



Tonga

# **ELECTORAL (AMENDMENT) ACT 2010**

**Act 13 of 2010**





## ELECTORAL (AMENDMENT) ACT 2010

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**SCHEDULE**

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**13**



# ELECTORAL (AMENDMENT) ACT 2010

Act No.13 of 2010

## AN ACT TO AMEND THE ELECTORAL ACT

I assent,  
PRINCESS SALOTE PILOLEVU TUITA,  
6<sup>th</sup> May 2010.

**BE IT ENACTED** by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

### 1 Short Title

- (1) This Act may be cited as the Electoral (Amendment) Act 2010.
- (2) In this Act, the Electoral Act 1989, as amended, is referred to as the Principal Act.

### 2 Section 2 amended – Interpretation

Section 2 of the Principal Act is amended by inserting the following definitions in the appropriate places–

“**Electoral Commission**” means the Commission established by the Electoral Commission Act 2010;

“**Tongan subject**” has the meaning given in section 2 of the Nationality Act.”.

### 3 Section 3 amended – Supervisor of Elections

Section 3 of the Principal Act is amended –

- (a) in subsection (1), by inserting “and any other Act” at the end, before the full stop;
- (b) in subsections (1), (2) and (3) by deleting “Prime Minister” and replacing it with “Electoral Commission”.

#### **4 Section 4 amended – The roll**

Section 4 of the Principal Act is amended by –

- (a) in subsection (1), deleting “Prime Minister’s Office” and replacing it with “Office of the Electoral Commission”;
- (b) in subsection (2) inserting the following paragraph –
  - “(d) include for each constituency a separate section showing electors who reside overseas and their address.”;
- (c) deleting subsections (5) and (6) and replacing them with –
  - “(5) A person shall not be entitled to be registered as an elector in more than one constituency at the same time.
  - (6) An elector –
    - (a) may apply to the Supervisor in Form 3 of the Schedule for a change in the constituency where he is registered;
    - (b) who ceased to be a Tongan subject shall notify the Supervisor.”;
- (d) in subsection (9), deleting “Electoral Appeal Committee” and replacing it with “Electoral Commission”.

#### **5 Section 4(3) replaced**

Section 4(3) of the Principal Act is deleted and replaced with –

- “(3) Every Tongan upon attaining the age of 21 years shall, unless disqualified under clause 64 of the Constitution, within 3 months of attaining that age or within 3 months of his return to the Kingdom if not already registered or within 3 months of becoming a naturalised Tongan subject, apply to the Supervisor in Form 1 of the Schedule to be entered on the roll for the constituency in which he has been resident for the period of 3 months before his application for registration. An application in Form 1 shall include a recent photograph of the applicant. Upon the registration of any elector, the Supervisor shall issue a certificate in Form 2 of the Schedule.”.

#### **6 Section 4(4) replaced**

Section 4(4) of the Principal Act is deleted and replaced with –

- “(4) Notwithstanding subsection (3) –

- (a) if a person has been resident in more than one place during the period of 6 months, referred to in subsection (3), he shall apply for registration, at his option, in either of the following electoral constituency –
  - (i) the electoral constituency where he was last resident for the period of 3 months; or
  - (ii) the electoral constituency where he has been resident for the period of 3 months before his application;
- (b) for a member of the Legislative Assembly who represents an electoral constituency outside Tongatapu, the time spent in residence in Tongatapu to fulfil his responsibilities as a member or as a Cabinet Minister shall be disregarded for the purpose of determining where he is resident;
- (c) a Tongan subject who is not resident in Tonga may apply in the manner specified in subsection (3) to be entered on the roll for the electoral constituency in which he was last resident for the period of 3 months;
- (d) if a person satisfies the Supervisor that employment commitments require him or his spouse to reside in a place outside his normal electoral constituency, then he may apply to be registered in the electoral constituency where, before the employment commitments required him to relocate, he was last resident for the period of 3 months.”.

## **7 Section 5 (3) amended – Publication of roll**

Section 5(3) of the Principal Act is amended by deleting the words “Electoral Appeal Committee” and replacing them with “Electoral Commission”.

## **8 Section 6 replaced – Electoral roll appeals**

Section 6 of the Principal Act is deleted and replaced with –

### **“6 Electoral roll appeals**

On any appeal under section 4(9) or 5(3), the Electoral Commission may give such directions in the matter as they think proper and the order of the Electoral Commission shall be final and conclusive and not subject to appeal to any other body.”.

