

ELECTORAL AMENDMENT BILL 2021

SAMOA

Explanatory Memorandum

1.0 Summary:

The Bill seeks to amend the Electoral Act 2019 ("principal Act"). The overall objective of the Bill is to improve electoral requirements and processes for by-elections that may arise after the 2021 general elections.

Clauses:

- Clause 1:** - provides for the short title and commencement.
- Clause 2:** - amends section 2 of the principal Act to omit the definition of the term "approved form" and insert new definition for "lodgement day".
- Clause 3:** - amends section 8 of the principal Act:
(a) by amending subsection (1)(c), to insert after the word "for" the words "a consecutive three (3) years ending on lodgement day for" to clarify that matai title for the candidate should be registered for consecutive three (3) years by the date in which Nomination was lodged;

- (b) by substituting the words in subsection (1)(d)(ii) “in which the nomination paper is lodged with the Commissioner” with “lodgement day” for consistency of wording regarding the lodgement of nomination paper as a result of electoral challenge cases of 2020;
- (c) by amending subsection (1)(e) to substitute “years ending with the day on which the nomination paper is lodged with the Commissioner” with “consecutive years ending on lodgement day” for consistency of wording regarding the lodgement of nomination paper as a consequence to the proposed amendments in subsection (1)(d)(ii);
- (d) by omitting the words “or section 9 of this Act” in subsection (1)(f) as the section 9 referenced has been repealed;
- (e) by amending subsection (2)(d)(i) to substitute the words “date nomination is made” with the words “lodgement day” for consistency of terms used regarding the lodgement of nomination papers as a consequence of the proposed amendments in subsection (1)(d)(ii);
- (f) by amending subsection (3) -
 - (i) to omit the words “or monotaga” for clarity of the provision; and
 - (ii) to substitute paragraph (d) with a new paragraph to clarify the eligibility of a person who is exempted from residential requirement for medical reasons;

- (iii) to substitute paragraph (e) with a new paragraph to exempt a person/candidate that was a carer for a person seeking medical assistance overseas;
- (iv) to insert new paragraphs (f) and (g). Paragraph (f) provides for an exemption of a person who satisfies the Commissioner that he or she was affected by travelling restrictions of a declared pandemic or natural disaster. Paragraph (f) what was previously under subsection (5) regarding temporary absence from Samoa as a new paragraph (g) to exempt from the residential requirement a person temporarily absent from Samoa for official duties and is a holder of a Government position, post or office; or a member or official of a representative body or organisation based in Samoa;
- (g) by amending subsection (5) -
 - (i) in the definition of “minimum of three (3) years” substitute the words “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 “lodgement day”. This amendment is made for consistency. The exemption

will now be provided in subsection (3) where all other exemptions are provided, thus there is no need for the exemption to be included in the definition of “minimum of three (3) years”;

- (ii) to insert the definition of “organisation” to assist the Court in determining what the meaning of “organisation” is, for the purpose of section 8(3)(f) of the Electoral Act;
- (h) by substituting subsection (7) with a new subsection to clarify for the purpose of section 8(2)(b)(ii) and section 47(1)(f) of the Principal Act, the two (2) matai who are to depose the statutory declaration prescribed form, must meet the requirements set out in this new subsection before they can depose a statutory declaration. The requirements are, the two (2) matai must hold a registered matai title for consecutive three (3) years ending on the day of lodgement of the nomination, must have rendered monotaga for consecutive three (3) years ending on the day of lodgement of the nomination, must sit in the same village council as the Candidate for consecutive three (3) years ending on the day of lodgement of the nomination. The rationale for this clarification is to ensure that the matai who depose affidavits are in a position to verify the

monotaga of the candidate because they consistently attend village council meetings and render monotaga themselves in the same village that the candidate renders monotaga in.

In addition the clarification made regarding the Sui o le Nuu or Sui Tamaitai o le Nuu who are to depose the statutory declaration prescribed form, is only those who legally hold such position (i.e. appointed as such under the Internal Affairs Act 1995 or the Ministry of Women Affairs Act 1990) at the time of the lodgement of the nomination are permitted to depose the statutory declaration.

