all the used ballot papers, together with the certificate stating the total number of ballot papers used at the election.
- (2) If on comparing the number of ballot papers stated in the certificate with the ballot papers used at the election the District Court Judge finds that any of the ballot papers have been lost, stolen, or in a way interfered with during the

interval between the official count and the recount, the official count made by the Commissioner is to be regarded as correct, and the result of the poll declared correct.

## PART 11

### DISPOSAL OF BALLOT PAPERS

#### **87. Disposal of ballot papers and other relevant books and papers:**

- (1) As soon as practicable after polling day the Commissioner must enclose in separate packets all the parcels transmitted to the Commissioner by the Presiding Officers in the following manner:
  - (a) enclose in one (1) or more separate packets all the parcels of used ballot papers, and all counterfoils corresponding to those ballot papers -
    - (i) in one (1) or more other separate packets all parcels of unused and spoilt ballot papers;
    - (ii) in another all parcels of ballot papers set aside under section 72 and section 82; and
    - (iii) in one (1) or more other separate packets all parcels containing ballot paper accounts, copies of rolls (except the master roll), books, or other papers, as provided in this Act;

- (b) properly secure the several packets to be forwarded immediately to the Registrar of the Supreme Court after it is endorsed by signature and with a description of the contents as follows -
    - (i) the name of the constituency;
    - (ii) the name of the polling place and number of the polling booth; and
    - (iii) the date of the polling; and
  - (c) also at the same time properly secure and transmit to the Registrar of the Supreme Court a parcel containing all ballot papers printed for the election and not used by the Commissioner or distributed for use to a Presiding Officer.
- (2) The Registrar of the Supreme Court must immediately give to the Commissioner a receipt under his or her hand for the packets and parcel.
- (3) The Commissioner must keep the master roll in a manner determined by the Commissioner to be most secure, until the close of the next general election.
- (4) A registered voter may inspect a master roll at the Commissioner's office without payment of a fee at a time when the office is open for the transaction of business.

**88. Disposal of packets:**

- (1) The packets and parcel are to be safely kept unopened for one year, unless a Court of



competent jurisdiction orders them, or any of them, to be opened.

- (2) At the end of one year the packets and parcel are to be destroyed unopened in the presence of the Registrar of the Supreme Court and the Clerk of the Legislative Assembly.
- (3) For the purpose of this section, the “Registrar” and “Clerk” referred to under subsection (2) include their representatives.

## **PART 12**

### **OFFENCES AT ELECTIONS**

#### **89. Interference with or influencing voters:**

- (1) A person commits an offence and is liable on conviction to a fine not exceeding 50 penalty units who at an election:
  - (a) in any way interferes with a voter either on the way to a polling booth or in the polling, with the intention of influencing him or her or advising him or her as to his or her vote;
  - (b) at a time on polling day before the close of the poll in or in view or hearing of a public place holds or takes part in a demonstration or procession having direct or indirect reference to the poll by any means whatsoever;
  - (c) at a time on polling day before the close of the poll, makes a statement having direct or indirect reference to the poll

through the use of a loudspeaker or public address apparatus or other broadcasting tools;

- (d) at any time on polling day before the close of the poll, prints or distributes or delivers to a person anything being or purporting to be an imitation of a ballot paper to be used at the poll and having on it the names of the candidates or any of them, together with a direction or indication as to the candidate for whom a person should vote, or in a way containing any direction or indication, or having on it a matter likely to influence a vote;
- (e) at any time on polling day before the close of the poll exhibits in or in view of a public place, or publishes, or distributes, or broadcasts, a statement advising or intended or likely to influence a voter as to the candidate for whom he or she should vote;
- (f) at a time on polling day before the close of the poll prints or distributes or delivers to a person a card or paper (whether or not it is an imitation ballot paper) having thereon the names of the candidates or any of them;
- (g) exhibits or leaves in a polling booth a card or paper having thereon a direction or indication as to how a person should vote or as to the method of voting;

- (h) at a time on polling day before the close of the poll, within, or at the entrance, to, or in the vicinity of, a polling place or booth -
  - (i) gives or offers to give to a person a written or oral information as to a name or number on the main roll or a supplementary roll being used at the election;
  - (ii) permits or offers to permit a person to examine a copy for the main roll or a supplementary roll being used at the election.
- (2) It is not an offence:
  - (a) against subsection (1) (e) if the Commissioner causes to be removed or obliterated a statement to which that paragraph applies which is exhibited within half a mile of a polling place, and may recover all expenses incurred in so doing from the persons by whom or by whose direction the statement was exhibited, as a debt due by them jointly and severally to the Government;
  - (b) against this section for a person to wear or display (whether on his or her person or not) a Party emblem;
  - (c) against this section if a statement in a newspaper is published before 12 noon of the day before polling day;
  - (d) against this section if a statement is so exhibited before polling day in a fixed

position not in view of a polling place it is  
and not removed on polling day.

- (3) Nothing in this section applies to an official statement or announcement made or exhibited under the authority of this Act.

**90. Publishing defamatory matter during elections:**

A person is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 6 months:

- (a) who publishes or exposes, or causes to be published or exposed, to public view a document or writing or printed matter containing an untrue statement defamatory of a candidate and calculated to influence the vote of a voter; and
- (b) at a time after public notice has been given by the Commissioner under section 52 and before the close of the poll.

**91. Erasing or altering official mark on ballot paper:**

A person is liable on conviction to a fine not exceeding 50 penalty units who erases, obliterates, or alters any official mark, stamp, or writing on any ballot papers, or places on a ballot paper any writing, print or other matter which might lead persons to believe that it was put there by an official or person duly authorised in that behalf.

**92. Offences in respect of ballot papers and ballot boxes:**

- (1) A person commits an offence who:

- (a) forges, or counterfeits, or fraudulently defaces, or fraudulently destroys any ballot paper, or the official mark on a ballot paper; or
  - (b) without due authority supplies a ballot paper to a person; or
  - (c) fraudulently puts into a ballot box a paper other than the ballot paper that he or she is authorised by law to put in the ballot box; or
  - (d) fraudulently takes out of a polling booth a ballot paper; or
  - (e) without due authority destroys, takes, opens, or interferes with a ballot box, or box or packet or parcel of ballot papers, in use for an election.
- (2) A person who commits an offence against this section is liable on conviction:
- (a) for an officer appointed under this Act, to imprisonment for a term not exceeding 2 years;
  - (b) for any other person, to imprisonment for a term not exceeding 6 months.
- (3) A person who attempts to commit an offence against this section is liable on conviction to imprisonment for term not exceeding one-half of the longest term to which a person committing the offence may be sentenced.

**93. Infringement of secrecy:**

- (1) An official, clerk, scrutineer, interpreter, and police officer in attendance at a polling booth must maintain and aid in maintaining the secrecy of the voting in the booth, and must not communicate to a person, except for some purpose authorised by law, any information likely to defeat the secrecy of the ballot.
- (2) A person must not, except for a purpose authorised by law:
  - (a) interfere with or attempt to interfere with a voter when the voter is marking his or her vote;
  - (b) attempt to obtain in a polling booth information as to the candidate a voter intends to vote for or for whom the voter has casted his or her vote;
  - (c) communicate at any time to any person any information obtained in a polling booth regarding the candidate a voter at the booth is about to vote or has voted, or as to the consecutive number on the ballot paper given to a voter at the booth.
- (3) A person present at the counting of the votes must maintain and aid in maintaining the secrecy of the voting, and must not communicate any information obtained at the counting as to the candidate for whom a vote is given in a particular ballot paper.
- (4) A person must not directly or indirectly induce a voter to display his or her ballot paper after he or she has marked it, in order to obtain for whom that voter has voted.