## **9 Section 7 replaced – Election writs**

Section 7 of the Principal Act is deleted and replaced with –

### **“7 Election writs**

- (1) For the purpose of every general election of representatives of the nobles or the people to the Legislative Assembly, the King, on the

advice of the Prime Minister, shall issue writs of election, under seal, addressed to the Electoral Commission, specifying –

- (a) the date, not less than 8 weeks later, on which the election shall be held;
  - (b) the date on or before which each writ is returnable to the King, advising the result of the election; and
  - (c) the places appointed pursuant to section 3(3) of the Legislative Assembly Act, and the time in each electoral constituency at which the Electoral Commission shall receive the votes of the electors.
- (2) The text of every writ of election shall be published in the Gazette and at least one newspaper having wide circulation and it shall be the duty of the Electoral Commission to advise all electors within each electoral constituency of the time and place of the election.”.

## 10 Section 8 amended – Nominations

- (1) Section 8(1) of the Principal Act is amended by –
- (a) deleting “the Tonga Chronicle” and substituting “at least one newspaper having a wide circulation”;
  - (b) deleting “date” and substituting “day or days”;
  - (c) deleting “Prime Minister’s Office” and replacing it with “Electoral Commission Office”;
  - (d) deleting “Magistrate’s Offices” and substituting “Offices of Government Representatives”.
- (2) Section 8(2) of the Principal Act is deleted and replaced with –
- “(2) The day or days so fixed shall not be less than 21 or more than 28 days after the day on which the writ is received. A maximum of 2 consecutive days may be fixed for the purpose of this section.”.

## 11 Section 9 amended - Candidates

Section 9 of the Principal Act is amended –

- (a) in subsection (1), by inserting “or days” after “day”;
- (b) in subsection (2), by inserting the following at the end:

“In accordance with clause 65 of the Constitution, a candidate may nominate as a candidate only in the electoral constituency where he is registered as an elector.”;
- (c) in subsection (3), in the first sentence, by deleting “\$200” and substituting “\$400”;



- (d) in subsection (3), by deleting the last two sentence and substituting it with  
“A deposit paid by a candidate shall not be refunded in any circumstances.”;
- (e) deleting subsection (4) and substituting –  
“(4) A candidate shall, before completing his nomination, deliver to  
the returning officer a written clearance from the Supreme Court and  
Magistrates Court to the effect that the Supreme Court and Magistrates  
Court has no record of an outstanding order as specified in clause 65 of  
the Constitution relating to the candidate.”;
- (f) in subsection (5) by inserting “on the last day” after “3p.m.”.

## **12 Section 9A amended – Withdrawal of nomination**

Section 9A(1) of the Principal Act is amended by deleting “14 clear days before polling day” and substituting “7 days after the receipt of the nomination of candidates”.

## **13 Section 12 amended – Procedure on voting**

Section 12 of the Principal Act is amended by deleting subsection (3) and substituting –

- “(3) After checking against the final roll that the elector is entitled to vote, and the identity of the elector in accordance with any regulations made under this Act, the returning officer shall mark against the elector's name on the roll the same number as is marked on the ballot paper and then hand the ballot paper to him.”.

## **14 Section 16 amended - Counting**

Section 16 of the Principal Act is amended by inserting the following at the end of subsection (2) –

- “Provided that at an election for representatives of the Nobles, a candidate shall be entitled to withdraw from the contest before the toss of the coin.”.

## **15 Section 17 amended - Recounts**

Section 17(5) of the Principal Act is amended by –

- (a) deleting “\$300” and substituting “\$1,000”; and
- (b) deleting paragraph (a) and renumbering the remaining paragraphs accordingly.

**16 Section 19 amended – False impersonation**

Section 19(1) of the Principal Act is amended by deleting “\$2,000” and substituting “\$5,000”.

**17 Sections 20, 21, 22 and 23 amended – Fines**

The Principal Act is amended as follows –

- (a) in section 20(1) by deleting “\$1,000” and substituting “\$3,000”;
- (b) in section 21(4) by deleting “\$2,000” and substituting “\$5,000”;
- (b) in section 22(2) by deleting “\$2,000” and substituting “\$5,000”; and
- (c) in section 23(6) by deleting “\$1,000” and substituting “\$3,000”.

**18 Section 23 amended – General offences**

Section 23(1) (c) of the Principal Act is amended by deleting –

“At any time on polling day before the close of the poll makes any statement having direct or indirect reference to the poll by means of any loudspeaker or public address apparatus or cinematograph or television, video or radio apparatus”, and substituting –

“At any time on polling day before the close of the poll or within 24 hours before the start of the poll makes any statement having direct or indirect reference to the poll by means of any loudspeaker or public address apparatus or cinematograph or television, video or radio apparatus.”.

**19 Section 24 amended – Permitted election expenses**

Section 24(4) of the Principal Act is amended by deleting “one month” and substituting “14 days”.

**20 Section 26 amended – Election petitions**

Section 26(2) of the Principal Act is amended by deleting “Supervisor of Elections” and replacing it with “Chairman of the Electoral Commission”.

