Tuvalu

ELECTORAL PROVISIONS (PARLIAMENT) ACT

2008 Revised Edition

CAP. 4.04

Tuvalu

ELECTORAL PROVISIONS (PARLIAMENT) ACT

Arrangement of Sections

Section

PART I - PRELIMINARY 7

1 Short title ... 7
2 Interpretation ... 7

PART II - ELECTORAL DISTRICTS AND REGISTERS 8

3 Electoral districts ... 8
4 Electoral wards ... 8
5 Registration of electors ... 8
6 Appointment of Returning Officer ... 9

PART III - NOTICE OF ELECTION 9

7 Minister's notice of election ... 9
8 Returning Officer's notice ... 10

PART IV - NOMINATION OF CANDIDATES 10

9 Nomination of candidates ... 10
10 Validity of nominations ... 11
11 List of candidates to be published ... 12
12 Withdrawal of candidature ... 12
13 Unopposed candidates ... 12
14 Frustration of election by death or withdrawal ... 12

PART V - PROCEDURE FOR CONTESTED ELECTIONS 13

15 Notice of poll and voting outside electoral district ... 13
16 Arrangements for poll ... 14
17 Ballot papers ... 15
18 Polling agents ... 15
19 Ballot boxes ... 15

20 Hours of voting....16
21 Method of voting....16
22 Admission of persons to polling station....17
23 Personation....17
24 Tendered ballot papers....18
25 Conduct in polling....18
26 Presiding officer's duties at close of voting....19
27 Counting agents....20
28 Counting votes....20
29 Persons who maybe present....20
30 Method of counting votes....20
31 Handling of ballot papers....21
32 Votes not to be counted....21
33 Endorsement by Returning Officer....21
34 Rejected ballot papers....21
35 Returning Officer's decision final....22
36 Returning Officer's duties at conclusion of counting....22
37 Declaration of result....22
38 Equality of votes....22
39 Notification to successful candidate and publication of result....23
40 Disposal of documents used in election....23

PART IV - ELECTION OFFENCES 23

41 Corrupt practice....23
42 Penalty for false answer....24
43 Offences in respect of nomination papers, etc.....24
44 Infringement of secrecy....24
45 Penalty for bribery, treating and undue influence....25
46 Persons to be deemed guilty of bribery....25
47 Persons to be deemed guilty of treating....26
48 Persons to be deemed guilty of undue influence....27
49 Penalty for personation....27
50 Persons to be deemed guilty of personation....27
51 Incapacity entailed by conviction for corrupt practice....27
52 Penalty for certain illegal practices....27
53 Interference with lawful public meeting to be an illegal practice....28
54 Display of emblems in vicinity of place of voting prohibited....28
55 Saving of offences under Penal Code....28

PART V - ELECTION PETITIONS 29

56 Questions as to elected members to be determined by High Court....29
57 Presentation of election petition....29
58 Hearing of election petition....29
59 Procedure at hearing of election petition....30

PART VI - FINANCIAL AND LEGAL **30**

60 Expenses of registration and elections 30
61 Effect of non-compliance with Act 30
62 Candidates and their agents 31
63 Language 31
64 Regulations 31

SCHEDULE 1 **32**
SCHEDULE 2 **33**

APPLICATION FOR REGISTRATION AS AN ELECTOR 33

SCHEDULE 3 **34**

NOMINATION PAPER 34

SCHEDULE 4 **35**

APPLICATION BY ELECTOR TO CAST HIS VOTE IN AN ELECTORAL DISTRICT OTHER THAN THE DISTRICT WHERE HE IS REGISTERED 35

Supporting Documents

ENDNOTES **36**

Tuvalu

ELECTORAL PROVISIONS (PARLIAMENT) ACT

AN ORDINANCE TO MAKE PROVISION ADDITIONAL TO THAT IN THE CONSTITUTION FOR THE REGISTRATION OF ELECTORS AND THE ELECTION OF MEMBERS OF PARLIAMENT[1]

Commencement [4th November 1980]

PART I - PRELIMINARY

1 Short title

This Act may be cited as the Electoral Provisions (Parliament) Act.

2 Interpretation

In this Act,

"**candidate**" means a person nominated under Part II of this Act whose nomination paper has not been rejected under section 10(2) and who has not withdrawn under section 12;

"**election**" means an election to fill a vacant seat in Parliament;

"**elector**" means a person entitled to vote at an election to fill a vacant seat in Parliament;

"**member**" means a person elected as a member of Parliament;

"**nomination period**" means the time for the delivery of nomination paper under Part II of this Act;

"**polling day**" means the day fixed for the poll by the Minister in the notice under section 7;

"**presiding officer**" means the person appointed to be presiding officer under section 16(b);

"**Returning Officer**" unless otherwise specified means the Returning Officer in the electoral district in which a vote is cast;

"**statement of electors**" means the statement under section 15(1)(b)(v) in the notice given by the Returning Officer.

PART II - ELECTORAL DISTRICTS AND REGISTERS

3 Electoral districts

For the purpose of this Act and sections 82(4) and (5) and 83 of the Constitution, Tuvalu shall be divided into 8 electoral districts which shall be known by the names, consist of the areas and return the number of members specified in relation thereto in Schedule 1.

4 Electoral wards

(1) For the purpose of registration of electors and the conduct of elections the Minister may by notice divide any electoral district into such number of electoral wards as he may think fit, and may assign such name as he may deem appropriate to any electoral ward.

(2) In the absence of any such declaration, every electoral district shall be deemed to consist of one ward.

5 Registration of electors

(1) For the purpose of this Act and section 90(1) of the Constitution, there shall be a register of electors for each electoral district.

(2) Every person who is a citizen of Tuvalu and has attained the age of 18 years and who is not disqualified under the provisions of section 92 of the Constitution shall be entitled on application to be registered on the electoral register of his home island.

