

ELECTORAL AMENDMENT BILL 2020

SAMOA

Explanatory Memorandum

1.0 Object and reasons:

- 1.1 The Bill seeks to amend the Electoral Act 2019 (“principal Act”) and to give effect to FK (19) 46 dated 13 January 2020.
- 1.2 The object of the Bill is to strengthen provisions regarding the process for the conduct of elections in Samoa.

Clauses:

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - amends section 2 of the principal Act to insert new definition.
- Clause 3:** - amends section 8 of the principal Act to:
- (a) provide for the Commissioner’s power to disqualify a candidate contesting for election if he or she does not meet qualifications to run as a candidate in the elections;
 - (b) require the candidate and three (3) matai’s of the candidate’s constituency to each provide statutory declarations to confirm that he or she satisfies the residency and monotaga requirements under section 3(2)(b) of the principal Act; and
 - (c) omit religious contributions in the definition of monotaga;

(d) substitute the number of the fine and term of imprisonment imposed for making false declaration in the prescribed form.

Clause 4: - amends section 9 of the principal Act by substituting with a new section 9 to provide for the review of the Commissioner’s decision to disqualify a candidate under section 8(2).

Clause 5: - amends section 13 of the principal Act to insert a new subsection (8) relating to the offence of misleading the Commissioner and the duty of the Commissioner to institute prosecution against a person that the Commissioner believes breached the offence of misleading the Commissioner or committed the offence of aiding, abetting, counselling or procuring of the offence.

Clause 6: - repeals section 21(5) of the principal Act.

Clause 7: - amends section 43(2) of the principal Act by substituting “polling day” with “the commencement of the pre-polling period as designated under section 60(2)” as the new cut-off date for campaigns.

Clause 8: - amends section 61 of the principal Act by inserting new subsections to include additional persons qualified to pre-poll:

(a) carers of pensioners and carers of persons living with disabilities; and

(b) person confirmed to be employed in an Office providing essential services as listed under section 5 of the Public Holidays Act 2008.

Clause 9: - amends section 63 of the principal Act to:

(a) provide for the requirement to publish within 12 months after every election the list of names and addresses of people who did not register to vote and registered to vote but did not vote; and

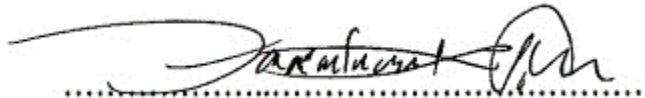
(b) substitute the period from “3” to “12” months for the Electoral Commissioner to issue a penalty notice to a person whose name appears on the published list of those who did not register to vote and registered but did not vote.

Clause 10: - amends section 65 of the principal Act to provide reasonable time off to vote for a voter employed in essential services during general elections or a voter required to work during by-election.

Clause 11: - amends section 73 of the principal Act to provide for the definition of an approved scrutineer and the restrictions that apply to an approved scrutineer when using polling booths.

Clause 12: - amends section 101 of the principal Act to change the period for the presentation of the traditional O’o or momoli from within “two, 2” to “three, 3” years after the date of the declaration of results of a poll under section 84.

Clause 13: - provides for consequential amendments to section (5)(n) of the Public Holidays Act 2008 and section (2) of the Electoral Commission Act 2019.



(Hon FAAOLESA Katopau Ainuu)

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

ELECTORAL AMENDMENT BILL 2020

SAMOA

Arrangement of Provisions

1. Short title and commencement
 2. Section 2 amended
 3. Section 8 amended
 4. Section 9 substituted
 5. Section 13 amended
 6. Section 21 amended
 7. Section 43 amended
 8. Section 61 amended
 9. Section 63 amended
 10. Section 65 amended
 11. Section 73 substituted
 12. Section 101 amended
 13. Consequential amendments
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2020, No.

A BILL INTITULED

AN ACT to provide for the amendment of the Electoral Act 2019 (“Principal Act”) and related purposes.

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

1. Short title and commencement:

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

2. Section 2 amended:

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

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

3. Section 8 amended:

Section 8 of the Principal Act is amended as follows:

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

(b) for subsection (2)(b) substitute with:

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

(i) sworn by the candidate and witnessed by a barrister and solicitor of the Supreme Court in the private sector; and

- (ii) sworn by three (3) matai of the candidate's constituency and witnessed by a barrister and solicitor of the Supreme Court in the private sector."; and
- (c) in subsection (5), in the definition of "monotaga" omit "or religious"; and
- (d) in subsection (6), substitute -
 - (i) "50" with "100"; and
 - (ii) "two (2) years" with "three (3) years and having his or her name entered onto the Corrupt Practices list."

