

ELECTORAL COMMISSION BILL 2018

SAMOA

Explanatory Memorandum

1.0 Object and reasons:

- 1.1 The Electoral Commission Bill 2018 (“Bill”) seeks to establish the Electoral Commission and consolidate matters on the position of the Electoral Commissioner (Commissioner) dealt with under sections 3, 3A, 3B and 4 of the Electoral Act 1963 that are to be repealed by this Bill.
- 1.2 The objects of the Bill are:
 - (a) to establish the Electoral Commission; and
 - (b) to provide for the establishment of the position of Electoral Commissioner, the terms of appointment, resignation, termination and vacancy of the position of the Electoral Commissioner; and
 - (c) to set out the appointment of staff of the Electoral Commission.

Clauses:

PART 1 - PRELIMINARY

- Clause 1: - provides for the short title and commencement date of the Bill.
- Clause 2: - provides for definitions of terms used within the Bill.

PART 2 - ELECTORAL COMMISSION

- Clause 3:** - provides for the establishment of the Electoral Commission.
- Clause 4:** - provides for the functions of the Electoral Commission.
- Clause 5:** - provides for the independence of the Electoral Commissioner when carrying out certain functions under this clause.
- Clause 6:** - provides for the Electoral Commissioner to prepare and provide a report within six (6) months of the return of the writ after a general election on the administration of that general election to the Legislative Assembly.

PART 3 - ELECTORAL COMMISSIONER

- Clause 7:** - provides for the establishment and appointment of the Electoral Commissioner.
- Clause 8:** - provides for the terms of appointment of the Electoral Commissioner.
- Clause 9:** - provides for the resignation, termination and vacancy of the office of the Electoral Commissioner.
- Clause 10:** - provides that the Electoral Commissioner, declare pecuniary interests and convictions upon his appointment.
- Clause 11:** - provides that the Acting Electoral Commissioner may be appointed by the Head of State acting on the advice of Cabinet, if the office of the Electoral Commissioner becomes vacant or if the Electoral Commissioner is unable to perform functions, duties and powers under this Bill.

PART 4 - ADMINISTRATION AND FINANCE

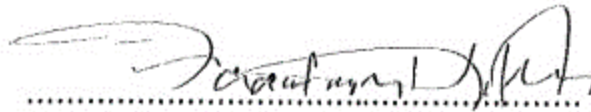
- Clause 12:** - sets out the appointments of staff of the Electoral Commission.
- Clause 13:** - provides for the secondment of public servants to the Electoral Commission.
- Clause 14:** - empowers the Electoral Commissioner to issue guidelines for employment under this Bill.
- Clause 15:** - provides for the remuneration of staff determined by the Commissioner with the approval of Cabinet.
- Clause 16:** - provides that the Electoral Commissioner must ensure a corporate plan is prepared pursuant to requirement applying to government agencies.
- Clause 17:** - provides that a member of staff must report any breach or suspected breach of any provision of the Act to the Electoral Commissioner and the Commissioner to report to the appropriate authority for investigation, prosecution or other action as case requires.
- Clause 18:** - provides that the funds of the Commission consist of monies appropriated by Parliament for this Bill. It also provides for the application of the Public Finance Management Act 2001 and the Audit Act 2013 to the funds of the Commission.
- Clause 19:** - provides that the Electoral Commissioner prepares and provides an annual report on the work of the office of the Electoral Commission to the Speaker for tabling in the Legislative Assembly.

PART 5 - MISCELLANEOUS

- Clause 20:** - provides for an Electoral Boundaries Committee, in the circumstances where boundaries of constituencies are required to be reviewed, the Head of State on the recommendation of Cabinet may appoint three (3) members of this Committee to review and provide a

report to the Legislative Assembly and Cabinet for approval.

- Clause 21:** - provides exemption from personal liability.
- Clause 22:** - empowers the Head of State to make regulations acting on the advice of Cabinet.
- Clause 23:** - repeals sections 3, 3A, 3B and 4 of the Electoral Act 1963 and provides for the transition and saving provisions.