(3)[2] A person's "home island" shall be the electoral district which he states to be his home island in an application made by him to be registered as an elector but a person may state an electoral district to be his home island in such application if and only if —

(i) he owns land in that electoral district and actively participates in activities of the indigenous community of that electoral district; or

(ii) he has in the three years immediately preceding the date of his application resided in that electoral district for not less than two years, and actively participates in the activities of the indigenous community of that electoral district; or

(iii) in the event that there is no electoral district that the person can state is his home island under paragraphs (i) and (ii) of this subsection he chooses that electoral district to be his home island.

(4) Any application for registration under this section shall be in the form set out in Schedule 2 to this Act.

6 Appointment of Returning Officer

(1) The Minister shall appoint a Returning Officer for each electoral district.

(2) The Returning Officer for each electoral district may, and the Returning Officer for the electoral district of Niutao shall in respect of Niulakita, appoint one or more fit and proper persons to be Assistant Returning Officers who shall, subject to the directions of the Returning Officer, have all the powers and functions of the Returning Officer.

PART III - NOTICE OF ELECTION

7 Minister's notice of election

(1) Whenever an election for a member or members of Parliament becomes necessary, the Minister shall issue a notice of election which notice shall specify —

(a) the electoral district for which the election is to be held;

(b) the number of vacant seats in each electoral district;

(c) the name of the Returning Officer for each electoral district;

(d) a day by which the nominations of candidates for election are to be delivered, which day shall not be earlier than 7 days from the date of the notice and shall not be earlier than the date specified under section 8(d);

(e) the places and times at which nomination papers shall be delivered to a Returning Officer of any electoral district;[3] and

(f) a day on which the poll is to be taken in the event of the election being contested, which day shall not be earlier than 21 days from the date of the notice.

(2) Notice of election as aforesaid shall be published in every electoral district.

8 Returning Officer's notice

The Returning Officer for an electoral district shall, within 5 days of the publication of a notice under section 7, publish in an appropriate manner in the electoral district a notice stating —

(a) the number of members to be elected in that electoral district;

(b) the place at which and the date and time by which nomination papers are to be delivered; and

(c) the date on which the poll is to be taken in case the election is contested;

(d) the final date for the receipt of applications for registration in the register of electors, making it clear that any persons not already registered who do not apply for registration by that date will not be permitted to vote at the election should it be contested; and

(e) the final date for the receipt of applications from electors who are registered in other electoral districts who wish to cast their votes at a polling station in the electoral district where the notice is published.

PART IV - NOMINATION OF CANDIDATES

9 Nomination of candidates

(1) A person shall be qualified to be elected as a member of Parliament if, and shall not be so qualified unless —

(a) he is a citizen of Tuvalu; and

(b) he has attained the age of 21 years; and

(c) he is not disqualified from being so elected under the provisions of section 95 of the Constitution.

(2) Nomination papers may be delivered to a Returning Officer of any electoral district. If a nomination paper is delivered to a Returning Officer other than the Returning Officer for the electoral district to which it relates, that Returning Officer shall be notified of such a nomination as soon as possible by the Returning Officer to whom it was delivered, and in any event within 48 hours of the expiration of the time allowed for delivery of nomination papers.[4]

(3) Every person submitting himself for election shall be a registered elector for the electoral district for which he is a candidate and shall be nominated in writing by 5 persons registered in the same electoral district.[5]

(4) The nomination shall be signed by the candidate, and by the persons nominating him, in the form set out in Schedule 3, and the nomination form shall contain the following particulars —

(a) the full name, the address and the occupation of the candidate;

(b) the full names, the addresses and the occupations of the nominators of the candidate; and

(c) a certificate by the candidate that he is willing and qualified under section 9(1) to stand for election.

(5)

(a) In respect of an electoral district for which one member is to be elected, no elector shall nominate more than one candidate, and where any elector purports to nominate more than one candidate, his subscription of every nomination paper shall be null and void.

(b) In respect of an electoral district for which 2 members are to be elected, no elector shall nominate more than 2 candidates and where an elector purports so to do his subscription of every nomination paper shall be null and void.

10 Validity of nominations

(1) When any nomination paper is delivered to a Returning Officer the candidate shall be deemed to stand nominated unless and until that Returning Officer decides that the nomination paper is invalid or proof is given to the satisfaction of the Returning Officer of the death of the candidate or if the candidate withdraws in accordance with section 12.

(2) A Returning Officer shall not be entitled to hold the nomination paper invalid except on one or more of the following grounds —

(a) that it was not delivered to him by the expiration of the time allowed in section 8(b); or

(b) that it is not in the form in Schedule 3 or that such form has not been properly completed; or

(c) that the paper is not signed as required by law; or

(d) that the nominators of the candidate or one or any of them are not persons whose names appear on the register of electors in respect of the appropriate electoral district; or

(e) that the candidate already stands nominated for another electoral district.

(3) A Returning Officer's decision that the candidate has been validly nominated shall be final and shall not be questioned in any legal proceedings except on an election petition.

(4) Whenever a Returning Officer decides that a candidate has not been validly nominated he shall endorse and sign on the nomination paper his decision and the reason therefore and such decision shall not be subject to review except on an election petition.

(5) In any case where a Returning Officer holds a nomination paper to be invalid under this Act, he shall as soon as practicable communicate his decision to the candidate or any of his nominators.

(6) Where a nomination relating to any candidate has been declared invalid this alone shall not prevent that candidate from being again nominated for election in a like manner as if no previous nomination had been made and subject to the same provisions regarding form, manner and time as governed the original nomination.

11 List of candidates to be published

The Returning Officer for an electoral district shall within 48 hours of the expiry of the time allowed for the delivery of nomination papers under section 8(b), cause to be published within each electoral district a list containing the full names, addresses and descriptions of the candidates for the electoral district of which he is the Returning Officer and of the persons by whom they were nominated.

12 Withdrawal of candidature

Any candidate may withdraw his candidature by notice in writing signed and delivered by him to the Returning Officer at the place at which the list of candidates was published under section 11 not later than 4 o'clock in the afternoon of the last day before the day of the poll.