Clause 4: - amends section 11(2) of the principal Act by substituting “date of filing his or her nomination” with “lodgement day” for consistency of wording regarding the lodgement of nomination paper as a consequence to the proposed amendments in subsection (1)(d)(ii).

Clause 5: - amends section 18 of the principal Act:

- (a) by amending subsection (3) to substitute the words “date a candidate’s nomination is made under section 46” with “lodgement day”; and
- (b) by amending subsection (4) to substitute “his or her nomination is made under section 46” with “the lodgement day”.

These proposed changes are to ensure consistency of wording regarding the lodgement of nomination paper and as a consequence to the proposed amendments in subsection (1)(d)(ii).

- Clause 6:** - amends section 47 of the principal Act:
- (a) by substituting subsections (1) and (2) to reconcile with qualifications criteria under section 8;
 - (b) by inserting a new subsection (2A) to provide for matters to be considered by the Commissioner when exercising his or her power and duty to accept or reject a nomination under section 47 of the principal Act;
 - (c) by inserting in subsection (3)(a)(i) after the word “nomination” the words “and a response to the motion must be filed within five (5) working days after the filing of the motion”;
 - (d) by substituting in subsection (3)(a)(ii) the number “twenty (20)” with “twenty five (25)” as a consequence of the proposed amendment in subsection (3)(a)(i);
 - (e) by substituting in subsection (3)(b)(ii) the number “five (5)” with “ten (10)” as a consequence of the proposed amendment in subsection (3)(a)(i) above;
 - (f) by inserting new subsections (3A) to (3D) to provide:
 - (i) for subsection (3A), grounds for amending the Commissioner’s decision under subsections (1) and (2) of the principal Act in response to a challenge;
 - (ii) for subsection (3B), provides for other powers of the Commissioner relating to amending a decisions by him or her to revoke or accept

a nomination through the filing of an application to the Supreme Court;

(iii) for subsection (3C), provides for the various timeframes for application under subsection (3B);

(iv) for subsection (3D), to clarify that the Government is not liable for any costs in relation to any application made under subsections (3A) and (3B);

(g) by inserting new subsection (4) to provide for matters for the Supreme Court to take into account when hearing a motion filed under this section and renumber the current subsection (4) as subsection (5).

Clause 7:

- amends section 156 of the principal Act as follows:

(a) in subsection (1) -

(i) for paragraph (c)(i) by inserting after the words 'consecutive three (3) years' the words 'ending on lodgement day';

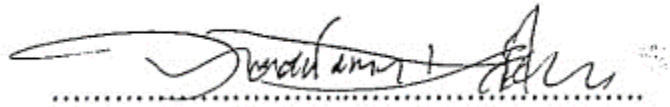
(ii) by inserting a new paragraph (c)(ii)(B) and renumber the current provision as paragraph (c)(ii)(C);

(iii) in subsection (c)(ii)(C), by inserting after the words "consecutive three (3) years" the words "ending on lodgement day" to accurately reflect the intention of the transitional arrangements;

(b) in subsection (2) -

(i) in paragraph (b), by omitting the fullstop after the year '2021' and substitute it with "; and";

- (ii) insert new paragraph (c) to clarify that the requirements under this subsection 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 sections 116 and 117 of the principal Act. This amendment is to ensure for clarity that the transitional arrangements for monotaga of candidates contesting in Electoral Constituencies that were divided, will not apply after the 2021 general elections.



(Hon FAAOLESA Katopau T. Ainuu)

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

ELECTORAL AMENDMENT BILL 2021

SAMOA

Arrangement of Provisions

1. Short title and commencement
2. Section 2 amended
3. Section 8 amended
4. Section 11 amended
5. Section 18 amended
6. Section 47 amended
7. Section 156 amended

2021, No.