(Hon FAAOLESA Katopau Ainuu)

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

ELECTORAL COMMISSION BILL 2018

SAMOA

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ELECTORAL COMMISSIONER

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2018, No.

A BILL INTITULED

AN ACT to establish the Electoral Commission and for related purposes.

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 Commission Act 2018.
- (2) This Act commences on the date of assent by the Head of State.

2. Interpretation:

In this Act, unless the context otherwise requires:

“Commission” means the Electoral Commission established under section 3;

“Electoral Commissioner” or “Commissioner” means the person appointed as such under section 7;

“Remuneration Tribunal” means the Tribunal established under the Remuneration Tribunal Act 2003;

“staff” means persons appointed under section 12, and includes persons seconded under section 13.

**PART 2
ELECTORAL COMMISSION**

3. Establishment:

- (1) The Electoral Commission is established as a body corporate with perpetual succession and a common seal.
- (2) The Commission may:
 - (a) own and dispose of property and other assets; and
 - (b) enter into contracts; and

- (c) sue and be sued; and
- (d) do any other thing that a person may do in law.

4. Functions:

- (1) The Commission has the following functions:
 - (a) to conduct elections of members of Parliament and referendums;
 - (b) to provide ruling on any technical matters on elections and referendums;
 - (c) to provide information on electoral matters and referendums;
 - (d) to register political parties (including providing funding disclosures);
 - (e) to advise the Head of State, the Legislative Assembly and any Committee of the Legislative Assembly (through the Speaker), the Government and the Minister;
 - (f) to provide reasonable and appropriate assistance and advice to the Speaker, members of Parliament, the Clerk of the Legislative Assembly, Candidates and persons declaring an intention to become a Candidate as to their compliance with the provisions of this Act and any applicable law;
 - (g) to initiate, sponsor, carry out and publish studies and research on elections and referendums;
 - (h) to undertake training, public awareness and education programmes;
 - (i) to provide, in cases approved by Cabinet, assistance in matters relating to elections and referendums (including the secondment of personnel and the supply or loan of materials) to authorities of foreign countries and international and regional organisations;

- (j) to register voters and maintain election rolls and determine issues of eligibility of voters and candidates and other complex issues in a timely manner prior to the closing of rolls or immediately prior to polling day;
 - (k) to investigate matters relating to electoral offences;
 - (l) to perform any other functions, duties and powers conferred under this Act or any other enactment.
- (2) The Electoral Commissioner is responsible for carrying out the functions, duties and powers of the Commission under this Act or any other law.

5. Independence:

The Commissioner must act independently and must not be subject to any direction or order of any other person (except for a court direction or order) when carrying out the following functions:

- (a) conducting elections or referendums;
- (b) conducting registration of voters and political parties;
- (c) advising on electoral matters;
- (d) any other prescribed functions.

6. Report on general election:

- (1) The Commissioner must, within six (6) months of the return of the writ after a general election, prepare and provide to the Legislative Assembly a written report on the administration of that election, including:
- (a) the services provided to voters to facilitate voting; and
 - (b) enrolment and voting statistics; and
 - (c) any substantive issue arising during the course of the election; and

- (d) any changes that are necessary or desirable in respect of -
 - (i) administration processes or practices; or
 - (ii) this Act or any other enactment; and
 - (e) any matter that the Minister asks the Commissioner to address; and
 - (f) any other matter that the Commissioner considers relevant.
- (2) The Speaker must, as soon as practicable, table the report in Legislative Assembly pursuant to its Standing Orders.
 - (3) After the tabling of the report, the Electoral Commissioner must publish the report as soon as practicable in a manner approved by the Commissioner.

