Tonga

ELECTORAL ACT

Chapter 2.03

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ELECTORAL ACT

AN ACT TO REGULATE ELECTIONS OF REPRESENTATIVES TO THE LEGISLATIVE ASSEMBLY AND FOR RELATED MATTERS[1]

Commencement [see endnotes[2]]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Electoral Act.

2 Interpretation

In this Act, unless the context otherwise requires —

"**candidate**" means a candidate for election or by-election;

"**election**" includes a by-election and means an election of representatives of the Nobles or of the People in the Legislative Assembly; and "**by-election**" has a corresponding meaning;

"**Electoral Commission**" means the Commission established by the Electoral Commission Act;[3]

"**provisional roll"** means the electoral roll kept under section 4(1), as amended up to the date of its publication under section 5(1);

"returning officer" includes assistant returning officer and chief returning officer;

"**Supervisor**" means the Supervisor of Elections appointed under section 3 (1), and includes the assistant Supervisor;

"**Tongan subject**" has the meaning given in section 2 of the Nationality Act.[4]

PART II - ORGANISATION

3 Supervisor of elections[5]

(1) The Electoral Commission shall appoint a Supervisor of Elections who shall have the powers and duties conferred upon him by this Act and any other Act.

(2) The Supervisor of Elections shall, with the approval of the Electoral Commission, appoint a returning officer for each electoral district and constituency and shall also, where necessary, appoint an assistant returning officer and such other assistants as he may require.[6]

(3) The Supervisor of Elections shall, subject to the direction of the Electoral Commission, have the general control over and supervision of the election, the preparation of the electoral roll, the handling of complaints concerning the roll and actions of candidates and their supporters, the preparation and distribution of ballot papers, ballot boxes, voting cubicles and other fixtures needed for the election, and arranging adequate security measures.

4 The roll

(1) An electoral roll shall be kept at the Office of the Electoral Commission showing all persons qualified under clause 64 of the Constitution to be electors of representatives of the people.[7]

(2) The roll shall be kept by the Supervisor of Elections and shall —

(a) be divided into electoral constituencies;[8]

(b) be based on the final roll used for the previous election;

(c) be amended to show errors since discovered, newly qualified electors, deceased electors, persons who are no longer Tongan subjects or are disqualified electors, and the latest constituency in which people are entitled to vote;[9]

(d) include for each constituency a separate section showing electors who reside overseas and their address.[10]

(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.[11]

(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 constituencies –

(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.[12]

(5) A person shall not be entitled to be registered as an elector in more than one constituency at the same time.[13]

(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.[14]

(7) The Supervisor shall, before publishing the roll as hereafter provided, search the records of the Registrar of Births, Deaths and Marriages for deaths and marriages and the Supreme Court for convictions of indictable offences and amend the roll accordingly.[15]

(8) Failure to apply as required by subsection (3) and failure to notify as required by subsections (5) and (6) constitutes an offence liable to punishment by a fine not exceeding $50 and the Supervisor, despite such failure, may amend the roll if he is satisfied that such person is entitled to be entered on the roll, or liable to be deleted therefrom or entered on the roll for a different constituency.[16]

(9) Any person whose application for registration as an elector has been refused, or whose name has been removed from the register, or who disputes the electoral constituency in which he has been registered, may appeal in writing to the Electoral Commission.[17]

(10) Any person may between the hours of 10 a.m. and 3 p.m. on any working day search the roll.

5 Publication of roll

(1) Not less than 6 months before the date when an election must be held, the Supervisor shall publish the provisional roll in the Gazette, and shall ensure that the roll is as correct as he can make it from information held or obtainable by him.

(2) Any person may, within 2 months of the publication of the provisional roll, object to the Supervisor, claiming —

(a) that any name is wrongly included;

(b) that any name is wrongly omitted;

(c) that any name is included in the wrong electoral constituency[18].

(3) The Supervisor shall investigate all such objections made under subsection (2) and shall amend the roll where he is satisfied that it contains an error. The Supervisor shall notify each objector of his decision on the objection and 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 Commission.[19]

(4) After deciding upon any objections and after noting the result of any finalised appeals, the Supervisor shall publish, not more than 4 months nor less than 2 months from the date set for an election, the final roll for that election.

(5) The final roll shall be conclusive of the electors in each constituency who are entitled to vote at that election and shall not be amended except —

(a) to include any elector who becomes qualified to vote in any constituency between publication and 14 days prior to election;[20] or

(b) to exclude any elector who has died or becomes disqualified to vote in any constituency between publication and election day; or

(c) to show the result of any decision or appeal under subsection (3) not finalised by the time of publication of the final roll; or

(d) to correct any clerical error.[21]

(6) No objection may be made that any elector included in the final roll was not entitled to be included in the roll, or that any elector was omitted from the final roll.

(7) Notwithstanding subsection (6), the inclusion of an elector in the roll shall not affect the power of the Court to hold that any candidate was not entitled to be a candidate.

(8) For the purposes of this section, the word "election" does not include a by-election.[22]

5A Roll for by-election[23]

The roll to be used in a by-election in any constituency, shall be the roll used in the last election for that constituency but including any elector who becomes qualified to vote in any constituency between the last election and 14 days prior to the by-election.[24]

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.[25]

PART III - ELECTIONS

7 Election writs[26]

(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.

