



Tonga

# **ELECTORAL COMMISSION ACT**

**Chapter 2.05**

**2020 Revised Edition**





# ELECTORAL COMMISSION ACT

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# ELECTORAL COMMISSION ACT

## AN ACT TO ESTABLISH AN ELECTORAL COMMISSION TO SUPERVISE ELECTIONS AND FOR RELATED PURPOSES<sup>1</sup>

Commencement [6<sup>th</sup> May 2010]

### PART 1 - PRELIMINARY

#### 1 Short Title

This Act may be cited as the Electoral Commission Act.

#### 2 Interpretation

In this Act, unless the context otherwise requires —

“**Commission**” means the Electoral Commission established by section 3;

“**election period**” means the period from the issue of writs of election until the close of polling at the election;

“**Supervisor of Elections**” means the Supervisor of Elections appointed under section 3 of the Electoral Act.

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## PART 2 - THE COMMISSION

### 3 Establishment of Commission

There is hereby established a Commission to be known as the Electoral Commission.

### 4 Members of Commission

- (1) The Commission shall consist of the following —
  - (a) a person appointed by the King for a term of five years, who will be the Chairman;
  - (b) the Supervisor of Elections; and
  - (c) a person appointed by the King for such term as he may deem fit.<sup>2</sup>
- (2) The Chairman and Commissioners and any person appointed under section 12 shall not be subject to direction by any person or the Public Service Act<sup>3</sup> in the exercise of their functions under this Act.<sup>4</sup>
- (3) In the event that the Chairman, for any reason, is unable to perform his functions as a Commissioner, the King may appoint an Acting Chairman.

### 5 Remuneration

The Chairman, members of the Commission and any person appointed under section 12, may be engaged on a part-time or full-time basis and shall be paid such remuneration or allowances, or both, as may be determined by the independent Commission on higher salary and remuneration.<sup>5</sup>

### 6 Officers

- (1) The Supervisor of Elections shall be responsible for the regular business of the Commission, supervise all officers and other staff and shall perform such other functions as are specified in the Electoral Act and any other Act.
- (2) The Commission may, subject to section 3(2) of the Electoral Act<sup>6</sup>, with the approval of Cabinet, appoint such qualified officers and staff, full-time or part-time, as may be required for the proper conduct of the business of the Commission.

### 7 Chairman

The Chairman shall be the head of the Commission and shall be responsible for the efficient and effective operation of the Commission.

**8 Meetings**

- (1) The quorum of the Commission shall be 2 members, one of whom shall be the Chairman.
- (2) The Chairman shall —
  - (a) call and attend regular meetings of the Commission;
  - (b) preside over the meetings of the Commission; and
  - (c) co-opt any person from the public or specialist to any meeting of the Commission if he considers it necessary.
- (3) The power of the Commission to perform its functions shall not be impaired by reason of the lack, absence or inability of the Chairman or any Commissioner to act.
- (4) Subject to this Act, the Commission shall determine its own procedure.

**9 Delegation**

The Commission may delegate to a member, officer or committee of the Commission the exercise of any of its functions but such delegation shall not prevent the exercise of the function by the Commission.

**PART 3 – ROLE OF COMMISSION****10 Principal role of the Commission**

- (1) In the exercise of its functions and duties, the Commission shall be independent.
- (2) The Commission shall, subject to this Act —
  - (a) undertake the long term planning for the proper conduct of elections and the establishment and maintenance of proper records and rolls;
  - (b) consider the need for regulations and other rules for the proper and efficient conduct of elections and related activities;
  - (c) as authorised by law, make and amend regulations and keep them under review;
  - (d) make recommendations for changes to the law concerning elections;
  - (e) under the powers granted to it in the Electoral Act, determine appeals, challenges and any other disputes;
  - (f) recommend prosecution for election offences;
  - (g) devise, undertake and review programmes of education for voters, candidates and others involved in elections;

- (h) compile and make reports on elections and related matters, and recommend changes to the law and procedures to improve the electoral system;
- (i) publish for general information such data and reports on elections as the Commission thinks fit;
- (j) within 3 months after any general election, report to the Cabinet on any changes that it recommends should be implemented before the next general election;
- (k) for the purpose of promoting fairness and equal opportunities for all candidates and to prevent abuses, to regulate the use of radio, television, newspaper, internet and other political notices, reports, appeals and advertising during the election period;
- (l) regulate and monitor electoral expenditure by candidates in accordance with section 24 of the Electoral Act; and
- (m) perform any of the functions that are specified for it in the Electoral Act or any other Act.

## **11 Funding of Commission**

The funds available to the Commission shall be —

- (a) moneys allocated by the Legislative Assembly for that purpose; and
- (b) moneys paid to or for it by an external agency or government for general purposes, for a specific purpose, or for the remuneration and benefit of specialists.

## **12 Specialists<sup>7</sup>**

- (1) The Commission may, for the purpose of any aspect of its functions or for a particular election or undertaking, engage specialists on a fixed term or temporary basis to —
  - (a) perform such work or assist in such matters as are specified; or
  - (b) advise the Commission.
- (2) The Commission may hire temporary staff including foreign civil servants or others when engaging experts as referred to in sub-section (1).

## **13 Protection of Commissioners and officers**

Persons appointed under this Act shall not be liable for any action done by them in good faith whilst carrying out their functions under this Act.



**14 Annual and other reports**

- (1) The Commission shall report to His Majesty the King and the Speaker of the Legislative Assembly —
  - (a) on its activities for each calendar year by 30 March in the next year; and
  - (b) upon the conduct of any general election, and on matters arising from such experience, within 3 months of the general election.

**15 Regulations**

The Electoral Commission may, with the approval of Cabinet, make regulations which are necessary or expedient for carrying out the purposes of this Act.

**16 Transitional**

Until an independent Commission on higher salary and remuneration is established, section 5 shall be read as if the reference to such an independent Commission was a reference to His Majesty in Council.

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## ENDNOTES

<sup>1</sup> Act 11 of 2010, commencement 10<sup>th</sup> of May 2010

### Amending Acts

Amending Acts	Commencement
Act 46 of 2010	24 November 2010
Act 13 of 2012	1 October 2012
Act 6 of 2020	3 August 2020

<sup>2</sup> Amended by Act 13 of 2012

<sup>3</sup> Refer to Volume 1.

<sup>4</sup> Amended by Act 46 of 2010

<sup>5</sup> Amended by Act 46 of 2010

<sup>6</sup> Refer to Volume 1.

<sup>7</sup> Amended by Act 6 of 2020.

The proposed amendment is as follows –

“Section 12 of the English version of the Electoral Commission Act 2010 is amended by numbering the current paragraph as (1) and inserting the following subsection (2) –

“(2) The Commission may hire temporary staff including foreign civil servants or others when engaging experts as referred to in subsection (1).”

The explanation for this amendment is set out in the Bill as follows –

“Section 12 of the English version of the Electoral Commission Act 2010 does not have a subsection (2), but the Tongan version as passed has a subsection (2) that says –

“(2) E ngofua ki he Komisoni ke ne tali ha kau ngaue fakataimi o ha kau ngaue fakapule’anga mei muli mo ha ni’ihi kehe pe, ‘i hono fakakau mai ‘o ha kau ngaue taukei ‘i he kupu si’i (1)”.

This clause makes the two versions the same by including an English language subsection the same as in the Tongan.”