PART 3

ELECTORAL COMMISSIONER

7. Establishment and appointment:

- (1) This section establishes the position of Electoral Commissioner who is to be appointed by the Head of State acting on the advice of Cabinet.
- (2) The Commissioner is the Chief Executive Officer of the Commission.

8. Terms of appointment:

The Electoral Commissioner:

- (a) holds office for three (3) years and on other terms and conditions approved by Cabinet;
- (b) is entitled to salary, allowances and other benefits as determined by Cabinet, following receipt by Cabinet of a report from the Remuneration Tribunal;

- (c) must not hold any other public office or engage in any business or other employment without the prior written approval of Cabinet;
- (d) at the time of appointment and whilst holding the position of Commissioner, must not -
 - (i) be a member of any political party; or
 - (ii) assist, support or endorse a Member, Candidate or any person who has declared an intention to become a Candidate, other than performing the Commissioner's responsibilities, functions, duties and powers under this Act;
- (e) is eligible for re-appointment, subject to compliance with this Act and satisfactory performance; and
- (f) on expiry of the term, continues until re-appointed or a successor is appointed.

9. Resignation, termination and vacancy:

- (1) The Commissioner may resign by delivering to the Head of State a 14 days' notice of resignation in writing.
- (2) The Head of State acting on the recommendation of the Cabinet may terminate the appointment of the Commissioner by reason of misbehaviour or physical or mental incapacity.
- (3) In this section, "misbehaviour" includes:
 - (a) unauthorised absence for 14 consecutive days or for 28 days in any 12 months; or
 - (b) engaging in paid employment outside the duties of the Commissioner's office without the approval of the Minister;
 - (c) any other prescribed behaviour.
- (4) The office of the Commissioner is vacant if:
 - (a) the Commissioner resigns, retires or dies; or
 - (b) the appointment is terminated.

10. Declaration of interests:

- (1) Upon appointment the Commissioner must provide the Head of State, the Speaker and the Minister with a declaration of pecuniary interests and convictions in a form approved by the Minister.
- (2) The declaration is to be available for public inspection without cost at the Office of the Clerk of the Legislative Assembly during normal business hours.
- (3) The Commissioner must provide a declaration for any new pecuniary interest.

11. Acting Electoral Commissioner:

- (1) If:
 - (a) the office of the Commissioner becomes vacant; or
 - (b) for any other reason the Commissioner is unable to perform functions, duties and powers under this Act,the Head of State, acting on the advice of Cabinet, may appoint a person qualified to be the Electoral Commissioner as Acting Electoral Commissioner for a period of up to three (3) months.
- (2) The Acting Electoral Commissioner:
 - (a) is subject to the provisions of this Act, including this section, in so far as the provisions are consistent with subsection (1);
 - (b) must carry out the functions, duties and powers of the Electoral Commissioner under this Act; and
 - (c) during the acting appointment, is taken, for all purposes, to be the Electoral Commissioner.
- (3) As an exception to subsection (1), if the Commissioner is on leave, overseas, on official duty or for any other reason is temporarily absent from duty, the Commissioner may designate an Assistant Electoral Commissioner to carry out the functions, duties and powers of the Electoral Commissioner under this Act.

PART 4
ADMINISTRATION AND FINANCE

12. Staff of the Commission:

- (1) The Commission may appoint the following for the purposes of this Act:
 - (a) one or more Assistant Electoral Commissioners; and
 - (b) other officers, employees;
 - (c) Returning Officers, Deputy Returning Officers, Deputy Registrar, polling officers and polling clerks and other persons required for the purpose of an election.
- (2) All persons appointed under this section are subject to the authority and direction of the Electoral Commissioner.
- (3) Subject to subsection (2):
 - (a) a Deputy Returning Officer has, in and about the polling place for which the Officer is appointed, all of the functions, duties and powers of a Returning Officer; and
 - (b) the Deputy Registrar has all of the functions, duties and powers of the Electoral Commissioner.
- (4) The Electoral Commissioner and persons employed under this section are treated as public servants.
- (5) In this section, the power to appoint includes the power to confirm, promote, demote, transfer, second, re-grade, suspend, terminate or re-appoint staff and the power to undertake disciplinary proceedings against staff.