**21 Section 41 amended – Regulations**

Section 41 of the Electoral Act is amended by –

- (a) deleting “Prime Minister, with the consent of His Majesty in Council,” and substituting “Electoral Commission with the approval of Cabinet”; and
- (b) deleting subparagraph (h) and replacing it with –

“(h) to provide for the use of a national identity card to assist in the identification of electors and applicants for registration of electors.”.

## **22 Section 42 repealed – Transitional**

Section 42 of the Principal Act is repealed.

## **23 Schedule 1 amended, new Form 1**

The Schedule to the Principal Act is amended by deleting Form 1 and replacing it with the form in the Schedule to this Act.

## **24 Temporary provisions for next election**

- (1) For the purposes of the first election held after the commencement of this Act –
  - (a) section 4(2)(b) of the Principal Act shall not apply;
  - (b) section 5(1) of the Principal Act is amended by deleting “Not less than 6 months before the date when an election must be held” and substituting “By 15 July 2010”;
  - (c) section 5(2) of the Principal Act is amended by deleting “within 2 months of the publication of the provisional roll” and substituting “by 10 August 2010”;
  - (d) section 5(3) is amended by deleting “any person dissatisfied with the Supervisor’s decision or who claims that no decision was made to a valid objection, may appeal in writing to the Electoral Appeal Committee” and substituting “the Supervisor’s decision shall be final”;
  - (e) section 5(4) of the Principal Act is amended by deleting “not more than 4 months nor less than 2 months from the date set for an election” and substituting “by 9 September 2010”.
- (2) For the purposes of the first election held after the commencement of this Act, and to form the basis of the electoral roll to be used in such election and subsequent elections, every Tongan subject qualified as an elector under clause 64 of the Constitution shall apply under section 4(3) and (4) (or re-apply as the case may be) to be registered as an elector in the electoral constituency (being one of the 17 electoral constituencies determined under the Electoral Boundaries Commission Act 2010) where he has been resident for the previous 6 months:

Provided that for the purposes of the first election held after the commencement of this Act, section 4(4)(a) shall include the following clause

“(iii) the electoral constituency where he satisfies the Supervisor he is likely to be resident for the period of 3 months before 25 November 2010;”.

## **25 Transitional**

- (1) For the purposes of the first election to be held after the commencement of this Act the Electoral Commission, with the consent of Cabinet, may make regulations to –
  - (a) provide for any matter considered necessary or desirable to obtain the most correct electoral roll for use in such election;
  - (b) provide transitional arrangements for election officials and facilities to be used in such election; and
  - (c) generally to ensure that such election is planned and carried out with clarity, certainty, efficiency and fairness.
- (2) For the purposes of section 3(1) of the Principal Act, until the Electoral Commission appoints a Supervisor of Elections, the Supervisor of Elections in office when this Act commences shall remain in office on his existing terms.

Passed by the Legislative Assembly this 15th day of April 2010.

SCHEDULE

<p>Voter Registration No.</p> <p><b>123456</b></p> <p><b>123456</b></p>
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**THE ELECTORAL ACT, 1989**  
 Form 1 (Section 4(3))  
**Claim to be registered as an elector**

<p><b>OFFICIAL USE ONLY</b></p> <p>Constituency: .....</p> <p>Census Block No.: .....</p> <p>National ID No.: .....</p> <p>Personal ID No.: .....</p>
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**To the Supervisor of Elections**

I hereby claim to have my name inserted in the register of electors for the electoral constituency of:

.....

**Surname:** .....

**Maiden name:** .....

**First name:** .....

**Middle name(s):**.....

**Date of birth (DD/MM/YYYY):** ..... **Sex:** .....

**Place of birth (electoral constituency, Village or Country, City):** .....

**Distinguishing mark(s):** .....

**Supporting document type:** ..... **No.:** .....

**My qualification is as follows:**

- I am a Tongan subject
- I am of the age of 21 years or over
- I have not been convicted of an unpardoned criminal offence punishable by imprisonment for more than 2 years.

I am resident at (*Village name*)..... within the electoral constituency of

.....

I hereby declare that the above particulars respecting my claim are true to the best of my knowledge and belief.

Dated the .....day of ..... 20 .....

.....

*(Signature of Claimant)*

Place of previous registration: .....

Registration officer name:.....

----- *(overleaf)* -----

<p>Please attach here one recent passport photo of yourself</p>
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<p><b>Voter Registration No.</b>  <b>123456</b>  <b>123456</b></p>
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**THE ELECTORAL ACT, 1989.**

FORM 2 (Section 4(3))

Certificate of Registration as an Elector

This is to certify that ..... *(here insert full name of elector)*  
of ..... is a registered elector for the electoral constituency  
of ..... *(here insert name of electoral constituency)* and is  
qualified to vote at any election of representatives of the people for that electoral constituency.

Dated the ..... day of ..... 20 .....

.....  
*(Signature of the Supervisor of Elections)*