

ELECTORAL AMENDMENT BILL (No. 2) 2021

SAMOA

Explanatory Memorandum

1.0 Summary:

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

Clauses:

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

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

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

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

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

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

booths particularly when voters reside outside of their constituency.

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

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

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

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

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

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



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(Hon FAUALO Harry Jeffrey Schuster)

MINISTER RESPONSIBLE FOR THE
OFFICE OF THE ELECTORAL COMMISSION

ELECTORAL AMENDMENT BILL (No. 2) 2021

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Arrangement of Provisions

1. Short title and commencement
2. Section 2 amended
3. Section 8 amended
4. Section 53 amended
5. Section 54 amended
6. Section 58 amended
7. Section 60 amended
8. Section 61 amended
9. Section 83 amended

2021, 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 (No. 2) 2021 and commences on the date of assent by the Head of State.

2. Section 2 amended:

In section 2 of the principal Act, for the definition of “lodgement day” insert the words “and section 149(1)(a)” after the number “45”.

3. Section 8 amended:

Section 8 of the principal Act is amended as follows:

(a) in subsection (1) -

(i) paragraph (c) substitute the words “registered matai title for a consecutive three (3) years ending on lodgement day” with “matai title registered before lodgement day,”; and

(ii) substitute paragraph (d) as follows:

“(d) has rendered a 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”;

(b) in subsection (2)(b) insert a new paragraph (iii) as follows -

“(iii) sworn by any other person appointed by the Commissioner under subsection (8) to confirm the monotaga requirements;” and

(c) in subsection (5), in the definition of “monotaga” insert the word “or religious” after the word “traditional”; and

(d) insert a new subsection (8) as follows:

“(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 refuse 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.”.

4. Section 53 amended:

Section 53 is amended by inserting after subsection (4) the following new subsection:

“(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.”.

5. Section 54 amended:

Section 54(2) of the principal Act is amended by omitting the word “only” and inserting the words “or outside of” after the word “within”.

6. Section 58 amended:

Section 58(2) of the principal Act is amended by substituting the words “nomination day” with “the designated day for withdrawal of nominations”.

7. Section 60 amended:

Section 60(2) of the principal Act is amended by substituting the word “period” with “day”.

8. Section 61 amended:

Section 61 of the principal Act is amended as follows:

- (a) in subsection (7) substitute 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.”; and
- (b) in subsection (8) substitute the number “79” with the number “83”; and
- (c) insert new subsection (11) as follows:

“(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.”.

9. Section 83 amended:

Section 83(2)(a) of the principal Act is amended by substituting “section 77(1)(e)” with “sections 77(1)(e) and 61(7)”.
