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Our Reference: LSF 969/19

'OFISI 'O E 'ATENI SENIALE

FAKAMATALA FAKA'ATĀ KI HE MITIA

"FAKAMA'ALA'ALA KI HE NGAAHI FOUNGA NGAUE KI HE FAKANOFO 'O E PALEMIA MO E FILI-SI'I"

25 Sepitema 2019

(1) 'Oku loto 'a e 'Ofisi 'o e 'Ateni Seniale ke tuku atu ha tali ki he ngaahi tokanga mei he kakai 'o pehe 'oku 'ikai totonu ke fakahoko 'a e fili 'o e Palemia fo'ou ke fetongi 'a Hon. Samuela 'Akilisi Pohiva kuo ne pekia kae 'oleva ke fakakakato 'a e ngaahi ngaue ki he fili-si'i ke fakakakato 'a e sea 'o e Vahenga Fili Tongatapu 1 kuo 'atā 'i he Fale Alea.

Founga ki he fakanofo 'o e Palemia fo'ou

(2) 'Oku hā 'i he kupu 50A 'o e Lao 'o e Konisitutone 'o Tonga (Vahe 2) ("Konisitutone") 'a e founga ki hono fakanofo 'e he 'Ene 'Afio 'a e Palemia mo e ngaahi makatu'unga 'a ia 'oku lau ai kuo 'ikai ke to e ma'u 'e he Palemia 'a e lakanga pe kuo 'atā 'a hono sea 'i he Fale Alea.

(3) 'I he hili 'a e pekia 'a e Palemia 'i he 'aho 12 'o Sepitema 2019, 'oku ngaue'aki leva 'a e kupu 50A 'o e Konisitutone 'a ia 'oku tu'utu'uni kuo pau ki he Fale Alea ke ne muimui pau ki he ngaahi founga ngaue 'oku hā 'i he Tepile 'o e Konisitutone ("Tepile") ki he fili pe fakanofo 'o e Palemia fo'ou.

(4) Ko e founga ngaue 'oku tu'utu'uni ki ai 'a e Tepile ko e ni'ihi pe 'oku kau ki ai ko e Sea 'o e Fale Alea ("Sea") mo e kau fakafofonga nopele moe kakai 'a ia 'oku nau lolotonga memipa 'i he Fale Alea.

(5) 'Oku tu'utu'uni 'i he Tepile 'a e ngaahi founga ki he Sea ke fakahoko 'aki 'a e fili 'o e Palemia fo'ou 'o anga pehe ni -

(a) Fakaafe'i 'a e kau fakafofonga kotoa ke fakahū ange kiate ia 'enau ngaahi fokotu'u ki he Palemia Fili;

(b) Ui ha fakataha ‘o e kau fakafofonga kotoa kuo fili ki he taumu’a ko hono fili pe ko hai kuo pau ke nau fokotu’u ke fakanofo ‘i ha paloti fakapulipuli ko e Palemia Fili; pea

(c) Lipooti ki he ‘Ene ‘Afio ‘a e tokotaha kuo fokotu’u ‘e he kau fakafofonga kuo fili ke fakanofo ko e Palemia Fili.

(6) ‘Oku ‘ikai ke fiema’u ‘e he Konisitutone ke fakahoko ‘a e fili-si’i ke fakakakato ‘a e sea kuo atā ‘i he Fale Alea kimu’a pea toki fakanofo ‘a e Palemia fo’ou ‘i he taimi ‘oku ‘ikai ke ‘i he Lakanga ai.

Founga ki he Fili- Si’i

(7) Ko e founga ngaue ki he fili-si’i ‘oku ‘i he malumalu ia ‘o e kupu 76 ‘o e Konisitutone, kupu 6 ‘o e Lao ki he Fale Alea (Vahe 4), mo e kupu 7 mo e 8 ‘o e Lao ki he Fili Fale Alea 1989 pea koe founga ngaue kehe ia mei he fili ‘o ha Palemia.

(8) Ko e founga ngaue ki he fili-si’i, ko e fili ia ke fetongi ha memipa ‘o e kau nopele pe kakai ‘i he taimi ‘e ‘atā ai ‘a e sea koe’uhi ko e pekia, fakafisi pe faka’ilo faka-Fale Alea (impeachment).

(9) Ko e taimi ‘oku hoko ai ha me’a pehe ni, kuo pau ke tu’utu’uni leva ‘e he Sea ke toe fili ‘e he vahe fonua na’e fili mei ai ‘a e fakafofonga ko ia ha fakafofonga ko hono fetongi. Kuo pau ki he Komisoni Fili, ‘i he femahino’aki mo e Sea, ke tu’utu’uni ki he taimi mo e feitu’u ‘o e fili ko ia ‘i he hili ‘a e pekia, fakafisi pe ko e taimi kuo ‘atā ai ha sea ‘o ha memipa.