- (5) A person who commits an offence against this section is liable on conviction to a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding 12 months, or both.

## **PART 13**

### **CORRUPT AND ILLEGAL PRACTICE**

#### *Division 1 - Corrupt Practice*

**94. Corrupt Practice:**

- (1) A person is guilty of corrupt practice who commits:
  - (a) personation; or
  - (b) treating; or
  - (c) bribery.
- (2) A person is guilty of corrupt practice who aids, abets, counsels, or obtains the commission of any offence listed in subsection (1).

**95. Personation:**

- (1) A person commits the offence of personation who:
  - (a) votes as another person, whether that other person is living or dead or is a fictitious person; or
  - (b) after having voted at an election, votes again at the same election.
- (2) For the purpose of this section a person is taken to have voted if the person has applied for a ballot paper for himself or herself, or has marked a

ballot paper for himself or herself, whether validly or not.

- (3) It is the duty of the Commissioner to institute a prosecution against a person that the Commissioner believes to have breached this section at the election for which he or she is Commissioner.

**96. Bribery:**

- (1) In this section, “voter” includes a person who has or claims to have a right to vote.
- (2) A person commits the offence of bribery who, directly or indirectly in person or by any other person on his or her behalf either before, during or after voting:
- (a) gives any money or obtains an office to or for -
    - (i) a voter; or
    - (ii) any other person on behalf of a voter; or
    - (iii) any other person, in order to induce a voter to vote or refrain from voting; or
  - (b) does any act as a result of a voter having voted or refrained from voting; or
  - (c) offers a gift to a person in order to induce that person to obtain, or endeavour to obtain, the return of a person at an election or the vote of a voter; or
  - (d) in receipt of a gift whether tangible or not, obtains, engages, promises, or attempts to



- obtain, the return of a person at an election or the vote of a voter; or
- (e) advances or pays or causes to be paid any money to or for the use of any other person with the intent that that money is to be expended in bribery at an election; or
  - (f) knowingly pays or causes to be paid any money to a person in discharge or repayment of any money wholly or in part spent on bribery at an election.
- (3) For the purposes of this section:
- (a) references to giving money includes references to giving, lending, agreeing to give or lend, offering, promising, or promising to obtain or endeavour to obtain, any money or valuable consideration;
  - (b) references to obtaining an office includes references to giving, procuring, agreeing to give or procure or to endeavour to procure, an office, place, or employment.
- (4) Subsections (5) and (6) do not extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or for an election.
- (5) A voter commits the offence of bribery if before or during an election he or she directly or indirectly, by himself or herself or by any other person on his or her behalf, receives, or agrees or contracts for, any money, gift, loan, or valuable consideration, office, place, or employment for

himself or herself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.

- (6) A person commits the offence of bribery if after an election he or she directly or indirectly, by himself or herself or by any other person on his or her behalf, receives any money or valuable consideration on account of a person having voted or refrained from voting or having induced any other person to vote or refrain from voting.

**97. Treating:**

- (1) A person commits the offence of treating who in person or by any other person on that person's behalf, either before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part:
- (a) the expense of giving or providing any food, drink, entertainment, or provision to or for a person -
- (i) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
  - (ii) for the purpose of corruptly procuring himself or herself to be elected; or
  - (iii) on account of that person or any other person having voted or refrained from voting, or being

- about to vote or refrain from voting; or
- (b) transportation to and from -
  - (i) the Office of the Electoral Commission or any other place, of voters for the purpose of carrying out registration for such voters; or
  - (ii) a polling booth of a voter for the purpose of that voter casting his or her vote.
- (2) A voter who corruptly accepts or takes any such food, drink, entertainment, or provision also commits the offence of treating.

**98. Undue influence:**

- (1) A person commits the offence of undue influence who does any act in subsections (2) or (3):
  - (a) in order to induce or compel that person to -
    - (i) vote for or against a particular candidate; or
    - (ii) vote or refrain from voting; or
  - (b) as a favour to a person on account of that person -
    - (i) voting for or against a particular candidate; or
    - (ii) having voted or refrained from voting.
- (2) In order to achieve the outcome under subsection (1), a person directly or indirectly in person or

through another person uses, or threatens to do the following on another person:

- (a) use force, violence or restraint; or
  - (b) inflicts or threatens to inflict any temporal or spiritual injury, damage, harm, or loss; or
  - (c) by abduction, duress, or a fraudulent device, obstructs or prevents the free exercise of the right of a voter, or thereby compels, induces; or
  - (d) force a voter either to vote or to refrain from voting.
- (3) In order to achieve the outcome under subsection (1), a person by himself or herself or through another person withholds a Certificate of Identity belonging to another voter.

*Division 2 - Illegal Practice*

**99. Procurement of voting by unqualified voters:**

A person is guilty of an illegal practice who knowingly ensures a person disqualified or prohibited from voting under this Act, casts a vote.

**100. Illegal activities during period of election:**

- (1) In this section, “period of election” means the period during an election or by-election, commencing on the day after the Commissioner gives public notice of polling day and ending at the close of the Poll on polling day.

- (2) A candidate who during a period of election directly or indirectly, in person or through another person gives food, beverage, money or other valuable to a voter at a ceremony or activity is guilty of an illegal practice.
- (3) A voter who during a period of election obtains or attempts to obtain, directly or indirectly in person or through a person, any food, beverage, money or other valuable from a candidate for election, is guilty of an illegal practice.
- (4) Despite subsections (2) and (3) it is not an illegal practice if the act referred to under those subsections is carried out at a funeral.

*Division 3 - General provisions relating to this Part*

**101. Conduct of O'o and Momoli:**

Despite this Act, the presentation of the traditional O'o and Momoli by a Candidate or Member or a Candidate's or Member's representative respectively to a village or a Constituency is not considered as treating, bribery or an illegal or corrupt activity if it is presented within 3 years after the date of the declaration of results for a general election.

**102. Tautua fa'aauau:**

- (1) Despite provisions of this Act, the conduct of tautua fa'aauau, by a Member or his or her representative, a Candidate or his or her representative is not an offence under this Part.
- (2) "Tautua fa'aauau" is:

- (a) an action that is culturally appropriate and expected and includes a service normally provided by a person; or
  - (b) not excessive in circumstances; or
  - (c) service to faifeau; or
  - (d) not a O'o and momoli.
- (3) With the exception of subsection (2)(c), tautua fa'aauau must not be conducted within 90 days before polling day.
- (4) A person in breach of subsection (3) commits an offence if a person knowingly commits an act of tautua fa'aauau within 90 days before polling day, and is liable upon conviction to a fine not exceeding 20 penalty units or to imprisonment for a term not exceeding 2 years imprisonment.

**103. Penalty for corrupt or illegal practice:**

- (1) A person who commits the offence of a corrupt practice is liable on conviction to imprisonment for a term not less than 2 years and not exceeding 4 years or to a fine not less than 20 penalty units and not exceeding 50 penalty units, or both.
- (2) A person who commits the offence of illegal practice is liable on conviction to imprisonment for a term not exceeding 3 years or to a fine not exceeding 20 penalty units, or both.
- (3) A conviction under this Part is to be recorded as a criminal conviction by the Police Service and Prison Service.

**104. Person charged with corrupt practice may be found guilty of illegal practice:**

A person charged with a corrupt practice may, if the circumstances warrant that finding, be found guilty of an illegal practice; and a person charged with an illegal practice may be found guilty of that offence despite that the act constituting the offence amounted to a corrupt practice.

