



*Tonga*

# **ELECTORAL BOUNDARIES COMMISSION ACT ACT**

**Chapter 2.04**

**2020 Revised Edition**





# ELECTORAL BOUNDARIES COMMISSION ACT ACT

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# ELECTORAL BOUNDARIES COMMISSION ACT ACT

## AN ACT TO ESTABLISH AN ELECTORAL BOUNDARIES COMMISSION TO DEFINE THE BOUNDARIES OF ELECTORAL CONSTITUENCIES AND KEEP THOSE BOUNDARIES UNDER REVIEW<sup>1</sup>

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

### PART 1 - PRELIMINARY

#### 1 Short title

This Act may be cited as the Electoral Boundaries Commission Act.

#### 2 Interpretation

In this Act, unless the context otherwise requires —

“**census**” means a national population census made under section 8 of the Statistics Act<sup>2</sup>;

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

“**island group**” means one of the following —

- (a) Tongatapu;
- (b) Vava’u;
- (c) Ha’apai;
- (d) ‘Eua;

- (e) the Niuas.<sup>3</sup>

## PART 2 - THE COMMISSION

### 3 Establishment of Commission

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

### 4 Members of Commission

- (1) The Commission shall consist of —
- (a) a person who holds or has held judicial office;
  - (b) a person with skill and experience as a statistician; and
  - (c) a qualified land surveyor,
- appointed by His Majesty in Council for a term of five years, and —
- (i) one Commissioner shall be appointed to be the Chairman;
  - (ii) His Majesty in Council may revoke the appointment of a Commissioner for misconduct or incompetence, and appoint another person to be a Commissioner for the balance of that Commissioner's term.
- (2) The Commissioners and any person appointed under section 6 or 11 shall not be subject to the Public Service Act in the exercise of their functions under this Act.
- (3) In the event that a Commissioner resigns or is unable to perform his functions as a Commissioner, then His Majesty in Council may appoint a replacement Commissioner.

### 5 Remuneration

The Chairman, members of the Commission and any person appointed under section 6 or section 11, 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.

### 6 Officers

The Commission may, with the consent 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.
- (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 a specialist to any meeting of the Commission if he considers it necessary.
- (3) 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.

## 10 Funding of Commission

The funds available to the Commission shall be —

- (a) moneys allocated by the Legislative Assembly for that purpose;
- (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.

## 10A Communications from Prime Minister<sup>4</sup>

If the Prime Minister wishes to communicate with the Commission he shall do so in writing and a copy of every communication made under this section to the Commission in any year shall be included in the annual report of the Commission for that year laid before the Legislative Assembly under section 22.

## 11 Specialists

The Commission may, for the purpose of any aspect of its functions or for a particular 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.

## 12 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.

## 13 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 determination of electoral boundaries, within 3 months of the determination.
- (2) The Speaker shall table such reports before the Legislative Assembly as soon as possible.
- (3) A copy of every report of the Commission, together with properly authenticated maps of the electoral constituencies fixed by the report, shall be presented by the Commission to the Legislative Assembly within 3 sitting days after the date of publication if the Legislative Assembly is then in session, and, if not, then within 3 sitting days after the date of the commencement of the next ensuing session.

## 14 Accounting and Audit

- (1) The Commission shall keep proper accounts and other records in relation to its finances and shall prepare in respect of each financial year a statement of accounts.
- (2) The accounts of the Commission shall be audited annually by the Auditor General.
- (3) As soon as the accounts have been audited, the Commission shall forward a copy of the statement of accounts referred to in subsection (1) to the Cabinet, together with a copy of any report made by the auditor on that statement of accounts or on the accounts of the Commission.<sup>5</sup>
- (4) The accounts of the Commission, as soon as may be after the close of each financial year and after audit, shall be published in such manner as the Cabinet decides.<sup>6</sup>
- (5) The audited accounts shall be included in the annual report of the Commission submitted under section 13.<sup>7</sup>

## PART 3 – ROLE OF COMMISSION

### 15 Independence of the Commission

In the exercise of its functions and duties, the Commission shall be independent.