A BILL INTITULED

AN ACT to amend the Electoral Act 2019 (“Principal Act”) to improve electoral requirements and processes for by-elections that may arise after the 2021 general elections 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 2021 and commences on the date of assent by the Head of State.

2. Section 2 amended:

Section 2 of the Principal Act is amended by:

- (a) omitting the definition of “approved form”;
- (b) inserting the following definition:

““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 for the purposes of section 46 and 47 of this Act;”.

3. Section 8 amended:

Section 8 of the Principal Act is amended as follows:

- (a) in subsection (1)(c) by inserting after the word “for” the words “a consecutive three (3) years ending on lodgement day for”; and
- (b) in subsection (1)(d)(ii), by substituting “in which the nomination paper is lodged with the Commissioner” with “lodgement day”; and
- (c) in subsection (1)(e) substitute the words “years ending with the day on which the nomination paper is lodged with the Commissioner” with “consecutive years ending on lodgement day”; and
- (d) in subsection (1)(f) omit the words “or section 9 of this Act”;
- (e) in subsection (2)(d)(i) substitute the words “date nomination is made” with the words “lodgement day”; and

- (f) in subsection (3) -
 - (i) omit the words “or monotaga”; and
 - (ii) by substituting paragraph (d) with:
 - “(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.”; and
 - (iii) by substituting paragraph (e) with:
 - “(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”;
 - (iv) insert a new paragraphs (f) and (g) as follows:
 - “(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.”; and
- (g) in subsection (5) -
 - (i) in the definition of “minimum of three (3) years” substitute “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.”; and
 - (ii) insert the definition of “organisation” as follows:

““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.”; and
- (h) in subsection (7) substitute a new subsection (7) as follows with:

“(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 depose 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 Nuū or Sui Tamaitai required to depose the statutory declaration in the prescribed form must be the Sui o le Nuū or Sui Tamaitai of the candidate’s village who legally holds that position on lodgement day.”.

4. Section 11 amended:

Section 11(2) of the Principal Act is amended by substituting “date of filing his or her nomination” with “lodgement day”.

5. Section 18 amended:

Section 18 of the Principal Act is amended:

- (a) in subsection (3) by substituting “date a candidate’s nomination is made under section 46” with “lodgement day”; and
- (b) in subsection (4) by substituting “his or her nomination is made under section 46” with “lodgement day”.

6. Section 47 amended:

Section 47 of the Principal Act is amended by:

- (a) substituting subsections (1) and (2) with:

“(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 Nuu or current Sui Tamaitai o le Nuu 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)."; and
- (b) by inserting a new subsection (2A) as follows:
- “(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.”; and

- (c) in subsection (3)(a)(i) by inserting after the word “nomination” the words “and a response to the motion must be filed within five (5) working days after the filing of the motion”; and
- (d) in subsection (3)(a)(ii) by substituting “twenty (20)” with “twenty five (25)”; and
- (e) in subsection (3)(b)(ii) by substituting the number “five (5)” with “ten (10)”; and
- (f) inserting a new subsections as follows:

“(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.”; and
- (g) inserting a new subsections (4) set out below and renumber the current subsection (4) as subsection (5):
 - “(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.”.

7. Section 156 amended:

Section 156 of the Principal Act is amended:

- (a) in subsection (1) -
 - (i) for paragraph(c)(i) by inserting after the words ‘consecutive three (3) years’ the words ‘ending on lodgement day’; and
 - (ii) by inserting a new paragraph (c)(ii)(B) set out below and renumber the current paragraph (c)(ii)(B) as paragraph (c)(ii)(C):

- “(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”;
and
 - (iii) in subsection (c)(ii)(C) by inserting after the words “consecutive three (3) years” the words “ending on lodgement day”; and
 - (b) in subsection (2) -
 - (i) for paragraph (b) by omitting the fullstop after the year ‘2021’ and substitute it with “; and”; and
 - (ii) by inserting after paragraph (b) a new paragraph (c) as follows:
 - “(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.”.
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