**105. Limitation period for prosecution:**

- (1) Subject to subsection (2) a prosecution against a person for a corrupt practice or an illegal practice must commence within 30 days after the day on which the Commissioner has publicly notified the result of the poll.
- (2) If the person charged has been reported by the Supreme Court in its report on the trial of an election petition to have been proven guilty of the offence, a prosecution must commence within 6 months after the offence was committed or within 3 months after the date of the report, whichever period is the later to expire.

**106. Papers taken from parcels as evidence in certain cases:**

- (1) A ballot paper, a copy of a roll, and a book purporting to be taken from any such parcel, and having written thereon respectively, under signed by the Registrar of the Supreme Court, a certificate of the several particulars by this Act required to be endorsed on the parcel, is

conclusive evidence in a Court or before a Committee of the Legislative Assembly that it was so taken and that it, if a ballot paper was deposited and, if a roll or book, was kept or used at the election and booth to which the endorsement and the writing relate.

- (2) A ballot paper so certified is to be evidence of a vote given at the poll, and of the correspondence of the number appearing on the ballot paper with the number appearing on any roll so certified as of the same election and booth, according to the tenor of the ballot paper.
- (3) But in the case of the ballot papers set aside or selected by a Presiding Officer or by the Commissioner, the correspondence is the evidence only of some person having voted in the name appearing on the roll.
- (4) This section applies to this Part and Part 14.

## **PART 14**

### **ELECTION PETITIONS**

#### *Division 1 - Presentation of Election Petitions*

#### **107. Method of questioning election:**

- (1) No election and no declaration of result or report to the Head of State is to be questioned except by petition complaining of an unlawful election or unlawful declaration or report (in this Act referred to as an election petition) presented in accordance with this Part.



- (2) A petition complaining of no declaration of results or report to the Head of State is taken to be an election petition, and the Supreme Court may:
  - (a) make such order on the petition as the Court thinks expedient for compelling a declaration or report to be made; or
  - (b) allow the petition to be heard as provided with respect to ordinary election petitions.

**108. Who can present an election petition:**

- (1) Subject to subsection (2) an election petition may be presented to the Supreme Court by one (1) or more of the following persons:
  - (a) a person claiming to have had a right to be elected or returned at the election;
  - (b) a person alleging himself or herself to have been a candidate at the election;
  - (c) the Commissioner, in considering the public interest, in his or her own motion -
    - (i) on the question of whether a candidate is qualified to be a candidate; or
    - (ii) where there are allegations of breaches of this Act.
- (2) A person must not file a petition if that person polled less than 50% of the total number of votes polled by a person elected or returned at the election.

- (3) The Member whose election or result is complained of is the respondent to the petition, and if the petition complains of the conduct of any polling official or the Commissioner, the Commissioner must also be a respondent.
- (4) The petition must be in a form and state matters according to the rules of the Court, and must be signed by the petitioner or all the petitioners if there is more than one petitioner.
- (5) The petitioner must:
  - (a) present his or her petition by filing it in the Office of the Supreme Court; and
  - (b) serve a copy of it on each respondent.
- (6) The petition must be served personally, or in any other manner as prescribed by rules of the Court.

**109. Limitation period for presentation of election petition:**

- (1) Subject to this section, an election petition is to be presented within 10 working days after the day on which the Commissioner has publicly notified the result of the poll.
- (2) If the petition questions the election or result upon an allegation of corrupt practice and specifically alleges a payment of money or other reward to have been made:
  - (a) by the Member; or
  - (b) on the Member's account; or
  - (c) with the Member's knowledge and consent,

since the day of the public notification in order to achieve the continuance of the alleged corrupt practice, the petition may be presented within 10 days after the date of the alleged payment.

- (3) For the purposes of this section an allegation that an election is void under section 116 is taken to be an allegation of corrupt practices, even if the offences alleged are or include offences other than corrupt practices.

**110. Security for costs:**

- (1) The security of costs must be given:
- (a) at the time the election petition is made;
  - or
  - (b) within 3 days after the expiration of the limitation period,
- for the presentation of the election petition to the satisfaction of the Commissioner or the Court for all costs that may become payable by the petitioner to a witness summoned on his or her behalf or to any respondent.
- (2) The security must be an amount of \$2,000 and must be paid:
- (a) to the Government by bond signed by not more than 5 sureties; or
  - (b) by a deposit of cash to the Court; or
  - (c) partly in bond and partly in cash to the Court.
- (3) The bond referred to under subsection (2)(a) is between the Chief Executive Officer of the

Ministry responsible for Justice and Courts Administration and the petitioner or the sureties.

- (4) If no security is given as required by this section no further proceedings are to be taken on the petition.

**111. Statutory declaration by petitioner:**

- (1) At a time a petitioner presents an election petition, the petitioner must also produce statutory declarations:
- (a) made by himself or herself in the prescribed Form, that the petitioner has not engaged in a corrupt or illegal practice; and
  - (b) made by the petitioner's witnesses in the prescribed Form, that to the best of the witness' knowledge, the petitioner had not engaged in a corrupt or illegal practice.
- (2) Where in the course of a petition hearing, a counter petition produces evidence accepted beyond reasonable doubt by the Court that a declaration under subsection (1) is false in a material particular, the Court may make a finding, in addition to any other findings available to the Court under this Act, that the person who made the false declaration has committed an offence and is liable to the penalties provided under section 23 of the Oaths, Affidavits and Declarations Act 1963.

**112. More than one petition relating to same election:**

Where more petitions are presented relating to the same election or result, all those petitions are to be dealt with as 1 petition.

**113. Rules of Court:**

- (1) Rules of Court may be made in the manner prescribed by the Judicature Ordinance 1961 for the purposes of this Part.
- (2) All rules made under this section are to be laid before the Legislative Assembly within 28 days after they are made, if the Legislative Assembly is sitting or at the next sitting.

*Division 2 - Trial*

**114. Court:**

An election petition is to be tried by 2 or more Judges of the Supreme Court at a place nominated by the Court.

**115. Trial of petition:**

- (1) An election petition is to be tried in open Court without assessors, and notice of the time and place of trial is to be given not less than 7 days before the day of trial.
- (2) The Court may in its discretion adjourn the trial, but the trial, so far as is practicable shall consistently be continued from day to day on a

lawful day until its conclusion in the interests of justice.

- (3) The trial of an election petition shall proceed despite that the respondent may have become disqualified as a Member, or that the Legislative Assembly is not in session.
- (4) Subject to this Act, the Court has jurisdiction to inquire into and adjudicate on a matter relating to the petition in any manner it thinks fit, and in particular may at a time during the trial direct a recount or scrutiny of the votes given at the election, and shall disallow the vote of a person proven to have been guilty of a corrupt practice, or whose name has been wrongly placed or retained on the roll.
- (5) The vote of a person who on polling day was entitled to be registered as a voter in question must not be disallowed on the ground that the voter's name was wrongly placed or retained on any roll.
- (6) On the trial of an election petition, unless the Court directs, the following may be dealt with by the Court:
  - (a) a charge of a corrupt or illegal practice; and
  - (b) evidence regarding that charge received before any proof has been given that any candidate was aware of or consenting to the corrupt or illegal practice.
- (7) On the trial of an election petition:
  - (a) complaining of an unlawful election declaration or report; and

- (b) claiming the seat for some person,  
the respondent may give evidence to prove that that person was not duly elected, in the same manner as if the respondent had presented a petition against the election of that person.
- (8) In allocating a time for hearing an electoral petition the Court shall give priority to that petition over all matters before the Court which are not electoral petitions.