13 Unopposed candidates

(1) Where at the close of the nomination period, or as a result of the withdrawal of a candidate thereafter, there is only one candidate in an electoral district for which only one member is to be elected, the Returning Officer for that electoral district shall declare that candidate to be duly elected and shall report the fact to the Minister.

(2) Where at the close of the nomination period, or as a result of the withdrawal of a candidate thereafter, there are only either one or 2 candidates in an electoral district for which 2 members are to be elected, the Returning Officer for that electoral district shall declare that candidate or those candidates to be duly elected and shall report the fact to the Minister, who shall in the event of only one candidate being so elected, issue a notice of election in terms of section 7 and cause electoral procedure in respect of the remaining seat to be commenced afresh.

14 Frustration of election by death or withdrawal

(1) Where, after the expiration of the time allowed for the delivery of nomination papers and before the day of the poll, a candidate dies, the Returning Officer

shall countermand the election in respect of the electoral district for which the deceased was a candidate and report his action to the Minister.

(2) Where, after the expiration of the time allowed for the delivery of nomination papers a candidate withdraws with the result that there are no candidates standing in that electoral district, the Returning Officer shall countermand the election in respect of that electoral district and report his action to the Minister.

(3) Upon receipt of a report under subsection (1) or (2) the Minister shall in respect only of the electoral district so affected issue a notice of election in terms of section 7 and the electoral procedure shall in respect of that electoral district be commenced afresh:

Provided that no new nomination shall be required in respect of a candidate who, at the time of the countermand of the election, had been properly nominated in accordance with section 9.

PART V - PROCEDURE FOR CONTESTED ELECTIONS

15 Notice of poll and voting outside electoral district[6]

(1) In the event of there being a contested election in any electoral district —

(a) the Returning Officer for the district where the election is contested shall not less than 14 days before the polling day give notice to the Returning Officers of all the other electoral districts stating the full name, address, and the occupation of each of the candidates in his electoral district;

(b) the Returning Officer for all electoral districts shall not less than 4 days before polling day give notice in his electoral district in such a manner as he may think fit specifying:

(i) the day and hours fixed for the poll; and

(ii) the full names and addresses of each candidate in every electoral district where there is a contested election. The names of the candidate being listed under the heading of the electoral district where they are standing; and

(iii) if there is a contested election in the electoral district where the notice is published the full names, addresses, and descriptions of all the electors who nominated each candidate who is standing for election in that electoral district; and

(iv) the situation of each polling station; and

(v) a numbered statement of the electors entitled to vote at each polling station being —

(aa) in the event of a contested election in the electoral district where the polling station is situated and subject to the provision of subsection (5) of this section all the electors registered in that district who have been allotted to that polling station by the Returning Officer,

(bb) all persons who are registered as electors in any electoral district, (other than that in which the polling station is situated where there is contested election) and should have made application in accordance with the provisions of subsection (2) of this section and who are allotted by the Returning Officer to that polling station.

(2) Registered electors may vote in contested elections in any electoral district for the electoral districts they are registered.[7]

16 Arrangements for poll

The Returning Officer for an electoral district shall —

(a) provide a sufficient number of polling stations in the electoral district and, in accordance with the terms of any notice given under section 15, allot electors resident within the electoral district to vote at such polling station as seems to him most convenient;

(b) appoint a person to be known as the presiding officer to be in charge of each polling station in the electoral district;

(c) furnish each polling station with such number of compartments as may be necessary, in which the electors can, screened from observation, record their votes;

(d) provide each presiding officer with ballot papers in respect of each electoral district for which registered electors have been allotted to that polling station;

(e) in respect of every electoral district for which 2 members are to be elected, ensure that the ballot papers for such electoral district show the names of the nominated candidates in alphabetical order and a space against each name where the elector may make a mark or marks in accordance with section 21(1)(d);

(f) provide each polling station with the means for making an official mark on the ballot papers and with copies of the register of electors for each electoral district for which registered electors have been allotted to that polling station, or such part thereof as contains the names of the electors allotted to vote at that polling station; and

(g) provide each polling station with one ballot box for each electoral district where there is a contested election and for which electors have been allotted to that polling station; and

(h) do all such other acts and things as may be necessary for conducting the poll in the manner provided in this Act.

17 Ballot papers

Every ballot paper shall —

(i) be clearly marked with the name of the electoral district to which it relates; and

(ii) have attached a serially numbered counterfoil; and

(iii) bear a number on the back corresponding to the number on the counterfoil; and

(iv) shall list the full names of all the candidates in the electoral district to which it relates; and

(v) have a space alongside the name of each candidate sufficient to allow room for any elector to mark the same.

18 Polling agents

(1) Each candidate may, in respect of each polling station in each electoral district appoint a person, hereinafter referred to as a polling agent, to attend at that polling station for the purpose of detecting personation.

(2) Notice in writing of the appointments, stating the names and addresses of the polling agents, together with the polling stations to which they have been assigned, shall be given by the candidate to the Returning Officer not later than 4 days before the day fixed for the poll.

(3) If any polling agent dies or becomes incapable of acting as such, the candidate may appoint another polling agent in his place, and shall forthwith give to the Returning Officer notice in writing of the name and address of the polling agent so appointed.

19 Ballot boxes

(1) Any ballot box placed in a polling station under the provision of section 16 (g) shall be so constructed that a ballot paper may be placed inside it by an elector but may not be removed without breaking any seal.

(2) Immediately before voting begins the presiding officer shall show the ballot box or boxes to the electors present so that they may see that it is empty and shall then close and seal the box in such a manner as to prevent the box being opened without the seal being broken.

20 Hours of voting

The hours of voting shall be from 8 a.m. until 4 p.m.

21 Method of voting

(1) The voting at an election shall be conducted in the following manner —

(a) Every elector desiring to record his vote shall present himself to the presiding officer at the polling station at which he is entitled to vote, and the presiding officer, after satisfying himself that the name of such elector appears on the copy of the statement of electors, provided for that polling station, and that he has not already voted, shall deliver to him a ballot paper.