4. Section 9 substituted:

For section 9 of the Principal Act, substitute:

"9. Review of the Commissioner's decision:

- (1) A candidate may seek judicial review of a decision made by the Commissioner under section 8(2).
- (2) An application for judicial review of a decision of the Commissioner to disqualify a candidate under section 8(2) must be made no later than noon of the 3rd day after nomination and in accordance with the rules of the Court.
- (3) An application referred to the Court for judicial review under this section must be decided within 10 days after close of nomination.
- (4) A party shall bear its own legal costs in relation to any judicial review, unless the judge considers that exceptional circumstances justify the making of an award of costs.
- (5) An order made under this section is final and is not subject to any review or appeal."

5. Section 13 amended:

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

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

6. Section 21 amended:

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

7. Section 43 amended:

In section 43(2) of the Principal Act, substitute “polling day” with “the commencement of the pre-polling period as designated under section 60(2),”.

8. Section 61 amended:

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

- “(d) is nominated (in a method approved by the Commissioner) by a person qualified under paragraphs (b) or (c) to be his or her carer;
- (e) is confirmed (in a method approved by the Commissioner) to be employed in an Office providing a service listed under section 5 of the Public Holidays Act 2008;”.

9. Section 63 amended:

Section 63 of the Principal Act is amended as follows:

- (a) substitute subsection (2) with:

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

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

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

10. Section 65 amended:

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

- “(1) A voter is to be given reasonable time off during work hours to cast his or her vote:
- (a) for general elections, if he or she is employed in the services and places of employment in section 5 of the Public Holidays Act 2008; or
 - (b) for by-elections if he or she is required by his or her employer to work on polling day.”.

11. Section 73 substituted:

Section 73 is substituted as follows:

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

- (1) A Presiding Officer must ensure that:
 - (a) only six (6) voters are allowed in a polling booth at the same time; and
 - (b) only one (1) voter is allowed in an inner compartment; and
 - (c) no person is allowed to remain in a polling booth except the Presiding Officer and his or her clerks, and any approved scrutineers, an interpreter, and a police officer.
- (2) For the purpose of this section, “approved scrutineer” means:
 - (a) a person appointed in writing by a candidate as his or her scrutineer; and
 - (b) a person that produces a statutory declaration made in the prescribed form and witnessed by an Electoral Officer, an Assistant Officer or a person authorised to take a statutory declaration under section 21 of the Oaths, Affidavit and Declarations Act 1963 to be a

scrutineer for a candidate whom appointed him or her as such.

- (3) A scrutineer who leaves the polling booth to which he or she is assigned, during the hours of polling, without the permission of the Presiding Officer at that polling booth, is prohibited from re-entering the polling booth.
- (4) A candidate is prohibited from acting as scrutineer under this section.
- (5) A person who breaches this section:
 - (a) in the case of a person that is not a candidate, commits an offence and is liable upon conviction to pay a fine not exceeding 50 penalty units or to imprisonment for a term not exceeding two (2) years;
 - (b) in the case of a candidate commits an offence and is liable upon conviction to pay a fine not exceeding 100 penalty units or to imprisonment for a term not exceeding two (2) years."

12. Section 101 amended:

In section 101 of the Principal Act, for "two (2)" substitute "three (3)".

13. Consequential amendments:

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

Column 1	Column 2
Public Holidays Act 2008	<p>In Section 5(n) of the Public Holidays Act 2008 substitute with:</p> <p>“(n) for the purpose of elections -</p> <p style="padding-left: 40px;">(i) the Electoral Commissioner, his or her staff and assistants working during elections; or</p> <p style="padding-left: 40px;">(ii) the General Manager and staff of the Electric Power Corporation working during elections for the provision of electricity services;</p> <p style="padding-left: 40px;">(iii) the General Manager and staff of the Samoa Water Authority working during elections for the water supply and waste water services;”.</p>
Electoral Commission Act 2019	<p>In section 2 of the Electoral Commission Act 2019, insert the following new definition:</p> <p>““election” has the same meaning under section 2 of the Electoral Act 2019.”.</p>