**116. Void of election of candidate guilty of corrupt practice:**

The election of a candidate proven at the trial of an election petition to have been guilty of a corrupt practice at the election is void.

**117. Void of election for corruption:**

- (1) If it is reported by the Supreme Court at the trial of an election petition that the prevalence of corrupt or illegal practices committed for the purpose of obtaining the election of the candidate is reasonably inferred to have resulted in the election of the candidate, the election shall be ruled as void.
- (2) Except under this section, an election is not void by reason of the general prevalence of corrupt or illegal practices.

**118. Real justice to be observed:**

On the trial of an election petition, the Court:

- (a) shall be guided by the substantial merits and justice of the case without regard to legal forms or technicalities; and
- (b) may admit such evidence as in its opinion may assist it to deal effectively with the case, despite that the evidence may not otherwise be admissible in the Supreme Court.

**119. Votes to be struck off for corrupt practices:**

- (1) This section applies where, on the trial of an election petition claiming the seat for a person, a candidate is reported by the Supreme Court to have been proven guilty of bribery, treating, or undue influence in regarding a person who voted at the election.
- (2) Where subsection (1) applies, there must, on a scrutiny be struck off from the number of votes appearing to have been received by the candidate one vote for every person who voted at the election and is reported to have been proven bribed, treated, or unduly influenced.

**120. Irregularities not to invalidate election:**

No election is declared invalid by reason of:

- (a) a failure to comply with the times prescribed for doing an act; or
- (b) an omission or irregularity in filling in a form prescribed by this Act; or
- (c) a want or defect in the appointment of an official or scrutineer; or



- (d) an absence of, or mistake or omission or breach of duty by, an official, whether before, during, or after the polling,

if the Court is satisfied that the election was conducted to be substantially in compliance with the law for elections, and that the failure omission, irregularity, want, defect, absence, mistake, or breach did not affect the result of the election.

**121. Decisions of Court to be final:**

All decisions of the Supreme Court under this Part are final and conclusive and without appeal, and must not be questioned in any way.

**122. Certificate of Court as to corrupt or illegal practice:**

- (1) Where in an election petition a charge is made of a corrupt or illegal practice being committed at the election, the Court, in addition to giving a certificate shall at the same time, report in writing to the Speaker as follows:
  - (a) the nature of corrupt or illegal practice; and
  - (b) whether a candidate is proven guilty of a corrupt or illegal practice; and
  - (c) whether the corrupt or illegal practice has or has not been committed with the knowledge and consent of a candidate at the election; and
  - (d) whether any candidate is proven guilty by his or her agents of a corrupt or illegal practice;

- (e) the names of all persons proven at the trial to have been guilty of a corrupt or illegal practice and whether they have received certificates of indemnity under section 127;
  - (f) whether there is reason to believe that corrupt or illegal practices prevailed at the election.
- (2) In the case of:
- (a) someone who is not a Party to the petition; or
  - (b) a candidate on behalf of whom the seat is claimed by the petition,
- the Court, before reporting him or her to have been proven guilty of a corrupt or illegal practice, shall:
- (aa) first cause notice to be given to that person; and
  - (bb) if that person appears under the notice, give an opportunity of being heard and of calling evidence in that person's defence to show why that person should not be so reported.
- (3) For the purposes of this Act, if it is reported by the Court that a corrupt or illegal practice was committed with the knowledge and consent of a candidate the candidate shall be treated as being reported of being proven guilty of that corrupt or illegal practice.
- (4) If a candidate is reported of being guilty by the candidate's agents of a corrupt or illegal practice, and the Court further reports that:

- (a) no corrupt or illegal practice was committed at the election by the candidate with the Candidate's knowledge or consent, and that the offences mentioned in the report were committed without the approval or involvement of the candidate; and
  - (b) all reasonable means for preventing the commission of corrupt and illegal practices at the election were taken by and on behalf of the candidate; and
  - (c) the offences mentioned in the report were of a trivial, unimportant, and limited nature; and
  - (d) in all other respects the election was free from a corrupt or illegal practice on the part of the candidate and of the candidate's agents,
- the candidate is not to be treated for the purposes of this Act as being proven guilty of the offences mentioned in the report.

**123. Special Report:**

At the same time as it gives its certificate at the conclusion of the trial of an election petition, the Court may make a special report to the Speaker as to any matters arising in the course of the trial an account of which, in the judgment of the Court, ought to be submitted to the Legislative Assembly.

**124. Signature and effect of certificate and report:**

- (1) The certificate and a report of the Court at the conclusion of the trial of an election petition is to be signed by the Presiding Judge.
- (2) On being informed by the Speaker of the certificate and a report of the Court, the Legislative Assembly shall:
  - (a) order the same to be entered in the Journals of the Assembly; and
  - (b) give the necessary directions for confirming or altering the result or for issuing a public notice for a new election, or for carrying out the determination, as the circumstances may require.
- (3) Where the Court makes a special report the Legislative Assembly may make such order in respect of that report as it thinks proper.

**125. Submission of report to Attorney-General:**

Where the Supreme Court reports that certain persons named have been proven at the trial of an election petition to being guilty of a corrupt or illegal practice the report is to be laid before the Attorney-General.

*Division 3 - Witnesses*

**126. Summons and examination of witnesses:**

- (1) Witnesses may be summoned and sworn on the trial of an election petition in the same manner as in the trial of an ordinary action if practicable.
- (2) The Supreme Court may by order require a person who appears to the Court to have been

concerned in the election to attend as a witness, and a person who refuses to obey that order is guilty of contempt of Court.

- (3) The Court may examine a person required to attend or a person in Court, although the person is not called or examined by a Party to the petition.
- (4) After the examination of a witness under subsection (3) by the Court, the witness may be cross-examined by or on behalf of the petitioner and each respondent, or any of them.

**127. Certificate of indemnity to witness:**

- (1) Subject to subsection (2), a person called as a witness on the trial of an election petition shall not be excused from answering a question relating to an offence at or connected with the election on the ground that the answer may incriminate or tend to incriminate himself or herself, or on the ground of privilege.
- (2) During the trial:
  - (a) an answer by a person to a question put by or before the Court is not admissible in evidence against him or her in any proceeding, civil or criminal, except in the case of a criminal proceeding for perjury in respect of the evidence.;
  - (b) a witness who answers truly all questions which he or she is required by the Court to answer is entitled to receive a certificate

of indemnity stating that he or she has so answered.

- (3) If a person has received a certificate of indemnity regarding an election, and a legal proceeding is at a time instituted against that person for an offence committed by him or her or in connection with the election after the date of the certificate, the Court having knowledge of the case shall on production of the certificate stay the proceeding, and may in its discretion award to that person costs the Court regards necessary.
- (4) Nothing in this section is taken to relieve a person receiving a certificate of indemnity from incapacity under this Act or from any proceedings to enforce any such incapacity (other than a criminal prosecution).

*Division 4 - Costs*

**128. Expenses of witnesses:**

- (1) The reasonable expenses incurred by a person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions, may be allowed by the Court.
- (2) Any such expenses, if the witness was called and examined by the Court, are taken as part of the expenses of the Court, and in other cases are taken as costs of the petition.

**129. Costs payable by persons proven guilty of corrupt or illegal practice:**

- (1) Where on the trial of an election petition it appears to the Court that a person is guilty of a corrupt or illegal practice, the Court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceedings before the Court in relation to that offence or to that person to be paid by that person to another person or persons as the Court thinks fit.
- (2) All costs so ordered to be paid may be recovered as a debt due by the person by whom they are ordered to be paid to the person or persons to whom they are ordered to be paid.