8 Nominations

(1) After writs of election have been issued, the Supervisor shall publish in the Gazette and in at least one newspaper having wide circulation the day or days when nominations of candidates shall be received for the seats to be filled by election. Receipt of nominations shall be at the Electoral Commission Office in the case of Tongatapu, at the Governor's Office in the case of Vava'u and Ha'apai, and at the Offices of Government Representatives respectively in the case of 'Eua, Niuatoputapu and Niuafo'ou.[27]

(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.[28]

9 Candidates

(1) On the day or days and at the place fixed, the returning officers shall attend between the hours of 10 a.m. and 3 p.m. and receive the nomination of any duly qualified candidate or candidates for the seat or seats to be filled.[29]

(2) Every candidate shall be nominated in writing in accordance with Form 4 of the Schedule signed by 50 persons who are qualified electors for that electoral constituency. The candidate shall assent to the nomination and make the declaration therein in writing by fixing his signature to the nomination paper. 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. [30]

(3) At the time of nomination the candidate shall deposit with the returning officer the sum of $400 and shall receive from the returning officer a duly signed Government Revenue receipt therefor. A deposit paid by a candidate shall not be refunded in any circumstances.[31]

(4) A candidate shall, before completing his nomination, deliver to the returning officer a written clearance from the Supreme Court and Magistrate's Court to the effect that the Supreme Court and Magistrate's Court has no record of an outstanding order as specified in clause 65 of the Constitution relating to the candidate.[32]

(5) If at 3p.m. on the last day only the same number of candidates have been nominated as there are vacant seats the returning officer shall declare the candidate or candidates duly elected.[33]

(6) This section does not apply to elections of representatives of the nobles.

9A Withdrawal of nomination [34]

(l) Any candidate may withdraw his nomination by giving the Supervisor Notice in Form 8 of the Schedule, not later than 7 days after the receipt of the

nomination of candidates. The Supervisor shall forthwith give public notice of any withdrawals of candidacy.[35]

(2) A withdrawal of nomination which does not comply with subsection (l) of this section shall have no effect.

(3) If any candidate withdraws his nomination in accordance with subsection (1) of this section, he shall not be capable of being elected at any polling station.

(4) A candidate who withdraws shall forfeit his deposit.

9B Elections of representatives of the nobles [36]

Elections of the representatives of the nobles shall be in accordance with such Regulations as the Prime Minister with the consent of His Majesty in Council may make.

10 Voting

On the day or days fixed by the writ of election the returning officers shall severally attend at the polling station named between the hours of 9 a.m. and 4 p.m., which shall be the time for voting unless otherwise stated in the writ of election.

10A Adjournment of Poll[37]

(1) Where the polling at any polling station cannot start or has been suspended whether by reason of natural disaster, bad weather conditions or any other case, the Supervisor may adjourn the taking of the poll at that polling station to the following day, and if necessary from day to day until the poll can be taken, and shall, if he adjourns the taking of the poll forthwith give public notice of the adjournment in such manner as he thinks fit.

(2) Notwithstanding subsection (1), the poll shall not be kept open for more than 10 hours at any polling station.

(3) Where the close of the poll at any polling station is adjourned under this section for any number of days, the day on or before which the Writ is made returnable shall be postponed by the same number of days.

11 Voting to be facilitated

(1) Every employer shall allow any person employed by him on polling day sufficient time off work with full pay to enable that employee to vote at the nearest polling station for the constituency in which he is registered.[38]

(2) An employer who fails to comply with this section is guilty of an offence and liable to a fine not exceeding $500.

12 Procedure on voting [39]

(1) The ballot paper shall be in the general form of Form 5 of the Schedule hereto and shall show on the face of it the names and town or village of the candidates. The order in which the names of the candidates are printed on the ballot paper shall be determined by ballot conducted by the Returning Officer in each constituency immediately upon the close of nominations in the presence of such of the candidates as are present, and a police officer.

(2) No identification, such as occupation, title, honour, or degree, shall be included on the ballot paper in addition to any candidate's name.

(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 cross out the electors name on the roll, initial at the back of the ballot paper and then hand the ballot paper to him.**[40]**

(4) The elector shall retire to a voting cubicle or some private space in the voting area and mark his ballot paper with a "√" against the name of the candidate for whom he wishes to vote:

Provided that no ballot paper shall be rejected as invalid if it clearly indicates the candidate for whom the elector intended to vote, whether that indication is made in the manner prescribed by this section or otherwise.**[41]**

(5) After marking his ballot paper the elector shall fold the paper and deposit it in the ballot box.

(6) Any voter who not having deposited his ballot paper, in the ballot box, satisfies the returning officer that the ballot paper has been spoilt by inadvertence may be supplied with a fresh ballot paper, in accordance with the regulations made by the Commission.**[42]**

(7) Subsections (1), (2), (3) and (4) shall not apply to noble's elections. **[43]**

13 Voting in another district

(1) An elector residing temporarily in an electoral district other than that in which he is registered may vote at an election relating to the district in which he is registered, on proof that he is so registered.