(10) Ko e tokotaha kuo fili kuo pau te ne hoko ko e fakafofonga ia ki he toenga ‘o e taimi ‘o ia kuo ne fetongi.

(11) Fakatatau ki he kupu 76 ‘o e Konisitutone, kuo pau ke ma’u ‘e he Fale Alea ‘a e mafai ke fakataha mo fai ‘a e ngaahi ngaue neongo pe ‘oku ‘ikai katoa ai ‘a e Fale Alea. ‘Aia, neongo ‘oku te’eki ke fakakakato ‘a e founga ngaue ki he fili-si’i, ‘oku ‘i ai pe ‘a e mafai ‘o e Fale Alea ke fakahoko mo fakakakato ‘a ‘ene ngaahi ngaue angamaheni.

(12) Kuo tu’utu’uni ‘e he Sea ‘o e Komisoni Fili mo e Sea ‘o e Fale Alea ‘i he ‘aho 24 ‘o Sepitema 2019 ke fakahoko ‘a e Fili-Si’i ‘a e Fale Alea ki he fakafofonga ‘o e kakai mei he vahenga fili Tongatapu 1 ‘i he ‘aho 28 ‘o Novema 2019.

-------NGATA’ANGA ‘O E FAKA’ATĀ FAKAMATALA-------

Ki ha toe fakamatala, kātaki ‘o e fetu’utaki kia:

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ATTORNEY GENERAL'S OFFICE

MEDIA RELEASE

"CLARIFICATION ON THE APPOINTMENT OF THE PRIME MINISTER AND THE BYE-ELECTION PROCESS"

25 September 2019

(1) The Attorney General's Office would like to respond to overwhelming claims made from the public that the election process for a new Prime Minister to replace the late Hon. Samuela 'Akilisi Pohiva should not proceed until there is a bye-election to fill the vacant seat for the Tongatapu 1 Constituency in the Legislative Assembly.

Process for the appointment of a new Prime Minister

(2) Clause 50A of the Constitution of Tonga (Cap. 2) ("the Constitution") provides for the appointment process of the Prime Minister being appointed by His Majesty and circumstances in which it is deemed that the Prime Minister no longer holds office or has vacated his seat in the Legislative Assembly.

(3) Upon the death of the late Prime Minister on 12 September 2019, clause 50A of the Constitution is invoked and provides that the Legislative Assembly shall follow the procedures set out in the Schedule of the Constitution ("the Schedule") for the election or appointment of a new Prime Minister.

(4) The process provided in the Schedule only involves the Speaker and the elected members of the nobles and people's representatives who are current members of the Legislative Assembly.

(5) The Schedule provides for the Speaker to facilitate the election of a new Prime Minister in the following respects-

(a) Invite duly elected representatives to submit to him nominations for a Prime Minister Designate;

(b) Convene a meeting of all the duly elected representatives for the purpose of deciding through a secret ballot who they shall recommend for appointment as Prime Minister Designate; and

(c) Report to His Majesty the person the duly elected representatives recommend to appoint as the Prime Minister Designate.

(6) The Constitution does not require that a bye-election to fill in a vacant seat in the Legislative Assembly should precede the appointment of a new Prime Minister when he no longer holds Office.

Bye-Election Process

(7) The bye-election process is governed by clause 76 of the Constitution, section 6 of the Legislative Assembly Act (Cap. 4) and sections 7 and 8 of the Electoral Act 1989 and it is a separate process from the election of a Prime Minister.

(8) The bye-election process is for an election to be carried out to replace any representative of the nobles or of the people when their seat is vacant due to death, resignation or impeachment.

(9) When such instances occur, the Speaker must immediately call for an election of the district where the elected representative was elected from so that a replacement can be elected. The Electoral Commission, in consultation with the Speaker shall fix a time and place for an election following the death, resignation or when a member's seat is vacant.

(10) The person elected will hold office for the balance of the term of his predecessor.

(11) Clause 76 of the Constitution provides that the Legislative Assembly shall have the power to sit and act even though its numbers are not complete. Hence, even without the completion of the bye-election process , the Legislative Assembly has the power to sit and carry out its normal work.

(12) The Chairman of the Electoral Commission and the Speaker of the Legislative Assembly on 24 September 2019 declared that the Legislative Assembly Bye-Election for the representative of the people for the Tongatapu 1 electoral constituency will be held on 28 November 2019.

-------MEDIA RELEASE ENDS-------

For further information or clarification, please contact:

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