**130. Costs of petition:**

- (1) All costs of and incidental to the presentation of an election petition, and consequential proceedings of the petition, except where otherwise provided for in this Act must be paid by:
  - (a) the parties to the petition in a manner and in proportions as the Supreme Court determines; or
  - (b) the party who caused or incurred costs in the opinion of the Court was vexatious conduct, unfounded allegations, unfounded objections whether that party was successful or not.

- (2) A petitioner who fails to pay costs 6 months after being ordered to do so for:
  - (a) costs incurred by a witness as a result of being summoned on that person's behalf;
  - (b) costs due by that person to a respondent, and the failure is within 12 months proven to the satisfaction of the Court to be continued, the person is treated as having entered into a bond and is treated as being in default of the bond with the matter to be dealt with under section 15 of the Government Proceedings Act 1974.

*Division 5 - Withdrawal and abatement of petition*

**131. Withdrawal of petition:**

- (1) A petitioner shall not withdraw an election petition without the leave of the Supreme Court upon special application to be made in the prescribed manner.
- (2) No such application shall be made until the prescribed notice of the intention to make it has been given in the constituency to which the petition relates.
- (3) Where there is more than one petitioner, an application to withdraw the petition shall not be made except with the consent of all the petitioners.
- (4) If a petition is withdrawn, the petitioner is to pay the costs of each respondent.
- (5) If before the trial of an election petition a respondent other than the Commissioner:



- (a) dies; or
- (b) gives the prescribed notice that he or she does not intend to oppose the petition; or
- (c) has his or her seat declared vacant in a report from the Speaker to the Head of State,

notice thereof shall be given in the prescribed manner and, within 28 days after the notice is given, a person who might have been a petitioner in respect of the election may apply to the Supreme Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed 3.

- (6) A respondent who has given the prescribed notice that he or she does intend to oppose the petition shall not be allowed to appear or act as a Party against the petition in any proceedings thereon, and shall not sit or vote in the Legislative Assembly until the Assembly has been informed of the report on the petition.
- (7) Where a respondent has given the prescribed notice, the Court shall report that fact to the Speaker.

**132. Substitution of new petitioner:**

- (1) On the hearing of an application for leave to withdraw a petition, a person who might in the first instance have presented the petition may apply to the Court to be substituted as a petitioner.

- (2) The Court may, if it thinks fit, substitute any such applicant as petitioner, and may, if the proposed withdrawal is in the opinion of the Court the result of a corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs incurred by the substituted petitioner, and that to the extent of the sum named in the security the original petitioner is liable to pay the costs of the substituted petitioner.
- (3) If the Court does not so direct, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, must be given on behalf of the substituted petitioner within 3 days after the order of substitution.
- (4) A substituted petitioner shall as nearly as may be stand in the same position and be subject to the same liabilities as the original petitioner.

**133. Report on withdrawal:**

In a case of the withdrawal of an election petition the Supreme Court shall make a report to the Speaker stating whether in its opinion the withdrawal of the petition was the result of a corrupt arrangement or in consideration of the withdrawal of any other election petition and, if so, the circumstances attending the withdrawal.

**134. Abatement of petition:**

- (1) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.
- (2) The abatement of a petition does not affect the liability of the petitioner or any other person to the payment of costs previously incurred.
- (3) On the abatement of a petition, notice of the abatement shall be given in the prescribed manner, and within 28 days after notice is given a person who might have been a petitioner in respect of the election may apply to the Supreme Court in the prescribed manner.
- (4) On an application made under subsection (3) the Court may, if it thinks fit, substitute the applicant accordingly.
- (5) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

**135. Offence to pay money to stop petition:**

- (1) A person who pays money or attempts to pay money to:
  - (a) prevent the instigation of an election petition; or
  - (b) cause a withdrawal of an election petition,commits an offence.
- (2) A person who receives money for the purpose of subsection (1) commits an offence.
- (3) A person who commits an offence under this section is liable upon conviction to a fine not

exceeding 20 penalty units or to imprisonment for a term not exceeding 6 months, or both.

**136. Service of notices:**

- (1) A notice under this Act may be served on a person by delivering it to that person, and may be delivered to him or her either personally or by leaving it at his or her place of residence as stated on a roll or by posting it by registered letter addressed to him or her at that place of residence.
- (2) A notice so posted is taken to have been served at the time when the registered letter would in the ordinary course of post be delivered.
- (3) Where a notice is sent by registered letter addressed to a person at his or her place of residence as stated on a roll, with a special request that the letter be returned to the sender at the expiration of 15 days if the person to whom the letter is addressed cannot be found, the return of the letter by the Post Office is deemed sufficient proof that the person has vacated that place of residence.

**137. Commissioner exempt from Court fees:**

The Commissioner is exempt from the payment of any Court fees in respect of any proceedings under this Act.

**138. Validation of irregularities:**

- (1) Where anything is omitted to be done or cannot be done at the time required by or under this Act, or is done before or after that time, or is otherwise

irregularly done in matter of form, or sufficient provision is not made by or under this Act, the Head of State acting on the advice of Cabinet may, by Regulations, at a time before or after the time within which the thing is required to be done, extend that time, or validate anything so done before or after the time required or so irregularly done in matter of form, or make other provision for the case as required.

- (2) This section does not apply with respect to the presentation of an election petition or to the giving of security for costs in relation to an election petition.

## **PART 15**

### **CORRUPT PRACTICES LIST**

#### **139. Establishment and Maintenance of Corrupt practices list:**

- (1) The Commissioner must establish and maintain a list called the “Corrupt Practices List” which a Member of the public may view within the Office at any time during opening hours.
- (2) Where it is proven that a person who is registered or who applies for registration as a voter has within the immediately preceding period of 5 years:
  - (a) been convicted of a corrupt practice; or
  - (b) been reported by the Supreme Court in its report on the trial of an election petition

to have been proven guilty of a corrupt practice,

the Commissioner must enter the name, residence, and description of that person and particulars of the conviction or report on the Corrupt Practices List.

- (3) The Commissioner must remove the name of a person from the Corrupt Practices List at the expiration of 5 years from the date of the conviction or report in respect of which his or her name is entered on the list, or sooner if so ordered by the Supreme Court.
- (4) Whenever a main roll or supplementary roll is printed for a constituency, a copy of the Corrupt Practices List for that Constituency is to be attached to it and printed and published with it.

## **PART 16**

### **MEMBERSHIP OF A POLITICAL PARTY WITHIN THE LEGISLATIVE ASSEMBLY AND VACANCIES**

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

#### **140. Membership within the Legislative Assembly:**

- (1) Subject to subsection (3), a Member must sit in the Legislative Assembly as a Member of the political Party which appears on the ballot paper when that candidate was elected, for the Parliamentary term.

- (2) Subject to subsection (4), a Member elected as an independent Member must for the Parliamentary term sit in the Legislative Assembly as a Member of a Political Party which a Member joined before undertaking the Member's oath.
- (3) A Member elected as a Member for a political Party that does not have sufficient Membership to be recognised as a political Party in the Legislative Assembly may before that candidate takes the oath of allegiance:
  - (a) join another political Party; or
  - (b) become an independent Member, for the Parliamentary term.
- (4) A Member elected as an independent Member who takes the oath of allegiance as an independent Member must remain as an independent Member for the Parliamentary term.