(2) The returning officer of the district in which such an elector is temporarily resident shall accept such vote provided that such elector is registered on the roll under the appropriate constituency. **[44]**

14 Identity of voter

If the returning officer is in doubt whether an elector is the person whom he represents to be, the returning officer may require the elector —

(a) to take the oath set out in Form 6 of the Schedule; and

(b) to place his signature on and the oath form, and any person refusing shall not be allowed to vote. [45]

15 Void ballot papers

Any ballot paper on which votes are given for more or for less than the required number of representatives to be elected for that electoral district or constituency shall be void and not counted.[46]

16 Counting

(1) The Officer in charge of each polling station shall after the time for voting has ceased count the votes on the ballot papers and then publicly announce at the polling station the number of votes received by each candidate. He shall then as soon as possible forward a certificate to that effect to the returning officer of the district with the ballot papers. The returning officer shall as soon as possible ascertain the number of votes received throughout the electoral district by each of the candidates and shall declare the same in writing, together with the names of the candidates who have been elected. Such declaration shall be sent to the Supervisor of Elections, who shall publish the result.[47]

(2) If 2 or more candidates receive the same highest number of votes, the winning candidate shall be selected by the toss of a coin in the presence of the candidates and in such manner as the Supervisor shall determine: 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.[48]

17 Recounts

(1) Any candidate may, within one week of the declaration of the poll, demand in writing addressed to the Supervisor of elections, that the votes be recounted.

(2) Upon receipt of a demand for a recount and after payment of the fee payable under subsection (5), the Supervisor shall recount the votes in that constituency and he may substitute his decision concerning any doubtful ballot paper for that made by the returning officer or the officer in charge of the polling station.[49]

(3) The Supervisor shall, after recounting the votes, announce his decision on the vote and this decision shall be final.

(4) If no recount is demanded, the decision of the returning officer or officer in charge of the polling station as to any question arising in respect of any ballot paper, or as to the number of votes counted, shall be final.

(5) Any candidate demanding a recount shall pay, in advance, to the Supervisor, a fee of $1,000 which shall not be refunded unless —

(a) as a result of the recount, a different candidate is elected; or

(b) the Supervisor, in announcing his decision on the recount, certifies that in his opinion the demand for a recount was reasonable.[50]

18 Police to control [51]

The Minister of Police shall cause to be stationed at each polling station one or more uniformed police officers whose duty shall be —

(a) to ensure that the election is conducted freely and fairly in accordance with this Act;

(b) to ensure compliance with the provisions of section 23; and

(c) to maintain order in the polling station and the vicinity.

PART IV - ELECTION OFFENCES

19 False impersonation

(1) Every person who does or who aids, counsels, or procures the doing of—

(a) voting as some other person, whether that person is living or dead or is a fictitious person; or

(b) voting more than once at any election, whether in the same electoral constituency or another, is guilty of the offence of false impersonation and is liable to a fine not exceeding $5,000 or to imprisonment for any period not exceeding 2 years, or to both such fine and imprisonment.[52]

(2) It is the duty of the Supervisor to report the occurrence of any possible offence under this section to the Attorney General who, if he is satisfied that there are reasonable grounds, shall prosecute the alleged offender.

20 False information

(1) Every person who wilfully gives false or misleading information to the Supervisor, a returning officer, or any other electoral officer, whether under oath or in writing or orally, for the purpose of the compilation of the roll or to affect the eligibility of any person to vote or to be a candidate, is guilty of the offence of giving false information and is liable to a fine not exceeding $3,000 or to imprisonment for any period not exceeding 1 year or to both such fine and imprisonment.[53]

(2) It is the duty of the Supervisor to report the occurrence of any possible offence under this section to the Attorney General who, if he is satisfied that there are reasonable grounds, shall prosecute the alleged offender.

(3) If any candidate is convicted of an offence under this section, whether before or after the relevant election, and he is elected as a representative at that election, the Court shall declare the election of that representative to be void and if he has already taken his seat in the Legislative Assembly, he shall be unseated by the Assembly.[54]

21 Bribery

(1) Every person commits the offence of bribery who, directly or indirectly, by himself or by any other person on his behalf —

(a) gives any money or valuable gift to or for any elector, or to or for any other person on behalf of any elector or to or for any other person, in order to induce any elector to vote or refrain from voting; or

(b) corruptly does any act as aforesaid on account of any elector having voted or refrained from voting; or

(c) gives any money or valuable gift as aforesaid to or for any person in order to induce that person corruptly to procure, or to try to procure, the return of any person at an election or the vote of any elector; or

(d) in consequence of any such gift as aforesaid, procures, or engages, promises or tries to procure, the return of any person at any election or the vote of any elector; or

(e) advances or pays or causes to be paid any money to or to the use of any other person with the intent that money or any part thereof shall be expended in bribery at any election; or

(f) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election; or

(g) receives before or after an election, or agrees or contracts for any money or valuable gift for himself or any other person for voting or agreeing to vote or refraining or agreeing to refrain from voting or inducing any other person to so vote or refrain from voting.