(b) Immediately before the presiding officer delivers a ballot paper to an elector —

(i) the ballot paper shall be marked on both sides with an official mark;

(ii) the electoral district, number, name and address of the elector as stated in the copy of the statement of electors, shall be called out;

(iii) the elector's electoral district and his number in the statement of electors shall be marked on the counterfoil; and

(iv) a mark shall be placed against the number of the elector in the copy of the statement of electors to denote that a ballot paper has been received, but without showing the number of the ballot paper which has been received;

(v) the presiding officer shall ensure that the ballot paper given to the elector contains a list of candidates standing in the electoral district in which that elector is registered.

(c) The presiding officer may, and if required by a candidate or a polling agent shall, put to any person applying for a ballot paper at the time of his application, but not afterwards, the following questions or either of them in a language which such person appears to understand —

(i) Are you the person whose name is on the register of electors for the [specify] electoral district as follows (reading the copy of the entry in the relevant register)?

(ii) Have you already voted at the present election at this or any other polling station?

(d) The elector shall on receiving the ballot paper go immediately to a screened compartment provided under section 16(c) and shall there secretly record his vote —

(i) if the election is for the return of one member in respect of the electoral district in which that elector is registered by making a

mark or marks on the ballot paper from which his choice of candidate can be deduced;

(ii) if the election is for the return of two members in respect of the electoral district in which that elector is registered by making a mark or marks on the ballot paper from which his choice of candidates (or candidate, if he wishes to record a vote for only one candidate) can be deduced.

(e) After marking the ballot paper the elector shall place the same in the ballot box relating to the electoral district where that elector is registered.

(f) An elector shall not place on the ballot paper any writing or mark by which he may be identified.

(g) An elector who has accidentally dealt with his ballot paper in such manner that it cannot be conveniently used as a valid ballot paper may, on delivering such ballot paper to the presiding officer and after satisfying the presiding officer that the ballot paper has been spoilt by accident, obtain another ballot paper in place of the paper so delivered up, and the spoilt ballot paper shall be immediately cancelled.

(h) If an elector by reason of illiteracy, or of blindness or other physical disability, is unable to cast his vote, he shall call the presiding officer aside and tell him, no other person being present or within hearing except for polling agents if they so desire, the name of the candidate for whom he wishes to vote and the presiding officer shall record the elector's vote by marking the elector's ballot paper according to the elector's instructions and placing the marked ballot paper in the ballot box relating to the electoral district in which such elector is registered.

22 Admission of persons to polling station

(1) A person shall be permitted to vote at a polling station if, and only if, his name is included in the statement of electors relating to that polling station.

(2) The presiding officer shall regulate the admission of electors to the polling station, and shall exclude all other persons except the Returning Officer, candidates, polling agents, police officers on duty, and any other person who in his opinion has lawful reason to be admitted.

23 Personation

(1) If at the time a person applies for a ballot paper, or after he has so applied and before he has left the polling station, a polling agent declares to the presiding officer that he has reasonable cause to believe that the applicant has committed an offence of personation and undertakes to substantiate the charge in a court of law, the presiding officer may order a police officer to arrest such

person, and the order of the presiding officer shall be sufficient authority for the police officer so to do.

(2) A person in respect of whom a polling agent makes a declaration in accordance with subsection (1) shall not, by reason thereof, be prevented from voting, but the presiding officer shall cause the words "Protested against for personation" to be placed against his name in the marked copy of the relevant register of electors or portion thereof:

Provided that where a person in respect of whom such declaration is made admits to the presiding officer that he is not the person he held himself out to be, he shall not be permitted to vote if he has not already done so, and if he has already voted the presiding officer shall make a note of the details of the ballot paper delivered to him and such ballot paper shall be invalid and the presiding officer shall record the fact and the details of the ballot paper on a list, to be called the invalidated votes list, and such list shall be admissible in any legal proceedings arising out of the election.

(3) A person arrested under the provisions of this section shall be dealt with in accordance with the provisions of the Criminal Procedure Code Act[8] relating to the arrest and taking into custody of persons without a warrant.

24 Tendered ballot papers

(1) If a person presents himself to the presiding officer at a polling station as an elector named in the statement of electors after another person has voted as such elector the person so presenting himself shall, upon giving satisfactory answers to the question set out in section 21(1)(c), be entitled to receive a ballot paper in the same manner as any other elector but immediately before the presiding officer delivers a ballot paper to that person he shall endorse it with the name of the elector and the number of the elector in the statement of electors.

(2) The elector on receiving the ballot paper shall mark the ballot paper in the usual way with his choice of candidate or candidates as the case may be and shall return the ballot paper to the presiding officer.

(3) On receiving back the ballot paper the presiding officer shall place the same in a separate packet and it shall not be counted by the Returning Officer, and the name of such elector and the elector's number in the statement of electors shall be entered on a list to be called the tendered votes list and which together with the ballot paper shall be admissible in any legal proceedings arising out of the election.

25 Conduct in polling

(1) The presiding officer shall keep order at the polling station.

(2) If any person misconducts himself in a polling station, or fails to obey any lawful order of the presiding officer he may, by order of the presiding officer, be removed from the polling station by a police officer, or by any other person authorised by the presiding officer in that behalf; and the person so removed shall not, without the permission of the presiding officer, again enter the polling station during the day of the poll:

Provided that this power shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of so voting.

(3) Any person who misconducts himself in a polling station or fails to obey any lawful order of the presiding officer shall be guilty of an offence and liable to a fine of $200 and to imprisonment for 6 months.

26 Presiding officer's duties at close of voting

(1) As soon as practicable after the termination of the voting the presiding officer shall, in the presence of the polling agents, make up into separate packets, each sealed with an official seal, and in respect of each electoral district:

(a) unused and spoilt ballot papers, placed together;

(b) tendered ballot papers;

(c) the counterfoils of the used ballot papers; and

(d) the tendered votes list;

and shall deliver such packets to the Returning Officer for the electoral district in which the polling station is situated.