*Division 2 - Vacancies*

**141. Vacation of a seat in the Legislative Assembly:**

- (1) A seat of a Member becomes vacant if the events specified in Article 46(2) (a), (b), (c) of the Constitution or subsection (2) occur.
- (2) A seat of a Member becomes vacant if:
  - (a) a Member becomes a Member of a political party according to section 140(1), 140(2) or 140(3)(a) and that Member resigns or withdraws from or changes his or her political party during the Parliamentary term; or

- (b) a Member becomes an independent Member according to section 140(3)(b) or 140(4) and that Member joins a political party during the Parliamentary term; or
- (c) on 3 consecutive sitting days the Member fails, without permission of the Speaker, to attend the sitting of the Legislative Assembly in the manner and for the period prescribed under the Standing Orders; or
- (d) a Member takes an oath or makes a declaration or acknowledgement of allegiance or adherence to a foreign country; or
- (e) he or she renounces his or her Samoan citizenship; or
- (f) he or she is adjudged a bankrupt; or
- (g) he or she is -
  - (i) convicted in Samoa or in another country of a crime punishable by death; or
  - (ii) convicted in Samoa or in another country of a crime punishable by imprisonment for a term of 4 years or more; or
  - (iii) has been convicted in Samoa of a corrupt practice; or
  - (iv) reported by the Supreme Court in its report on the trial of an election petition to have been proven guilty of a corrupt practice; or,
- (h) he or she becomes a public servant; or



- (i) on an election petition the Court declares his or her election void; or
- (j) he or she becomes of unsound mind and subject to an order of medical custody made under the Mental Health Act 2007; or
- (k) if while he or she is a Member he or she is guilty of conduct unbecoming a Member;
- (l) being a Member representing a constituency he or she ceases to be qualified to be a candidate to represent that constituency; or
- (m) he or she is proven to the satisfaction of a Committee of the Legislative Assembly to have acted for commission or other reward as agent on behalf of the owner or for any other person having an interest in any land for the purpose of securing the purchase or acquisition of that land by the Government; or
- (n) the Member holds himself or herself out during the Parliamentary term as representing or being a Member of -
  - (i) a Party or organisation that has political aims and is desirous of taking part in an election where such Party or organisation is not registered as a political Party under this Act; or
  - (ii) a registered political Party other than the registered political Party of which he or she is a Member

when he or she takes the oath of allegiance.

**142. Charge with vacation of seat:**

- (1) If and as soon as the Speaker has reason to believe that a Member's seat has become vacant on the grounds set out in section 141, the Speaker must charge that Member with that vacation, and if the Legislative Assembly is then sitting must do so orally in the Assembly.
- (2) If a Member other than the Speaker charges any other Member for vacation of his or her seat pursuant to section 141, the Member must in accordance with Standing Orders of Parliament do so.
- (3) If a Member charged under this section does not admit to the charge in writing, the Speaker must refer the charge to the Supreme Court by motion, and it is to be determined by the Supreme Court pursuant to Article 47 of the Constitution of the Independent State of Samoa 1960.
- (4) The Speaker must give notice of the Speaker's motion to the Member alleged to have vacated his or her seat, unless in the case where the Speaker is excused by the Court on special grounds from doing so.
- (5) A person with whom the charged Member is alleged to have misconducted himself or herself is entitled to be treated as a party to the motion and to be heard.
- (6) The Legislative Assembly may by resolution suspend the charged Member on account of the

Speaker referring the matter to the Supreme Court under subsection (3), until the motion has been determined.

- (7) A Member suspended under this section is not entitled to any pay or allowance for the period of his or her suspension unless the Supreme Court rules that the Member's seat has not been vacated.
- (8) If the charged Member under this section is the Speaker, the Deputy Speaker shall carry out all the functions and duties of the Speaker under this section.

**143. Proof of vacation:**

The Speaker or the Deputy Speaker as the case may be, shall declare the vacation of a Member's seat if:

- (a) a Member admits to a charge under section 142;  
or
- (b) a Member is ruled by the Supreme Court to have vacated his or her seat.

**144. Notice of vacation of seat as a result of a court proceeding:**

- (1) The Registrar of the Supreme Court must:
  - (a) within 48 hours after a Member is adjudged a bankrupt; or
  - (b) after a Member has been convicted in a jurisdiction of an offence punishable by death or by imprisonment for a term of 4 years or more; or

- (c) after a Member has been convicted of a corrupt practice,  
notify the fact to the Speaker, or to the Deputy Speaker if there is no Speaker or if the Speaker is absent from Samoa.
- (2) The Registrar commits an offence if the Registrar fails to send a notice required by this section and is liable on conviction to a fine not exceeding 20 penalty units for every day during which he or she fails to send such notice.

**145. Offence for Member whose seat is vacated to sit:**

A Member who continues to sit or votes in a sitting of the Legislative Assembly after his or her seat is declared vacant under section 143 commits an offence and is liable upon conviction to a fine not exceeding 20 penalty units for every day on which he or she so sits or votes.

**146. Notice of death of Member:**

- (1) Subject to subsection (2) the Speaker may for the purpose of this Part accept the notice as a formal notice of a Member's death if the Notice is in writing from the spouse, child, parent or sibling of a Member.
- (2) The Speaker may only accept a written Notice under subsection (1) if it is by a person 18 years old or above.
- (3) Despite subsection (1) the Registrar General may notify the Speaker of the death of a Member within 24 hours of registering the death of a Member.

## PART 17

### BY-ELECTIONS

**147. Election petition bars issuing of writ:**

If after a petition has been presented against a Member representing a constituency, his or her seat becomes vacant, no writ to fill the vacancy is to be issued until after the petition has been disposed of, and not if the Court determines that Member was duly elected.

**148. Speaker of the Legislative Assembly to issue Warrant to issue writ to supply a vacancy:**

- (1) Where:
  - (a) the Legislative Assembly is not in session;  
or
  - (b) the Legislative Assembly is adjourned and is not due to meet again for more than 14 days,and it is proven under section 143 that the seat of a Member has become vacant, the Speaker must immediately publish a notice of the vacancy and reasons for the vacancy to be published in the *Savali*.
- (2) If the vacancy arises from death or resignation the Speaker must, upon the publication of the notice in the *Savali*, by warrant under the Speaker's hand direct the Commissioner to proceed to issue a writ to supply the vacancy.
- (3) If the vacancy arises from a cause other than death or resignation, then, after the expiration of

10 days from the date of the publication of the notice in the *Savali*, the Speaker, after it is established to the Speaker's satisfaction that a vacancy does exist, must, by warrant under the Speaker's hand, direct the Commissioner to proceed immediately to issue a writ to supply the vacancy.

- (4) If a vacancy exists at the commencement of a session and no writ has been issued to supply the vacancy, or where a vacancy occurs during a session, the Speaker must immediately upon being ordered to do so by the Legislative Assembly, by warrant under the Speaker's hand, direct the Commissioner to proceed immediately to issue a writ to supply the vacancy.
- (5) Nothing in subsections (1) to (4) applies in respect of a vacancy that occurs in the period between dissolution or expiration of the Legislative Assembly and the close of polling day at the next general election.
- (6) Despite this section, no writ is to be issued for a by-election to supply a vacancy in the Legislative Assembly if:
  - (a) the vacancy arises in the period of 6 months ending with the date of the expiration of the Parliament; or
  - (b) following the tabling in the Legislative Assembly by the Prime Minister of a document informing the Assembly that a general election is to be held within 6 months of the occurrence of the vacancy.

- (7) If the Speaker is absent for any reason when a vacancy occurs, the duties and powers of the Speaker under this section are to be exercised by the Deputy Speaker.