(2) In this section, a reference to giving money or valuable gift includes a reference to giving, lending, agreeing to give or lend, offering, promising or promising to procure or try to procure, any money or valuable gift.

(3) For the purposes of this section, any money or valuable gift given or offered or agreed to be given (in the absence of good consideration) to any person (except a person named in section 24(3)) within 3 months of any election by or on behalf of a candidate, shall be deemed to have been given or offered or agreed to be given for the purpose of influencing the vote, unless the contrary be proved.

(4) Every person who commits bribery is guilty of an offence and is liable to a fine not exceeding $5,000 or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.[55]

(5) If any candidate is convicted of bribery, whether before or after the relevant election, and he is elected as a representative at that election, the Court shall declare the election of that representative to be void and if he has already taken his seat in the Legislative Assembly, he shall be unseated by the Assembly.

(6) Any person who believes that an offence under this section has been committed, may report the circumstances to the Supervisor who shall —

(a) immediately call upon the alleged offender for an explanation;

(b) investigate the complaint;

(c) if satisfied that there are good grounds for complaint, notify the Attorney General who shall, if he considers that there are good grounds, prosecute the alleged offender.

22 Threats etc.

(1) It is an offence to threaten in any way the person, family or property of any elector in an attempt to influence the elector's vote at an election or in an attempt to induce him to vote or refrain from voting.

(2) A person guilty of an offence against this section is liable to a fine not exceeding $5,000 or to imprisonment for any period not exceeding 3 years or to both such fine and imprisonment.[56]

(3) If a person convicted under this section was elected at the election, the Court shall declare the candidate's election to be void and if he has already taken his seat in the Legislative Assembly he shall be unseated by the Assembly.

23 General offences [57]

(1) Every person commits an offence who —

(a) In any way interferes with, hinders, obstructs, annoys or pesters any elector, either in the polling station or while the elector is on the way to the polling station, with the intention of influencing the elector or advising the elector as to the elector's vote;

(b) At any time on polling day before the close of the poll in or in view or hearing of any public place or polling station makes a speech having direct or indirect reference to the poll;

(c) 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:

Provided that this paragraph shall not restrict the publication by radio or television broadcast made by a broadcasting station of —

(i) any public notice placed by the Supervisor or a Returning Officer; or

(ii) any news in relation to an election;[58]

(d) At any time on polling day before the close of the poll maintains in any public place or in the vicinity of a polling station a kava booth, entertainment tent, or a vehicle whose primary purpose is to exhibit election campaign displays, for the purpose of influencing the elector as to the elector's vote;

(e) At any time on polling day before the close of the poll, within, or at the entrance to, or in the vicinity of any polling station —

(i) gives or offers to give any person any written or oral information as to any name or number on the final roll or any provisional roll being used at the election;

(ii) permits or offers to permit any person to examine any copy of the final roll or any provisional roll being used at the election:

Provided that nothing in this paragraph shall apply to Returning Officers carrying out their duties under this Act;

(f) At any time, with intent to mislead or defraud electors, prints or distributes or delivers to any person anything being or purporting to be an imitation of any ballot paper to be used at a poll and having thereon the names of the candidates or any of them, together with any direction or indication as to the candidate for whom any person should vote, or in any way containing any such direction or indication, or having thereon any matter likely to influence any vote;[59]

(g) At any time on polling day before the close of the poll exhibits in or in view of any public place, or publishes, or distributes, or broadcasts, —

(i) any statement advising or intended or likely to influence any elector as to the candidate for whom the elector should or should not vote; or

(ii) any statement advising or intended or likely to influence any elector to abstain from voting; or

(iii) any candidate's name, photograph, poster, emblem, slogan, or logo:

Provided that this paragraph shall not apply to any statement, name, photograph, emblem, slogan, or logo in a newspaper published before 6 p.m. on the day before polling day:

Provided also that this paragraph shall not restrict the publication of any candidate's name in any news which relates to an election and which is published in a newspaper or other periodical or in a radio or television broadcast:

Provided further that this paragraph shall not apply to any name, photograph, poster, emblem, slogan or logo, or items of a similar

nature, which are worn or displayed by any person (not being an electoral official) on his or her person or on any vehicle other than a vehicle referred to in paragraph (d);

(h) At any time on polling day before the close of the poll prints or distributes or delivers to any person any card or paper (whether or not it is an imitation ballot paper) having thereon the names of the candidates or any of them;

(i) Exhibits or leaves in any polling booth any card or paper having thereon any direction or indication as to how any person should vote or as to the method of voting;

(j) In any way interferes with, hinders, obstructs, annoys, threatens or abuses any official at or in the vicinity of a polling station.

(2) It shall be a defence to a prosecution for an offence against subsection (1)(g) of this section that relates to the exhibition in or in view of a public place of a statement, name, photograph, poster, emblem, slogan or logo, if the defendant proves that —

(a) the exhibition was inadvertent; and

(b) the defendant caused the exhibition to cease as soon as the defendant was notified by the Supervisor, a Returning Officer or a Police Officer that the exhibition was taking place.