(2) The presiding officer shall also send to the Returning Officer for the electoral district in which the polling station is situated:

(a) each ballot box used at the polling station, unopened and sealed so as to prevent the introduction of additional ballot papers;

(b) the copy of each statement of electors relating to electors allotted to that polling station, marked so as to show whether an elector voted or not.

(3) The packets shall be accompanied by a statement, to be called the ballot papers account, prepared by the presiding officer, showing the number of ballot papers entrusted to him in respect of each electoral district and accounting for them under the following heads —

(a) number of spoilt ballot papers;

(b) number of unused ballot papers; and

(c) number of tendered ballot papers.

27 Counting agents

(1) Each candidate may appoint one person, hereinafter referred to as a counting agent, to attend at the counting of votes in each electoral district, who may be the same person as that appointed as polling agent.

(2) Notice in writing of the appointment, stating the name and address of the counting agent, shall be given by the candidate to the Returning Officer not later than 2 days before the day of the poll and the Returning Officer may refuse to admit to the place where the votes are counted any person purporting to be a counting agent in respect of whom such notice has not been given.

(3) If a counting agent dies or becomes incapable of acting as such, the candidate may appoint another accounting agent in his place, and shall immediately give to the Returning Officer notice in writing of the name and address of the counting agent so appointed.

28 Counting votes

(1) Upon receipt of all ballot boxes from polling stations situated within the electoral district of which he is Returning Officer, the Returning Officer shall commence to count votes in the presence of the counting agents and shall, so far as is practicable, proceed continuously with the counting, allowing only reasonable time for refreshment, until it is complete.

(2) The counting of votes for electoral districts other than that in which the votes are counted shall be completed before counting the votes for the electoral district in which they are counted but otherwise votes shall be counted for each electoral district in the same order as the list of electoral districts set out in Schedule 1 to this Act.

(3) The counting of votes for the part of Niutao electoral district comprising the island of Niulakita shall be performed by the Assistant Returning Officer on Niulakita appointed under the provisions of section 6(2), and the number of votes for each candidate notified as soon as possible to the Returning Officer for Niutao.

29 Persons who maybe present

Except with the consent of the Returning Officer, no person other than the Returning Officer, an Assistant Returning Officer, the candidates and their counting agents may be present at the counting of votes.

30 Method of counting votes

(1) The Returning Officer shall, in the presence of the counting agents, open each ballot box and, taking out the ballot papers, count and record the number of

ballot papers in respect of each electoral district and the number of votes for each candidate represented by all such ballot papers not rejected.

(2) Only one ballot box shall be opened at a time and the counting of ballot papers in each box shall be completed before another box is opened.

31 Handling of ballot papers

(1) The Returning Officer and any Assistant Returning Officer assisting him, while counting and recording the number of votes and the number of ballot papers, shall keep the ballot papers with their faces upwards and take all precautions for preventing any person from seeing the numbers printed on the backs of the papers.

(2) Counting agents may not handle ballot papers but may ask to see any paper more closely.

32 Votes not to be counted

A ballot paper —

(a) which does not bear an official mark under the provisions of section 21(1)(b)(i); or

(b) which does not relate to the same electoral district as the ballot box in which it was placed; or

(c) from which the elector's intention cannot be deduced,

shall be rejected.

33 Endorsement by Returning Officer

(1) The Returning Officer shall endorse the word "Rejected" on any ballot paper which pursuant to section 32 is rejected.

(2) The Returning Officer shall add to the endorsement the words "rejection objected to" if an objection to his decision is made by any counting agent.

34 Rejected ballot papers

The Returning Officer shall prepare a statement showing the number of ballot papers rejected in respect of each electoral district, under the following heads —

(a) want of official mark;

(b) relating to wrong electoral district;

(c) lack of clear intention;

and shall on request allow any counting agent to copy the statement.

35 Returning Officer's decision final

The decision of the Returning Officer for the electoral district in which any ballot paper is cast as to any question arising in respect of such paper shall be final, and shall be subject to review only on an election petition questioning the election.

36 Returning Officer's duties at conclusion of counting

(1) Upon the conclusion of the counting of votes for any electoral district the Returning Officer shall seal up in separate packets the counted and rejected ballot papers in respect of that electoral district. He shall open the sealed packets containing tendered ballot papers, unused and spoilt papers and counterfoils of used ballot papers submitted under the provisions of section 26 and shall proceed, in the presence of the counting agents, to verify the ballot paper account given by each presiding officer by comparing it with the number of ballot papers recorded in accordance with section 30, the number of rejected ballot papers shown in the statement prepared in pursuance of section 34, the unused and spoilt papers in his possession and the tendered votes list, and shall seal each packet after examination. The Returning Officer shall prepare a statement as to the result of the verification and shall on request allow any counting agent to copy such statement.

(2) Having ascertained the number of votes cast for each candidate for an electoral district other than that in which such votes were cast, the Returning Officer shall notify the Returning Officer for the electoral district in respect of which such votes were cast and the Returning Officer for the district in respect of which such votes were cast shall include such votes in the total number of votes recorded by him in respect of each candidate respectively and shall not indicate publicly the number of votes for any candidate cast in any particular electoral district.

37 Declaration of result

When he has ascertained the result of the poll in respect of the electoral district of which he is Returning Officer, the Returning Officer shall forthwith declare to be elected the candidate or, in the case of an election in an electoral district for which 2 members are to be elected, the 2 candidates, for whom the greatest number of votes has been cast and shall also declare the number of votes for every candidate, whether elected or not.

38 Equality of votes

When an equality of votes is found to exist between any candidates in an electoral district so that an addition of a vote would entitle any of them to be declared elected, the Returning Officer for that electoral district shall cause a recount of the votes cast in each electoral district in which votes were cast for those candidates to be made. If

there is again an equality of votes, as ascertained by such recount, the Returning Officer shall report the fact to the Minister who shall order that another election shall be held and a poll taken on such day as he shall specify for the purpose of determining which of the candidates between whom such equality of votes was found to exist shall be entitled to be declared elected and no new nominations shall be required in respect of any of them.