**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, authorise 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.

**150. Rolls to be used in by-election when election declared void by the Supreme Court:**

- (1) The main roll and supplementary roll used in the general elections must be used at a by-election for an election declared void under section 116, or 117.
- (2) The Commissioner must not make any changes to the rolls used under subsection (1) except in the case of the Commissioner removing from the rolls names of people that were disqualified from registration under section 17, after the general elections.

**151. Closing of rolls:**

- (1) If a by-election is to be held, the roll is to be temporarily closed on a date fixed by the Commissioner, and after the fixed date, the Commissioner must not add a name to the relevant roll.
- (2) Despite subsection (1), the Commissioner must cause a composite roll for that Constituency to be closed and printed on writ day for the by-election.
- (3) The Commissioner must issue a public notice of the date all rolls will be closed under this section and such notice must be published at least 15 days before the date for a roll to be temporarily closed.

**152. Relevant provisions to apply to by-elections:**



Sections 46 to 51 and 54 to 138 of this Act apply to this Part with the necessary modifications required for by-elections.

## **PART 18**

### **MISCELLANEOUS**

#### **153. Regulations:**

- (1) The Head of State acting on the advice of Cabinet may make regulations necessary or expedient for giving full effect to this Act.
- (2) Regulations made under this section may:
  - (a) prescribe forms to be used under this Act;
  - (b) prescribe penalties for offences against the regulations, not exceeding imprisonment for a term of 3 months or a fine of 20 penalty units, or both.
  - (c) prescribe fees payable under this Act to be paid to the Office of the Electoral Commission.

#### **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 2 years, or both

#### **154. Consequential amendment to the Land and Titles Act 1981:**

Section 22 of the Land and Titles Act 1981 is amended by inserting after subsection (3) the following new subsection (3A):

“(3A) Despite subsection (3)(c), the Registrar must not grant the removal of a name of a person from the register, if the request is for the purpose of a matai registering for the purpose of elections, in a Constituency different from that to which the matai title belongs.”.

**155. Repeal:**

The Electoral Act 1963 (“Repealed Act”) is repealed.

**156. Transitional and Saving Provisions:**

(1) At the commencement of this Act:

- (a) a person is entitled to transfer despite section 18 within 12 months after the commencement of this Act after which the transfer period of 10 years set out in section 18 shall apply;
- (b) the territorial and urban Constituency rolls under the Repealed Act continue until the dissolution of the Legislative Assembly;
- (c) for the purpose of section 8(1)(d) -
  - (i) a Member representing an Urban Constituency must render monotaga for a consecutive three (3) years ending on lodgement day in respect of any of his or her registered matai title regardless of where the matai title is registered; or

- (ii) a person contesting for elections from an Electoral Constituency listed in Column 2 of the Schedule, satisfies the requirements of that section if:
    - (A) the person has a registered matai title in the corresponding Territorial Constituency listed in Column 1 of the Schedule; and
    - (B) the matai title referred to in sub-subparagraph (A) above must be registered for a minimum of three (3) consecutive years ending on lodgement day; and
    - (C) the person has rendered monotaga for a consecutive three (3) years ending on lodgement day through the matai title that is registered in the Territorial Constituency listed in Column 1 of the Schedule;
- (d) the transfer limitation period under section 18(2) commences from the date of the person's last transfer or registration;
- (e) section 139(2) does not apply to a person whose name is on the Corrupt Practice's List and the name of the person on the list at the commencement of this Act must be removed by the Commissioner after 5 years commencing

from the date the name of the person was entered on such List.

(2) For the purpose of subsection (1)(c):

- (a) “monotaga” means the compulsory service assistance or contribution (such as, contribution in form of cash, kind or goods) rendered for customary, traditional activities, events, functions or similar purposes pursuant to the customs of a particular village in the corresponding Territorial Constituencies in Column 1 of the Schedule; and
  - (b) it only applies to the general elections 2021; and
  - (c) it 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 section 116 and 117 of this Act.
- (3) Nothing in section 8(1)(e) regarding residential requirement applies to a person who satisfies the Commissioner to be affected by travelling restrictions due to the Corona Virus Disease 2019 (COVID-19) for the general elections 2021.
- (4) Section 58(4)(f) and 58(4)(g) does not apply to a person that subsection (1)(c) applies to.

### **SCHEDULE**

*(Section 156(1)(c)(ii))*

Column 1	Column 2
Territorial Constituency	Electoral Constituency
Vaimauga Sisifo 1	Vaimauga 2 Vaimauga 3

	Vaimauga 4
Vaimauga Sisifo 2	Vaimauga 2 Vaimauga 3 Vaimauga 4
Faleata Sasae	Faleata 1
Faleata Sisifo	Faleata 2 Faleata 3 Faleata 4
Sagaga le Falefa	Sagaga 1 Sagaga 4
Aana Alofi No. 3 Aiga i le Tai	Aana Alofi 4
Aiga i le Tai	Aiga i le Tai
Safata Sisifo Gagaemauga No. 2	Safata 1
Safata Sasae Safata Sisifo	Safata 2
Vaa o Fonoti Anoamaa Sasae	Vaa o Fonoti
Anoamaa Sasae Vaa o Fonoti	Anoamaa 1
Faasaleleaga No.1 Palauli le Falefa	Faasaleleaga 1
Palauli le Falefa	Palauli 2
Gagaemauga No. 1 Gagaemauga No. 2	Gagaemauga 1
Gagaemauga No. 1 Sagaga le Falefa	Sagaga 3.

**REVISION NOTES 2019 – 2023**

This is the official version of this Act as at 31 December 2023.

This Act has been revised in 2019 - 2023 by the Legislative Drafting Division under the Authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following amendments were made to this Act since its enactment:

*By the Electoral Amendment Act 2020, No. 13, commenced on 4 May 2020:*

<b>Section 2</b>	New definition inserted:
<b>Section 4</b>	in sub-section (6) substitute “on which the writs for general election are issued with “on issuance of the Notice under section 45(2)
<b>Section 8</b>	in subsection (2), substitute “A person is disqualified” with “The Commissioner may disqualify a person”; substitute subsection (2)(b); in subsection (5) (a): for the definition of “minimum of 3 years” substitute “240” with “305”; for the definition of “monotaga” omit “or religious”; Subsection (6) substituted New subsection inserted after subsection (6).
<b>Section 9</b>	Substituted
<b>Section 13</b>	New subsections inserted after subsection (8);
<b>Section 21</b>	Subsection (2) substituted Subsection (5) repealed and subsections (6) (7) and (8) renumbered
<b>Section 43</b>	Substituted
<b>Part 7</b>	Part 7 substituted

<b>Section 61</b>	in subsection (1), insert a New paragraph (d); in subsection (2), substitute “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.
<b>Section 63</b>	Subsection (2) substituted; in subsection (3), substitute “three (3) months” with “twelve (12) months.
<b>Section 73</b>	Substituted
<b>Section 101</b>	for “two (2)” substitute “three (3)”; for “of a poll under section 84” substitute with “for a general election”.
<b>Section 149</b>	substituted
<b>Section 152</b>	for “45(2) to 138” substitute with “48-51 and 54 - 138”.
<b>Section 153A</b>	New Section 153A inserted after section 153.