(3) In this section "public place" has the same meaning as in section 2 of the Order in Public Places Act.[60]

(4) Nothing in this section shall apply to any official statement or announcement made or exhibited under the authority of this Act.

(5) If a police officer has reasonable grounds to believe that any person has committed an offence against subsection (1), he may subject to subsection (2) of this section arrest the alleged offender without warrant.

(6) A person guilty of an offence against this section is liable on conviction to a fine not exceeding $3,000 or to imprisonment for any period not exceeding one year or to both such fine and imprisonment.[61]

23A Duties of returning officers [62]

(1) Every returning officer appointed for the purposes of this Act shall use or disclose information acquired by him in that capacity only in accordance with his official duty.

(2) No returning officer, except for some purpose authorised by law, shall —

(a) interfere with or attempt to interfere with a voter when marking his vote;

(b) attempt to obtain in the vicinity of a polling station information as to the candidate for whom any voter is about to vote or has voted;

(c) communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter is about to vote or has voted, or as to the number on the ballot paper given to any voter.

(3) Every returning officer shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate any information obtained at the counting as to the candidate for whom any vote is given in any particular ballot paper.

(4) No returning officer shall directly or indirectly induce any voter to display his ballot paper after he has marked it so as to make known to any person the name of any candidate for or against whom he has voted.

(5) Every person who contravenes any provisions of this section is guilty of an offence and is liable on conviction to a fine not exceeding $15,000 or to imprisonment for any period not exceeding 18 months or to both such fine and imprisonment.

24 Permitted election expenses

(1) No candidate may spend, on any election campaign, more than the sum of $20,000.[63]

(2) Without prejudice to the generality of subsection (1), the following payments are deemed to be spending on an election campaign - unless contrary to section 21 —

(a) any donation made within 6 months of an election, either by a candidate or on his behalf;

(b) the cost of any entertaining (including food, drink or provision) paid by or on behalf of a candidate within 6 months of an election;

(c) travelling or transportation expenses paid by or on behalf of a candidate, to enable people to travel to a polling station.

(3) For the purposes of this section any sum expended by a candidate for his personal expenses, or those relating to his spouse, parents, grandparents, grandchildren, the brothers and sisters and half brothers and half sisters of his parents, spouse's parents, brothers and sisters and half brothers and half sisters or their children, or the brothers and sisters and half brothers and half sisters of his spouse or their children, or in relation to a church or for a charitable purpose; shall be disregarded.

(4) Within 14 days of an election, every candidate shall deliver to the Supervisor a signed statement of his election expenses in Form 7 of the Schedule, itemized and complete in all respects.[64]

(5) It is an offence for any candidate to spend on an election campaign more than the sum of $20,000 or to fail to deliver the statement referred to in sub-section (4) or to deliver a false statement, and any person found guilty shall be liable to a fine not exceeding $10,000.[65]

(6) If a person convicted under subsection (5) was elected at the election, and if the Court considers that the circumstances of the offence are sufficiently serious, the Court may declare the candidate's election to be void and if he has already taken his seat in the Legislative Assembly he shall be unseated by the Assembly.

PART V - ELECTION PETITIONS

25 Method of questioning election

(1) No election and no declaration of poll shall be questioned except by a petition complaining of an unlawful election or unlawful declaration (in this Act referred to as an election petition) presented in accordance with this Part of this Act.

(2) A petition complaining of no declaration shall be deemed to be an election petition, and the Supreme Court may make such order thereon as the Court thinks expedient for compelling a declaration to be made or may allow the petition to be heard as provided with respect to ordinary election petitions.

26 Election petitions

(1) An election petition may be presented to the Supreme Court by one or more of the following persons —

(a) a person who voted or had a right to vote at the election;

(b) a person claiming to have had a right to be elected or returned at the election;

(c) a person alleging himself to have been a candidate at the election.

(2) The member whose election or result is complained of shall be the respondent to the petition, and if the petition complains of the conduct of any official the Chairman of the Electoral Commission shall also be a respondent.[66]

(3) The petition shall be in such form and state such matters as are prescribed by rules of court, and be signed by the petitioner or all the petitioners if more than one.

(4) The petitioner shall present his petition by filing it in the office of the Supreme Court at Nuku'alofa, and shall serve a copy of it on each respondent thereto.

(5) The petition shall be served personally, or in such other manner as may be prescribed by rules of court.

27 Time for presentation of election petition

(1) Subject to the provisions of this section, an election petition shall be presented within 28 days after the day on which the result of the poll has been declared.

(2) If the petition questions the election or result upon an allegation of bribery and specifically alleges a payment of money or other reward to have been made by the member or on his account or with his knowledge and consent since the day of the declaration of the poll in pursuance or furtherance of the alleged bribery, it may be presented within 28 days after the date of the payment.

(3) For the purposes of this section an allegation that an election is avoided under section 33 of this Act shall be deemed to be an allegation of bribery, notwithstanding that the offences alleged are or include offences other than bribery.

28 More than one petition relating to same election

Where more petitions than one are presented relating to the same election or result, all those petitions shall be dealt with as one petition.

29 Rules of Court

The Chief Justice may make rules of court in respect of election petitions.