39 Notification to successful candidate and publication of result

(1) At the conclusion of the election the Returning Officer shall, in respect of the electoral district of which he is Returning Officer —

(a) notify the successful candidate or candidates in writing;

(b) notify the Minister of the result of the poll and verification thereof.

(2) The Minister shall —

(a) cause the result to be published in each electoral district in such manner as to him may seem appropriate; and

(b) cause the name of the successful candidate or candidates to be published in the Gazette.

40 Disposal of documents used in election

(1) At the conclusion of the election, the Returning Officer in each electoral district shall send to the Attorney General all documents relating to the conduct of the elections, including the ballot papers accounts prepared pursuant to section 26, the sealed packets and statement of verification prepared pursuant to section 34, the marked copy of each register of electors used in the election, and the results as declared under section 37.

(2) The Attorney-General shall ensure the safe custody of all documents sent to him under the provisions of subsection (1) but shall cause all such documents to be destroyed at the end of 6 months after the date of the poll unless otherwise directed by an order of the High Court:

Provided that the marked copies of the registers of electors and the declarations of results shall not be destroyed.

PART IV - ELECTION OFFENCES

41 Corrupt practice

(1) No election shall be valid if any corrupt or illegal practice is committed in connection therewith by the candidate elected or his agent.

(2) Where on an election petition it is shown that corrupt or illegal payments, employments or hiring committed in reference to the election for the purpose of promoting or procuring the election of any person thereat have been so widespread that they may be reasonably supposed to have affected the result, his election, if he has been elected, shall be void and he shall be incapable of being elected to fill the vacancy for which the election was held.

42 Penalty for false answer

Any person who makes a false answer to either of the questions prescribed in section 21(1)(c), knowing it to be false or not believing it to be true, is guilty of an offence and is liable to a fine of $300 and to imprisonment for 3 months.[9]

43 Offences in respect of nomination papers, etc.

(1) Any person who —

(a) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to any Returning Officer to whom nomination papers are required by this Act to be delivered, any nomination paper knowing the same to be forged; or

(b) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or

(c) without due authority, supplies any ballot paper to any person; or

(d) fraudulently takes out of any polling station any ballot paper; or

(e) without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes on an election; or

(f) makes a false declaration for the purpose of being registered as an elector or being permitted to cast his vote in an electoral district where he is not registered knowing that such declaration is false or not believing it to be true,

is guilty of an offence and is liable to a fine of $500 and to imprisonment for 6 months.[10]

(2) In any prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, counterfoils, marking instruments and other things in use at any election, the property in such papers, boxes, instruments and things may be stated to be in the Returning Officer at such election.

44 Infringement of secrecy

(1) Every Returning Officer, Assistant Returning Officer, presiding officer, candidate and agent shall maintain and aid in maintaining the secrecy of the

voting in an election and shall not communicate, except for some purpose authorised by law, before the election is closed, to any person any information as to the name or number on a register of electors of any elector who has or has not applied for a ballot paper or voted, or as to the official mark.

(2) Subject to the provisions of section 20(1)(g) and 20(2)(c), no Returning or presiding officer, candidate or agent, and no other person shall interfere with or attempt to interfere with an elector when casting his vote or otherwise attempt to obtain information as to the candidate for whom any elector is about to vote, or has voted, or communicate at any time to any person information obtained during any election as to the candidate for whom any elector is about to vote, or has voted, or as to the number on the ballot paper given to any voter.

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

(4) Any person who acts in contravention of this section is guilty of an offence and is liable to a fine of $1,000 and to imprisonment for 12 months.[11]

45 Penalty for bribery, treating and undue influence

Any person who is guilty of bribery, treating or undue influence is guilty of an offence of corrupt practice and is liable to a fine of $1,000 and to imprisonment for 12 months.[12]

46 Persons to be deemed guilty of bribery

(1) The following persons shall be deemed to be guilty of bribery within the meaning of this Part of this Act —

(a) any person who directly or indirectly, by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector or to or for any person on behalf of any elector, or to or for any other person in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector having voted or refrained from voting at any election;

(b) any person who directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure or to endeavour to procure, any office, place or employment to or for any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any voting at any election;

(c) any person who directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement as aforesaid to or for any person, in order to induce such person to procure, or to endeavour to procure the return of any person as a member of Parliament or the vote of any elector at any election;

(d) any person who, upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages, promises or endeavours to procure the return of any person as a member of Parliament or the vote of any elector at any election;

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

(f) any elector, who, before or during any election, directly or indirectly, by himself or by any other person on his behalf, receives, agrees to receive, or contracts for any money, gift, loan or valuable consideration, office, place or employment for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election; and

(g) any person who, after any election, directly or indirectly by himself or by any other person on his behalf receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting at any election:

Provided always that this section shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses bona fide incurred at or concerning any election.

47 Persons to be deemed guilty of treating

(1) The following persons shall be deemed to be guilty of treating within the meaning of this Part of this Act —

(a) any person who corruptly, by himself or by any other person, either before, during or after an election, directly gives, or provides, or pays, or promises to give, provide or pay, wholly or in part, the expenses of giving or providing any food, drink, entertainment or provision to or for any person, for the purpose of corruptly influencing that person, or any other person to vote or refrain from voting at such election, or on account of that person or any other person having voted or refrained from voting at such election; and

(b) any elector who corruptly accepts or takes any such food, drink, entertainment or provision.

48 Persons to be deemed guilty of undue influence

(1) Any person who directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of, any force, violence, or restraint, or inflicts or threatens to inflict by himself or by any other person, any injury, damage, harm or loss, upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting at any election, or who, by abduction, duress, or any fraudulent contrivances, impedes or prevents the free use of the vote by any elector and thereby compels, induces or prevails upon any elector either to give or refrain from giving his vote at any election, shall be guilty of undue influence within the meaning of this Part of this Act.