*By the Electoral Amendment Act (No.2) 2020, No. 19, commenced on 23 September 2020:*

<b>Section 8</b>	<p><b>Section 8 is amended:</b></p> <ol style="list-style-type: none"> <li>1. In subsection (1) where paragraphs (d) and (e) are substituted with new paragraphs. The new paragraph (e) was formerly paragraph (d) before its repeal. Thus the amendment also rearranges these two paragraphs, into its current form.</li> <li>2. In subsection (2) the words “The Commissioner may disqualify a person” are replaced with “A person is disqualified.”</li> <li>3. In subsection (3) paragraph (d) the number “125” has been substituted with “60” and a new paragraph (e) has been inserted.</li> <li>4. In subsection (4) the reference made to <i>paragraph (d)</i> has been amended to make reference to both <i>paragraphs (d) and (e)</i>.</li> </ol>
<b>Section 9</b>	<b><i>Repealed.</i></b>

<b>Section 46A</b>	New section inserted.
<b>Section 47</b>	This section is amended by inserting new subsections (3) and (4).
<b>Section 53</b>	This section is amended by inserting a new subsection (4).
<b>Section 58</b>	Subsection (4) of this section is amended by inserting new paragraphs (f) and (g) and by renumbering the current paragraph (f) as paragraph (h).
<b>Section 141</b>	Subsection (2) of this section is amended by substituting paragraphs (a) and (b) with new paragraphs (a) and (b).
<b>Section 152</b>	Section 152 is amended by substituting the reference of the number “48” with “46”.
<b>Section 156</b>	<p><b>Section 156 is amended:</b></p> <ol style="list-style-type: none"> <li>1. The section is renumbered as subsection (1).</li> <li>2. Subsection (1) paragraph (c) is substituted with a new paragraph (c).</li> <li>3. New subsections (2), (3) and (4) are inserted.</li> </ol>
<b>New Schedule</b>	A schedule is inserted for the purpose of the amended section 156(1)(c)(ii).

*By the Electoral Amendment Act 2021, No. 2, commenced on 3 March 2021:*

<b>Section 2</b>	the definition of “approved form” is omitted; new definition for “lodgement day” is inserted
<b>Section 8</b>	<p><b>Section 8 is amended:</b></p> <ol style="list-style-type: none"> <li>1. For subsection (1): <ul style="list-style-type: none"> <li>- in paragraph(c), the words “ a consecutive three (3) years ending on lodgement day for” were inserted after the word “for”;</li> <li>- in paragraph (d)(ii), substituted the words “in which the nomination paper is lodged with the Commissioner” with “lodgement day;;</li> </ul> </li> </ol>



- in paragraph (e) substituted the words “years ending with the day on which the nomination paper is lodged with the Commissioner” with “consecutive years ending on lodgement day”;
- in paragraph (f), the words “or section 9 of this Act” is omitted;
- 2. For subsection (2)(d)(i), the words “date nomination is made” is substituted with “lodgement day”.
- 3. For subsection (3):
  - the words “or monotaga” is omitted;
  - paragraph (d) is substituted with new paragraph (d);
  - paragraph (e) is substituted with new paragraph (e);
  - new paragraphs (f) and (g) inserted.
- 4. For subsection (5):
  - the definition of “minimum of 3 years” amended by substituting “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 “the lodgement day.”
  - new definition for “organisation” inserted.
- 5. Subsection (7) substituted.

**Section 11**

subsection (2) is amended by substituting the words “date of filing his or her nomination” with “lodgement day”.

**Section 18**

**Section 18 amended:**

1. For subsection (3), the words “date a candidate’s nomination is made under section 46” is substituted with “lodgement day”

2. For subsection (4), the words “his or her nomination is made under section 46” substituted with “lodgement day”

**Section 47****Section 47 amended:**

1. Subsections (1) and (2) substituted with new subsections (1) and (2);
2. New subsection (2A) inserted;
3. For subsection (3):
  - paragraph (a), sub paragraph (i) is amended by inserting the words “and a response to the motion must be filed within five (5) working days after the filing of the motion” after the word “nomination”;
  - paragraph (a), sub paragraph (ii) is amended by substituting “20” with “twenty five (25)”;
  - paragraph (b), sub paragraph (ii) is amended by substituting “five (5)” with “ten (10)”;
4. new subsections (3A), (3B), (3C) and (3D) inserted;
5. new subsection (4) inserted, and current subsection (4) renumbered as subsection (5).

**Section 156****Section 156 amended:**

1. For subsection (1):
  - paragraph (c), sub paragraph (i) is amended by inserting the words “ending on lodgement day” after the words “consecutive three (3) years”;
  - new paragraph (c)(ii)(B) inserted, and current paragraph (c)(ii)(B) renumbered as paragraph (c)(ii)(C);
  - paragraph (c)(ii)(C) amended by inserting “ending on lodgement day” after the words “consecutive three (3) years”
2. For subsection (2):
  - paragraph (b) the fullstop after the year “2021” is omitted and substituted with “;and”;
  - new paragraph (c) inserted after paragraph (b).

*By the Electoral Amendment Act (No. 2) 2021, No. 9, commenced 29 September 2021:*

- |            |  |
|------------|--|
| Section 2  | <b>Section 2 amended:</b> <ul style="list-style-type: none"><li>- insertion of words “and section 149(1)(a)” after the number “45”.</li></ul>  |
| Section 8  | <b>Section 8 amended:</b> <ul style="list-style-type: none"><li>- in subsection (1)(c) substitute the words “registered matai title for a consecutive three (3) years ending on lodgement day” with “matai title registered before lodgement day”;</li><li>- in subsection (1), substitute paragraph (d)- “(d) has rendered monotaga in respect of the registered matai title under paragraph (c) within a village in a constituency for which the person intends to run as a candidate for any three (3) consecutive years before lodgement day”;</li><li>- in subsection (2)(b) insert a new paragraph (iii)-</li><li>- in subsection (5) in the definition of “monotaga” insertion of the words “or religious” after the word “traditional”.</li><li>- insert a new subsection (8).</li></ul> |
| Section 53 | <b>Section 53 amended:</b> <ul style="list-style-type: none"><li>- insert a new subsection (5)</li></ul>   |
| Section 54 | <b>Section 54 amended:</b> <ul style="list-style-type: none"><li>- in subsection (2) omitted the word “only” and inserted after “within” the words “or outside of”</li></ul>   |
| Section 58 | <b>Section 58 amended:</b> <ul style="list-style-type: none"><li>- in subsection (2) substituted the words “nomination day” with the words “the designated day for withdrawal of nominations”.</li></ul>   |
| Section 60 | <b>Section 60 amended:</b> <ul style="list-style-type: none"><li>- in subsection (2) substitute the word “period” with “day”.</li></ul>  |

## Section 61

**Section 61 amended:**

- in subsection (7) substituted the words “as soon as practicable after each day within designated period, carry out the procedure in section 77” with “, when pre-polling ends, tally the number of ballot papers used.”
- in subsection (8) substitute the number “79” with the number “83”;
- insert a new subsection (11).

## Section 83

**Section 83 amended:**

- In subsection (2)(a) substitute reference to “section 77(1)(e)” with “sections 77(1)(e) and 61(7)”.

By virtue of the Attorney General’s powers under section 5(1)(u) of the *Revision and Publication of Laws Act 2008*:

## Section 8

subsection (8) amended to remove the words “*proof that candidate meets the monotaga requirements pursuant to subsection (1)(d)*” and substitute with the words “*the statutory declaration required for the confirmation of monotaga required under subsection (1)(d);*”. This change reflects the correct words as passed by Parliament in the Electoral Amendment Act (No.2) 2021.



(Su’a Hellene Wallwork)

**Attorney General of Samoa**

*This Act is administered  
by the Office of the Electoral Commissioner.*