30 Court and place of trial

Every election petition shall be tried by the Supreme Court at such place as the Chief Justice directs.

31 Trial of petition

(1) An election petition shall be tried in open Court and notice of the time and place of trial shall be given not less than 14 days before the day of trial.

(2) The Court may in its discretion adjourn the trial from time to time, but the trial shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day on every lawful day until its conclusion.

(3) The trial of an election petition shall be proceeded with notwithstanding that the respondent may have become disqualified as a member of the Legislative Assembly, or that the Legislative Assembly may have been prorogued.

(4) Subject to this Act, the Court shall have jurisdiction to inquire into and adjudicate on any matter relating to the petition in such manner as it thinks fit, and in particular may at any time during the trial direct a recount or scrutiny of the votes given at the election.

(5) On the trial of an election petition complaining of an unlawful election declaration and claiming the seat for some person, the respondent may give evidence to prove that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.

32 Avoidance of election of candidate

(1) Where a candidate who has been elected at any election is proved to the satisfaction of the Court at the trial of an election petition to have been guilty of an offence against sections 21, 22 or 24 at the election, the Court shall (where the offence is against section 24 if it considers the circumstances of the offence to be sufficiently serious), declare the election of that candidate to be void and if he has already taken his seat in the Legislative Assembly he shall be unseated by the Assembly.

(2) Nothing in subsection (1) shall prevent any person being charged with an offence against sections 21, 22 or 24.

33 Avoidance of election for general corruption

(1) Where it is reported by the Supreme Court on the trial of an election petition that corrupt or illegal practices committed in relation to the election for the purpose of promoting or procuring the election of any candidate thereat have so extensively prevailed that they may be reasonably supposed to have affected the result, his election, if he has been elected, shall be void and if he has already taken his seat in the Legislative Assembly he shall be unseated by the Assembly.

(2) Except under this section, an election shall not be liable to be avoided by reason of the general prevalence of corrupt or illegal practices.

34 Votes to be struck off for bribery etc.

Where, on the trial of an election petition claiming the seat for any person, a candidate is reported by the Supreme Court to have been proved guilty of an offence against sections 21 or 22 in respect of any person who voted at the election, there shall on a scrutiny be struck off from the number of votes appearing to have been received by the candidate one vote for every person who voted at the election and is reported to have been so bribed or threatened.

35 Real justice to be observed

On the trial of any election petition —

(a) the Court shall be guided by the substantial merits and justice of the case without regard to legal forms or technicalities;

(b) the Court may admit such evidence as in its opinion may assist it to deal effectively with the case, notwithstanding that the evidence may not otherwise be admissible in the Supreme Court.

36 Irregularities not to invalidate election

No election shall be declared invalid by reason of —

(a) any failure to comply with the times prescribed for doing any act; or

(b) any omission or irregularity in filling up any form prescribed by this Act or any regulations made thereunder; or

(c) any want or defect in the appointment of any official or scrutineer; or

(d) any absence of, or mistake or omission for breach of duty by, any official, whether before, during, or after the polling,

if the Court is satisfied that the election was so conducted as to be substantially in compliance with the law as to elections, and that the failure, omission, irregularity, want, defect, absence, mistake or breach did not affect the result of the election.

37 Certificate of Court as to result of election

At the conclusion of the trial of an election petition the Court shall determine whether the member whose election or return is complained of, or any and what other person, was duly elected or returned, or whether the election was void, and shall forthwith certify in writing the determination to the Speaker.

38 Costs of petition

All costs of and incidental to the presentation of an election petition, and to the proceedings consequent thereon, except such as are by this Act otherwise provided for shall be defrayed by the parties to the petition in such manner and in such proportions as the Supreme Court may determine; and in particular any costs which in the opinion of the Court have been caused by vexatious conduct, unfounded allegations, or unfounded objections on the part either of the petitioner or respondent, and any needless expenses incurred or caused on the part of the petitioner or respondent, may be ordered to be defrayed by the parties by whom they were caused or incurred, whether those parties are or are not on the whole successful.

39 Costs payable by guilty persons

(1) Where on the trial of an election petition it appears to the Court that any person has been guilty of an offence against sections 21, 22 or 24 the Court may, after giving that person an opportunity of making a statement to show why the order should not be made, order the whole or any part of the costs of or incidental to any proceedings before the Court in relation to that offence or to that person to be paid by that person to such other person or persons as the Court thinks fit.

(2) All costs so ordered to be paid may be recovered as a debt due by the person by whom they are ordered to be paid to the person or persons to whom they are ordered to be paid.

PART VI - GENERAL

40 Disqualification [67]

A person who is unseated or whose election is declared void under this Act shall not be nominated as a candidate at any election held within 5 years of the date when he is ordered to be unseated or his election declared void:

Provided that a person who is unseated or whose election is declared void because he was not entitled to be a candidate shall not be nominated as a candidate only at any election which has become necessary as a result of his unseating or his election being declared void.