49 Penalty for personation

Any person who is guilty of personation or of aiding, abetting, counselling or procuring the commission of the offence of personation, is guilty of an offence of corrupt practice and is liable to a fine of $300 and to imprisonment for 3 months.[13]

50 Persons to be deemed guilty of personation

Any person who at any election applies for a ballot paper in the name of another person or tenders a vote in the name of another person whether that name is the name of a person living or dead or of a fictitious person, or who, having voted once at any election, applies for a ballot paper or tenders a vote at the same election, in his own name, which he is not entitled to tender under this Act, shall be guilty of an offence of personation within the meaning of this Part of this Act.

51 Incapacity entailed by conviction for corrupt practice

Any person who is convicted of a corrupt practice shall in addition to any other punishment, be incapable during a period of 5 years from the date of his conviction —

(a) of being registered as an elector or of voting at any election;

(b) of being elected as a member of Parliament, or if elected before his conviction, of retaining his seat as such member.

52 Penalty for certain illegal practices

Any person who —

(a) votes, or induces or procures any other person to vote, at any election, knowing he or such other person is prohibited by this Act or by any other law for the time being in force from voting at such election; or

(b) before or during an election knowingly publishes any false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate;

is guilty of an offence of illegal practice and is liable to a fine of $300 and to imprisonment for 3 months and shall be incapable, during a period of 3 years from the date of his conviction, of voting at any election.[14]

53 Interference with lawful public meeting to be an illegal practice

Any person who at a lawful public meeting, held in connection with the election of any person to Parliament between the date of publication of a notice issued under section 7 and the date on which the result of the election is published under section 38 (2), acts or incites others to act in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called, is guilty of an offence of illegal practice and is liable to a fine of $1,000 and to imprisonment for 12 months, and shall be incapable, during a period of 3 years from the date of his conviction, of voting at any election.[15]

54 Display of emblems in vicinity of place of voting prohibited

(1) No person other than a candidate shall within any building where voting for the election of a member of Parliament is in progress, or on any public way within a distance of 50 yards of any entrance to such building, wear or display any card, symbol, favour or other emblem indicating support for a particular candidate or political party and no person shall within 200 yards of any such building make any public address indicating support for a particular candidate or political party.

(2) Any person acting in contravention of this section is guilty of an offence and is liable to a fine of $100.[16]

(3) For the purpose of this section "public way" includes any highway, market place, square, street, bridge or other way which is lawfully used by the public.

55 Saving of offences under Penal Code[17]

Nothing in this Part of this Act shall be construed or deemed in any way to prejudice, derogate from or affect any of the provisions of the Penal Code Act as to offences relating to public offices or public officers.

PART V - ELECTION PETITIONS

56 Questions as to elected members to be determined by High Court

(1) Proceedings on the question whether any person has been validly elected as a member of Parliament or, being a member, has vacated his seat or is required to vacate his seat, shall be commenced by way of petition in the High Court in its civil jurisdiction (in this Act referred to as an "election petition").

(2) Where the question to be decided concerns the right of any person to remain a member of Parliament, the High Court shall certify its decision in writing to the Minister; and where the High Court has decided that any person is not entitled to remain a member, such person shall thereupon cease to be a member.

57 Presentation of election petition

An election petition may be presented under section l00(1)(a) of the Constitution within one month after the publication of the result of the election under section 39(2) of this Act, within one month after the publication of the result of the election under section 39(2) of this Act.

58 Hearing of election petition

(1) Every election petition shall be heard by the High Court in open court.

(2) During such hearing the High Court may order —

(a) the inspection and production of any rejected ballot papers; or

(b) the opening of any sealed packet of counterfoils of used ballot papers; or

(c) the inspection of any counted ballot papers; or

(d) the inspection and production of tendered ballot papers and the tendered votes list:

Provided that in making and carrying into effect the order, care shall be taken that the way in which the vote of any particular elector has been given shall not be disclosed until it has been proved that his vote was given and the vote has been declared by the Court to be invalid.

(3) At the conclusion of the hearing, the Court shall determine whether the member whose return or election is complained of or any other and what person, was duly returned or elected or whether the election was void and, shall certify such determination to the Minister; and, upon such certificate being given, such determination shall be final and shall not be questioned in

any proceedings and the election shall be confirmed, or a new election shall be held, as the case may require, in accordance with such certificate:

Provided that where the High Court finds that any candidate who has been declared to be elected was not qualified or was disqualified at the time of his election, the High Court shall determine the election to be void.

59 Procedure at hearing of election petition

Subject to this Part of this Act and without prejudice to any other power to make rules of court, the Chief Justice may from time to time make rules for regulating the practice and procedure to be observed in relation to election petitions and, subject to such rules, the procedure at the hearing of an election petition shall, as near as circumstances will admit, be the same, and the High Court shall have the same powers, jurisdiction, and authority, as if it were hearing a civil action; and witnesses may be subpoenaed and sworn in the same manner, as near as circumstances will admit as in the hearing of a civil action in the High Court, and shall be subject to the same penalties for perjury.

PART VI - FINANCIAL AND LEGAL

60 Expenses of registration and elections

(1) All expenses including costs of legal proceedings, properly incurred in the registration of electors and the holding of elections under this Act, shall be a charge on public revenue.

(2) Returning Officers, Assistant Returning Officers and presiding officers shall receive such reasonable remuneration from public funds as the Minister may authorise.

61 Effect of non-compliance with Act

(1) No election shall be invalid by reason of non-compliance with this Act if it appears that the election was conducted in accordance with the principles of this Act and that the non-compliance did not affect the result of the election.

(2) Notwithstanding anything to the contrary contained in this Act, where the Minister is satisfied that by reason of storm or any other cause whatsoever, whether of the like nature or otherwise, it has not been or will not be possible to carry out any part of any election or to comply with any provision of this Act relating to time, throughout the electoral district concerned or any ward thereof, he may within 14 days of the date originally appointed for that part of the election, by notice appoint a new date for such part and for any subsequent part of the election as may be necessary.