### 16 Principal role of the Commission

The Commission shall, subject to this Act, —

- (a) determine the boundaries of electoral constituencies for the election of representatives of the people in accordance with this Act, clause 60 of the Constitution, and any other applicable Act;
- (b) by regulations under section 20 define and establish those electoral constituencies;
- (c) after each census, and at other times that it considers justified, review the results of the census and any other factors and, if the Commission considers it necessary, re-determine the electoral boundaries and re-define and establish the electoral constituencies;
- (d) make recommendations for changes to the law concerning electoral boundaries; and
- (e) perform any of the functions that are specified for it in the Constitution, the Electoral Act or any other Act.

### 17 Determination of boundaries<sup>8</sup>

- (1) Each determination of electoral boundaries shall be made by dividing Tonga into 17 electoral constituencies in accordance with the principles specified in this section and section 18.
- (2) Subject to subsection (3) electoral constituencies within any island group that includes more than one electoral constituency shall contain an equal number of residents.
- (3) If, in the opinion of the Commission, in taking into account the considerations specified in subsection (4), electoral constituencies within any island group that includes more than one electoral constituency (including an island group that incorporates a merged population pursuant to section 18) should contain unequal numbers of residents, the Commission may in determining electoral constituencies in such island group make an allowance by way of addition or subtraction of population to an extent not exceeding 10 per centum more or less:

Provided that it shall not be a ground for contesting the validity of any election that electoral constituencies within any such island group vary in population size by more than 10 per centum.

- (4) The Commission shall give due consideration to —
- (a) the principle of population equality between electoral constituencies;
  - (b) density of population;
  - (c) physical features including the natural boundaries of islands;
  - (d) local, town, district and traditional divisions and administrative areas;
  - (e) the keeping of villages, estates, districts and communities of interest intact where possible;
  - (f) community of interests within the proposed electoral constituency, including economic, social and regional interests;
  - (g) means of communication and travel within the proposed electoral constituency;
  - (h) geographical distribution of the settlements and the ease of communications between persons therein and their representative; and
  - (i) the contiguity of electoral boundaries.
- (5) The Commission shall not, unless it considers it to be in the national interest, make a determination of electoral boundaries within the period of 6 months before the date on which an election shall be held in accordance with clause 77(1) of the Constitution.<sup>9</sup>

## 18 Principles in determining boundaries<sup>10</sup>

The Commission shall observe the following general principles in determining electoral boundaries —

- (a) electoral constituencies should be allocated between the various island groups according to population distribution; but if in the opinion of the Commission the population of an island group is too small to justify that island group comprising a complete electoral constituency, then the population of that island group should for the purposes of the determination of electoral constituencies be merged with the population of another island group, and in such case the principle specified in this subparagraph shall apply as if that merged population comprised a single island group;
- (b) the principle set out in paragraph (a) should only be departed from if the Commission considers that there is strong justification on the basis of those considerations specified in section 17(4);
- (c) the drawing of boundaries along roads and coastlines wherever possible.

## 19 First determinations

The Commission shall make the —

- (a) first determination of electoral boundaries under section 17(1) as soon as practicable after the commencement of this Act:  
Provided that the determination of the electoral boundaries for the 2010 general election shall be based on the recommendations of the Royal Constituency Boundaries Commission as approved by the Legislative Assembly; and
- (b) second determination of electoral boundaries under section 17(1) as soon as practicable after it has received the results of the first census taken after the commencement of this Act.