41 Regulations

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

(a) to provide for the taking, by all electoral officers, of an oath of office, and the form thereof;

(b) to provide the procedure to be followed by any Civil Servant who wants to stand as a candidate at an election;

(c) to provide rules for the compilation and keeping of the roll;

(d) concerning the functions of various electoral officers before, during and after polling day;

(e) to provide for the manner in which the ballot box shall be kept and ballot papers kept and disposed of after the election;

(f) to provide for voters who are blind or who, because of some physical handicap, require special assistance at a polling station;

(g) to regulate election advertising and electioneering;

(h) to provide for the use of a national identity card to assist in the identification of electors and applicants for registration of electors.[68]

SCHEDULE

Voter Registration No.
123456
123456

THE ELECTORAL ACT

Form 1 (Section 4(3))

OFFICIAL USE ONLY
Constituency:
Census Block No.:
National ID No.:
Personal ID No.:

CLAIM TO BE REGISTERED AS AN ELECTOR[69]

To the Supervisor of Elections

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

…… ……

Surname: ……

Maiden name: ……

First name: ……

Middle name(s):……

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

Place of birth (*District, Village or Country, City*): ……

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

Please attach here one recent passport photo of yourself

My qualification is as follows:

- I am a Tongan subject
- I am of the age of 21 years or upwards
- I have not been convicted of an unpardoned criminal offence and sentenced to imprisonment for more than 2 years.

I am resident at (*Village name*)…….. within the district 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)* -

THE ELECTORAL ACT

FORM 2 (Section 4(3))

CERTIFICATE OF REGISTRATION AS AN ELECTOR[70]

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)

THE ELECTORAL ACT

Form 3 (Section 4(6))

APPLICATION FOR TRANSFER[71]

To the Supervisor of Elections

I ……(name in full) hereby apply for a transfer of my name from the register of electors for the electoral constituency of ..... to the electoral constituency of ..... The ground for the transfer is ..... .

Dated the…….day of…….20 .....

……
Signature of applicant

…….

Witness

THE ELECTORAL ACT

FORM 4 (Section 9(2))[72]

NOMINATION OF CANDIDATE FOR LEGISLATIVE ASSEMBLY

We the undersigned persons whose names appear on the register of voters in the ..... electoral constituency hereby nominate ..... (here insert name of candidate in full) of ..... (here insert address) as a candidate for the ..... electoral constituency.

…….
Signatures of Proposers.

I assent to the above nomination and do hereby declare that:

(a) I have not been convicted of a criminal offence and sentenced to imprisonment for more than 2 years and for which I have not been pardoned by the King;

(b) There is no order which has been made in any Court in the Kingdom against me for the payment of a specific sum of money the whole or any part of which remains outstanding, or for me to pay by instalments the whole or any part of such instalments remain outstanding on the day on which this nomination paper is submitted to the Returning Officer; and

(c) The above particulars are true and correct.

Dated the day of 20

Signature of Candidate.

…….

THE ELECTORAL ACT

FORM 5 (Section 12(1))

BALLOT PAPER

No .....

BALLOT PAPER FOR ELECTIONS OF REPRESENTATIVES OF THE PEOPLE

ELECTORAL DISTRICT ..... …….....

(Place) (Age)

I hereby vote the following candidate to become a representative of the people to the Legislative Assembly of Tonga at ..... on 20 .....

Name	Village	Vote
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		

(according to the number of the candidates)

NOTICE:

1. To choose your candidate you must insert a "√" in the circle indicated above beside the name of the candidate of your choice.

2. After you have completed the above, you must fold the piece of paper and insert it into the ballot box.

THE ELECTORAL ACT

FORM 6 (Section 14)

OATH OF ELECTOR[73]

I swear before God that my name is .....

and that I am a resident of ……and that I am over the age of 21 years and that I have not been convicted of a criminal offence and sentenced to imprisonment for more than 2 years (or that I have received a free pardon for every such offence of which I have been convicted). So help me God.

THE ELECTORAL ACT

Form 7 (Section 24)

RETURN OF ELECTION EXPENSES

I ……a candidate at the election for the Electoral Constituency

of. ……..held on the ……day of. ……..……20 ……..hereby make the following return of all expenses incurred by me or on my behalf at the election.

EXPENDITURE

Date of Payment	Details of Payment	Amount of Payment

I declare that the above particulars are true and correct.

Date ……Signature …….

THE ELECTORAL ACT

Form 8 (Section 9A)

NOTICE OF WITHDRAWAL OF NOMINATION[74]

To the Supervisor of Elections

I (*name of candidate*) hereby give notice that I withdraw my nomination as a candidate for the electoral constituency in the election to be held on the ……day of. …….20 …….and for which I was nominated on the ……..day of ……20 .....

……..
Signature of Candidate

Received at the hour of …….on the…….day of ……20 .....

.....
Signature of Supervisor of Elections.

ENDNOTES

[1] **Act 22 of 1989**

Amended by the following acts:

ACTS	COMMENCEMENT
Act 15 of 1992	3 November 1992
Act 7 of 1997	15 September 1997
Act 10 of 2000	7 September 2000
Act 13 of 2010	6 May 2010
Act 46 of 2010	29 September 2010
Act 5 of 2015	25 August 2015
Act 6 of 2020	3 August 2020

[2] Commencements GS 9A/1989 Section 1,2,3 & 7-42 (11 December 1989) and Sections 4,5,6 (1 July 1990)

[3] Inserted by Act 13 of 2010

[4] Inserted by Act 13 of 2010

[5] Amended by Act 13 of 2010, which also included the following transitional provision -

(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.