(3) Every date appointed under subsection (1) by the Minister shall be deemed to have been appointed under the appropriate provisions of this Act and shall afford all persons not less notice than is thus provided for.

(4) In exercising his powers under subsection (1), the Minister may give such directions as he may consider necessary as to the deferment or suspension of the counting of votes pending receipt of the ballot boxes, papers and lists relating to any part of any election for which a new date is appointed, and for the safe custody of all ballot boxes, papers and lists already received.

62 Candidates and their agents

(1) Where in this Act any act or thing is required or authorised to be done in the presence of the candidates, the non-attendance of any agent or agents at the time and place appointed for the purpose shall not, if that act or thing is otherwise properly done, invalidate the act or thing done.

(2) A candidate may do any act or thing which his agent would have been authorised or required to do, and may assist his agent in the doing of any such act or thing.

63 Language

Any written or oral question, form, document, statement or other matter whatsoever prepared under the provisions of this Act including the forms set out in the Schedules may be in English or in such other language as the Minister shall by notice direct.

64 Regulations

The Minister may by writing under his hand make regulations for carrying the foregoing provisions of this Act into effect and without prejudicing the generality of this provision:

(i) the preparing and keeping of electoral registers;

(ii) the person or persons to whom applications for registration as an elector are to be made;

(iii) the periodic review of electoral registers and for dealing with omissions and objections thereto;

(iv) the review of registers of electors whether periodic or otherwise to ensure that no elector is registered more than once.

SCHEDULE 1[18]

(Section 3)

Electoral District (in alphabetical order)	Area	No of Elected Representatives
1. Funafuti	The island of Funafuti	2
2. Nanumanga	The island of Nanumanga	2
3. Nanumea	The island of Nanumea	2
4. Nui	The island of Nui	2
5. Niutao	The islands of Niutao and Niulakita	2
6. Nukufetau	The island of Nukufetau	2
7. Nukulaelae	The island of Nukulaelae	1
8. Vaitupu	The island of Vaitupu	2

SCHEDULE 2

(Section 5 (4))

APPLICATION FOR REGISTRATION AS AN ELECTOR[19]

1. Name of Applicant: .....

2. Address of Applicant: .....

I the undersigned hereby apply for registration as an elector in the electoral district of .....which I state to be my home island.

The electoral district is my home island because —

*1. I own land there and I actively participate in the activities of its indigenous community.

*2. I have resided there for not less than 2 years in the 3 years preceding the date of this application and I actively participate in the activities of its indigenous community.

*3. None of the above numbered 1-2 apply to any electoral district in Tuvalu and I state it to be my home island.

** Delete as appropriate*

I am not registered as an elector in any electoral district in Tuvalu and I do not have an application for registration pending.

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

I declare that I have fully and accurately completed this form.

SIGNED .....

WARNING: It is an offence punishable by a fine or imprisonment for any person to make a false declaration for the purpose of being registered as elector knowing the declaration to be false or not believing it to be true.

SCHEDULE 3

(Section 9 (4))

NOMINATION PAPER

Electoral District for which the candidate seeks election .....
.....
Date of election: .....

A. I, the undersigned, am the candidate to whom this nomination paper . refers, and I hereby state that I am willing to stand for election to Parliament as a Member for the ..... Electoral District.
I also hereby state that I am qualified, and not disqualified, for election to Parliament in accordance with Part VI of the Constitution.
Full name: .....
Address: .....
Description or Occupation: .....
Date: .....

.....
Signature

B. We, the undersigned, are the nominators of the above candidate, and are electors for the Electoral District for which this candidate seeks election.

1 Full name: .....
Address: .....
Description or Occupation: .....
Date: .....

.....
Signature

2 Full name: .....
Address: .....
Description or Occupation: .....
Date: .....

.....
Signature

3 Full name: .....
Address: .....
Description or Occupation: .....
Date: .....

.....
Signature

SCHEDULE 4

(Section 15(3))

APPLICATION BY ELECTOR TO CAST HIS VOTE IN AN ELECTORAL DISTRICT OTHER THAN THE DISTRICT WHERE HE IS REGISTERED

Name of elector .....

Address of elector .....

I, the undersigned declare that I am registered in the electoral district .....of (insert name of electoral district) and that I have not applied in this election to vote in any other electoral district. I now apply to cast my vote for the candidates standing in my own electoral district in the forthcoming election in the district in the electoral district of .....(insert name of electoral district). I understand that if this application is accepted then I shall only be able to cast my vote at a polling station in the latter name electoral district.

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

SIGNED .....

WARNING: It is an offence under the provision of the Electoral Provisions (Parliament) Act to make a false declaration for the purpose of being permitted to cast your vote in an electoral district where you are not registered if you know that the declaration is false or do not believe it to be true.

ENDNOTES

[1] 1990 Revised Edition Cap 102 – Acts 2 of 1980, LNs 3/1985, 8/1987, 2/1989, 10/1989
Amended by Act 1 of 1993, commencement 23 September 1993 (see LN 11/1993)
Amended by Act 10 of 1997, commencement 1 January 1998 (see LN 1/1998)
Amended by Act 10 of 1999, commencement 23 August 2000 (see LN 6/2000)
Amended by Act 4 of 2000, commencement 23 August 2000 (see LN 7/2000)

[2] Amended by Act 1 of 1993

[3] Amended by Act 10 of 1997

[4] Substituted by Act 10 of 1997

[5] Substituted by Act 10 of 1997

[6] Amended by Act 10 of 1997

[7] Amended by Act 10 of 1997

[8] Cap.10.05

[9] Amended by Act 10 of 1997

[10] Amended by Act 10 of 1997

[11] Amended by Act 10 of 1997

[12] Amended by Act 10 of 1997

[13] Amended by Act 10 of 1997

[14] Amended by Act 10 of 1997

[15] Amended by Act 10 of 1997

[16] Amended by Act 10 of 1997

[17] Cap. 10.20

[18] Amended by Acts 10 of 1999 and 4 of 2000

[19] Amended by Act 1 of 1993