13. Secondment of public servants:

- (1) The Commissioner may request the Public Service Commission to second public servants to the Commission for the purpose of this Act or of conducting any election or referendum.
- (2) Public servants seconded under this section come under the authority and direction of the Commissioner during their secondment.

14. Guidelines for employment:

- (1) The Commissioner may issue employment guidelines:
 - (a) setting out procedures for appointments, demotion, transfer, suspension, termination, disciplinary matters or appeals; and
 - (b) on other matters relating to employment under this Act.
- (2) If there are no guidelines issued under subsection (1), the Commission must adopt the procedures and practices in the Public Service.

15. Remuneration:

- (1) The Commissioner may:
 - (a) with the approval of Cabinet, determine the salaries, allowances and other terms of employment of staff; or
 - (b) if no determination is made under paragraph (a), adopt for the staff the same salaries, allowances and terms applicable in the Public Service.
- (2) If officers in the Public Service are given general increases in salaries or allowances, the salaries or allowances of the Electoral Commissioner and staff are to be increased accordingly.

16. Corporate plan:

The Electoral Commissioner must ensure that a corporate plan of the Commission is prepared pursuant to the same requirements applying to government agencies.

17. Report breach:

- (1) A member of the staff must promptly report to the Commissioner any breach or suspected breach of any of the provisions of this Act or any applicable law.
- (2) If:
 - (a) the Commissioner receives a report under subsection (1); or
 - (b) the Commissioner becomes aware of any breach or suspected breach of the provisions of this Act or any applicable law,the Commissioner must ensure that the breach or suspected breach is reported to the appropriate authority for investigation, prosecution or other action, as the case requires.

18. Funds:

- (1) The funds of the Commission consists of monies appropriated by Parliament for this Act.
- (2) The Public Finance Management Act 2001 and the Audit Act 2013 apply to the funds of the Commission.

19. Annual reports:

The Commissioner must, before 30 June each year, prepare and provide to the Speaker for tabling in the Legislative Assembly an annual report on the work of the office of the Commission in the previous year, including financial statements and accounts and audit report on financial statements and accounts in a form approved and audited by the Controller and Chief Auditor.

**PART 5
MISCELLANEOUS**

20. Electoral Boundaries Committee:

- (1) Whenever the boundaries of constituencies are required to be reviewed, the Head of State acting on the recommendation of the Cabinet may appoint not more than three (3) members to review the

boundaries and provide a report to the Legislative Assembly and Cabinet for its approval and implementation.

- (2) The Commission must provide administrative support to the Committee when carrying out the review.

21. Exemption of liability:

The Electoral Commissioner, staff and any other person authorised to carry out any functions, duties or powers under this Act are not personally liable for carrying out in good faith those functions, duties or powers.

22. Regulations:

The Head of State, acting on the advice of Cabinet, may make regulations to give effect to or for the purposes of this Act.

23. Amendment and transitional:

- (1) Sections 3, 3A, 3B and 4 of the Electoral Act 1963 are repealed.
- (2) At the commencement of this Act:
 - (a) appointments of current Commissioner and staff (including their terms and conditions of employment) continue as if they were made under this Act;
 - (b) any actions, suits or proceedings continue as if they were instituted by or against the Commission;
 - (c) documents made by or on behalf of the Commissioner continue as if they were made by or on behalf of the Commission;
 - (d) properties of the Government in possession or control of the Commissioner continues to be in possession or control of the Commission, subject to any agreement between the Commission and the Government on their ownership or transfer.
- (3) Regulations may be made under section 22 to deal with any other transitional matter.

- (4) For the purposes of subsection (2)(a), within reasonable time after the commencement of this Act, a staff member of the Commissioner has the right to choose to be transferred to another Ministry.