### 19A Notice of proposed boundaries<sup>11</sup>

- (1) When the Commission proposes to make a determination under section 17, it shall publish in the *Gazette* a notice —
  - (a) stating places at which the public may inspect, without charge —
    - (i) the names, and a description of the boundaries, of the proposed constituencies; and
    - (ii) a summary, in respect of each proposed constituency, of the reasons why the boundaries described are being proposed; and
  - (b) stating the last date on which the Commission will receive written objections to the proposed boundaries or any of them and to the proposed names or any of them (which date shall be not less than one month after the date of the publication of the said notice in the *Gazette*).
- (2) Any failure to comply with subsection (1)(a) shall not of itself invalidate any decision or proceedings of the Commission.
- (3) Where any objections are received under subsection (1)(b), the Commission shall publish in the *Gazette* a notice —
  - (a) containing a summary of the objections;
  - (b) stating a place or places at which the objections are available for public inspection; and
  - (c) stating the last date on which the Commission will receive written counter-objections to those objections or any of them (which date shall not be less than 1 month after the date of the publication of the said notice in the *Gazette*).
- (4) The Commission shall, before coming to a final determination, duly consider any objections lodged under subsection (1)(b) and any counter-objections lodged under subsection (3).

### 19B Report and maps to be laid before Legislative Assembly<sup>12</sup>

A copy of every report of the Commission, together with properly authenticated maps of the electoral constituencies fixed by the report, shall be presented by the

Commission to the Legislative Assembly within 3 sitting days after the date of publication if the Legislative Assembly is then in session, and, if not, then within 3 sitting days after the date of the commencement of the next ensuing session.

## 20 Regulations determining boundaries

- (1) The Commission shall determine, define and establish by regulations made under this section and published in the Gazette, the boundaries of the electoral constituencies into which the Kingdom is to be divided and those electoral constituencies shall, until altered by regulations under this section, be the electoral constituencies for the purpose of elections of representatives of the people:

Provided that the regulations to be enacted to determine the electoral boundaries for the 2010 general election shall be based on the recommendations of the Royal Constituency Boundaries Commission as approved by the Legislative Assembly.

- (2) The boundaries fixed by the Commission in respect of the proposed constituencies shall be defined by the Commission by the use of such words, maps, and graphic means as are sufficient to define those proposed boundaries accurately.
- (3) Section 9 of the Government Act (*rescission of regulations*) does not apply to regulations made under this section.

## PART 4 - GENERAL

### 21 Census and statistics

- (1) To facilitate the second determination of boundaries under this Act, the Minister responsible for the administration of the Statistics Act shall cause a general population census to be carried out before the next General Election.
- (2) The Government Statistician shall certify and provide to the Commission such information, calculations and projections that the Commission may require to enable it to perform its functions under this Act.

### 22 Repeal, saving and transitional

- (1) The Order in Council made in December 2009 under the Royal Commissions Act<sup>13</sup> for the purpose of establishing the Royal Constituency Boundaries Commission shall be repealed on the day that this Act comes into force.
- (2) The repeal effected by subsection (1) shall not affect the validity of any act of the Royal Constituency Boundaries Commission or any of the protections and immunities attaching to its members.

- (3) The offices and assets of the Royal Constituency Boundaries Commission shall after the repeal effected by subsection (1) become vested in the Commission.
- (4) 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.

## ENDNOTES

<sup>1</sup> Act 15 of 2010; commencement by G5/2010

### Amending Acts

Amending Acts	Commencement Dates
Act 42 of 2010	24 November 2010
Act 15 of 2012	27 November 2012
Act 7 of 2014	25 August 2014

<sup>2</sup> Refer to Volume 1 Numerical List under 2020 Revised Edition.

<sup>3</sup> Amended by Act 15 of 2012

<sup>4</sup> Inserted by Act 15 of 2012

<sup>5</sup> Inserted by Act 15 of 2012

<sup>6</sup> Inserted by Act 15 of 2012

<sup>7</sup> Amended by Act 15 of 2012

<sup>8</sup> Substituted by Act 15 of 2012

<sup>9</sup> Inserted by Act 7 of 2014

<sup>10</sup> Substituted by Act 15 of 2012

<sup>11</sup> Inserted by Act 15 of 2012

<sup>12</sup> Inserted by Act 15 of 2012

<sup>13</sup> Refer to Volume 1 Numerical List under 2020 Revised Edition.