[6] Amended by Act 46 of 2010

[7] Amended by Act 13 of 2010

[8] Amended by Act 46 of 2010

[9] Amended by Act 46 of 2010

[10] Inserted by Act 13 of 2010

[11] Substituted by Act 13 of 2010

[12] Substituted by Act 13 of 2010

[13] Substituted by Act 13 of 2010

[14] Substituted by Act 13 of 2010

[15] Amended by Act 7 of 1997

[16] Amended by Act 46 of 2010

[17] Amended by Act 13 of 2010

[18] Amended by Act 46 of 2010

[19] Amended by Acts 13 of 2010 and 46 of 2010

[20] Replaced by Act 5 of 2014

[21] Amended by Act 46 of 2010

[22] Inserted by Act 10 of 2000

[23] Inserted by Act 10 of 2000

[24] Amended by Acts 46 of 2010 and 5 of 2014

[25] Substituted by Act 13 of 2010

[26] Substituted by Act 13 of 2010

[27] Amended by Act 13 of 2010

[28] Substituted by Act 13 of 2010

[29] Amended by Act 13 of 2010

[30] Amended by Acts 15 of 1992, 13 of 2010 and 46 of 2010

[31] Amended by Act 13 of 2010

[32] Substituted by Act 13 of 2010

[33] Amended by Act 13 of 2010

[34] Inserted by Act 7 of 1997

[35] Amended by Act 13 of 2010

[36] Inserted by Act 7 of 1997

[37] Inserted by Act 5 of 2014

[38] Amended by Act 46 of 2010

[39] Substituted by Act 15 of 1992

[40] Substituted by Act 13 of 2010

[41] Amended by Act 46 of 2010

[42] Inserted by Act 5 of 2014

[43] Amended by Act 5 of 2014

[44] Replaced by Act 5 of 2014

[45] Amended by Act 5 of 2014

[46] Amended by Act 40 of 2010

[47] Amended by Act 13 of 2010

[48] Amended by Act 13 of 2010

[49] Amended by Act 46 of 2010

[50] Amended by Act 13 of 2010

[51] Substituted by Act 15 of 1992

[52] Amended by Act 13 of 2010

[53] Amended by Acts 15 of 1992 and 13 of 2010

[54] Inserted by Act 15 of 1992

[55] Amended by Act 13 of 2010

[56] Amended by Act 13 of 2010

[57] Substituted by Act 15 of 1992

[58] Amended by Act 13 of 2010

[59] Amended by Act 46 of 2010

[60] Cap 20.15

[61] Amended by Act 13 of 2010

[62] Inserted by Act 15 of 1992

[63] Amended by Act 6 of 2020

The relevant amendment is planned to be –

"Section 24(1) of the Electoral Act is amended, in the English and Tongan versions, by repealing "$10,000" and replacing it with $20,000"."

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

"In section 24(1) of the Electoral Act in the English version the maximum permitted spend by a candidate on an election is $10,000 and this is consistent with the recital of that amount (twice) in section 24(5). However the Tongan version of section 24(5) was amended by Act 13 of 2010 to increase the amount to $20,000 (not in the English amendment). By implication then this should be $20,000 in s 24(1) as well and it should also be $20,000 in s. 24(1) and 24(5) of the English version.

Subsections (2) and (3) of this clause (in the planned Miscellaneous Amendment Bill for 2018) make all the amounts consistent and confirm that the maximum amount permitted to be spent on an election by a candidate is $20,000; and that the fine in section 24(5) is $10,000.

It should be noted that section 21 of the Interpretation Act now provides that if there is a difference in meaning between the English and Tongan versions of an Act then –

> "the court shall treat the Tongan language version of that provision as giving the true meaning of the law if it considers that the difference in meaning goes beyond a simple clerical error or error in translation."."

[64] Substituted by Act 15 of 1992 and Amended by Act 13 of 2010

[65]Amended by Act 6 of 2020. .

The relevant amendment is planned to be –

Section 24 of the Electoral Act is amended, in the English version and Tongan version, by repealing subsection (5) and replacing it with the following –

"(5) It is an offence for any candidate to spend on an election campaign more than the sum of $20,000 or to fail to deliver the statement referred to in subsection (4) or to deliver a false statement, and any person found guilty shall be liable to a fine not exceeding $10,000.".

The explanation for this proposed amendment is set out in endnote 63 above.

[66] Amended by Act 13 of 2010

[67] Substituted by Act 15 of 1992

[68] Amended by Act 13 of 2010

[69] Substituted by Acts 13 of 2010 and 46 of 2010 and Amended by Act 5 of 2014

[70] Substituted by Act 13 of 2010

[71] Substituted by Act 7 of 1997

[72] Amended by Acts 15 of 1992 and 5 of 2014

[73] Amended by Act 5 of 2014

[74] Inserted by Act 7 of 1997