



Tonga

ELECTORAL ACT 1989

Act 22 of 1989



ELECTORAL ACT 1989

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ELECTORAL ACT 1989

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

I assent,
TAUFA'AHAU TUPOU IV,
30th November, 1989

[24th October, 1989]

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

PART I - PRELIMINARY

1 Short title, commencement.

- (1) This Act may be cited as the Electoral Act 1989.
- (2) This Act shall come into force on a day proclaimed by His Majesty in Council and different sections of this Act may be brought into force on different dates.

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;

“**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.

PART II - ORGANISATION

3 Interpretation.

- (1) The Prime Minister shall appoint a Supervisor of Elections who shall have the powers and duties conferred upon him by this Act.
- (2) The Supervisor of Elections shall, with the approval of the Prime Minister, appoint a returning officer for each electoral district and shall also, where necessary, appoint an assistant returning officer and such other assistants as he may require.
- (3) The Supervisor of Elections shall, subject to the direction of the Prime Minister, 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 Prime Minister's Office showing all persons qualified under clause 64 of the Constitution to be electors of representatives of the people.
- (2) The roll shall be kept by the Supervisor of Elections and shall —
 - (a) be divided into electoral districts;

- (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 district in which people are entitled to vote.
- (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 district in which he is then residing. Upon the registration of any elector, the Supervisor shall issue a certificate in Form 2 of the Schedule.
- (4) A person is deemed to be a resident of any one of the following districts —
- (a) in the case of a male elector who is the holder of a tax allotment, the district in which the tax allotment of which he is the holder is situated;
 - (b) in the case of a female elector —
 - (i) who is a married woman, the wife of any elector qualified under (a) above, the district in which her husband is an elector;
 - (ii) who is a widow and the holder of a tax allotment, the district in which the tax allotment is situated;
 - (c) in the case of any other person, the district in which they permanently reside or, if not resident in Tonga, the last District in which they permanently resided.
- (5) Every elector who ceases to be a Tongan subject shall, within 3 months thereof, notify the Supervisor.
- (6) An elector shall notify the Supervisor in Form 3 of the Schedule of his change of residence within 3 months of that change.
- (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 the Supreme Court for convictions of indictable offences and amend the roll accordingly.
- (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 district.

- (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 district in which he has been registered, may appeal in writing to the Electoral Appeal Committee.
- (10) Any person may between the hours of 10 am and 3 pm 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 district.
- (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 Appeal Committee.
- (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 district 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 district between publication and election day; or
 - (b) to exclude any elector who has died or becomes disqualified to vote in any district 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.
- (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.

6 Electoral Appeal Committee.

- (1) His Majesty in Council shall appoint an Electoral Appeal Committee in each electoral district consisting of a chairman and not less than 2 or more than 5 other persons for the purpose of hearing appeals under section 5(3) and against the decision of the Supervisor in respect of registration under section 4(9).
- (2) On any appeal under section 4(9) or 5(3), the Electoral Appeal Committee may give any such directions in the matter as they think proper and the order of the Electoral Appeal Committee shall be final and conclusive and not subject to appeal to any other body.

PART III - ELECTIONS

7 Election writs.

For the purpose of every general election of representatives of the Nobles or the People to the Legislative Assembly, the Prime Minister shall issue writs of election, under seal, addressed to the proper returning officer, specifying the date on or before which each writ is returnable to the Prime Minister, and the places, and time in each electoral district at which the returning officer shall receive the votes of the electors. The text of every writ of election shall be published in the Gazette and it shall be the duty of the returning officer to advise all electors within his electoral district of the time and place of election.

8 Nominations.

- (1) After writs of election have been issued, the Supervisor shall publish in the Gazette and in the Tonga Chronicle the date when nominations of candidates shall be received for the seats to be filled by election. Receipt of nominations shall be at the Prime Minister's Office in the case of Tongatapu, at the Governor's Office in the case of Vava'u and Ha'apai, and at the Magistrate's Offices respectively in the case of 'Eua, Niuatoputapu and Niuafu'ou.
- (2) The day so fixed shall not be less than 21 or more than 28 days after the day on which the writ is received.

9 Candidates.

- (1) On the day 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.
- (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 district. The candidate shall assent to the nomination in writing by fixing his signature to the nomination paper.
- (3) At the time of nomination the candidate shall deposit with the returning officer the sum of \$200 and shall receive from the returning officer a duly signed Government Revenue receipt therefore. On the completion of the election a candidate receiving more than the prescribed percentage of the total votes polled in that electoral district shall be returned the sum of \$200 on presentation of the receipt at the Treasury or a Sub-Treasury, together with a certificate from the returning officer that the candidate is entitled to the refund. A candidate failing to receive the prescribed percentage of the total votes polled in that electoral district shall forfeit his deposit, and the sum so forfeited shall be paid into General Revenue on the certificate of the returning officer.
- (4) For the purposes of this section, the prescribed percentage is —
 - (a) for the electoral district of Tongatapu, six and two thirds percent;
 - (b) for all other electoral districts, ten percent.
- (5) If at 3p.m. 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.
- (6) This section does not apply to elections of representatives of the nobles.

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.

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 district in which he is registered.

- (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.

- (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 addresses of the candidates.
- (2) After checking against the final roll that the elector is entitled to vote the returning officer shall mark against the elector's name on the roll and on the ballot paper a consecutive number and then hand the ballot paper to him.
- (3) The elector shall retire to a voting cubicle or some private space in the voting area and mark his ballot paper by striking out with a pen or pencil all names on the ballot paper other than those of the representatives he wishes to elect. Provided that no ballot paper shall be rejected as invalid if it clearly indicates the candidate or candidates for whom the elector intended to vote, whether that indication is made in the manner prescribed by this section or otherwise.
- (4) After marking his ballot paper the elector shall fold the paper and deposit it in the ballot box.
- (5) Subsections (1) and (2) shall not apply to nobles' elections.

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 on the elector submitting to him a certificate in Form 2 of the Schedule and taking oath before the returning officer that he is the person described therein. Upon acceptance of such vote the returning officer shall post it by registered post to the chief returning officer of the district wherein the elector is registered as soon as may be practicable

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 thumb prints on the ballot paper and the oath form, and any person refusing shall not be allowed to vote.

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 shall be void and not counted.

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 posted publicly on the post office of the electoral district and similar declarations shall be posted to the Supervisor by registered mail.
- (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.

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 district 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.
- (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 \$300 which shall not be refunded unless —
- (a) the difference between the original count and the recount exceeds 50 votes or 5% of the total votes cast in that district, whichever is less; or
 - (b) as a result of the recount, a different candidate is elected; or
 - (c) the Supervisor, in announcing his decision on the recount, certifies that in his opinion the demand for a recount was reasonable.

18 Police to control.

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 fairly in accordance with this Act;
- (b) to ensure that any people coming to vote may do so without any hindrance or influence from any person;
- (c) to ensure that there are no kava booths or entertainment tents placed in the vicinity of the polling station;
- (d) to ensure that no election speeches are made in the vicinity of the polling station;
- (e) 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 district or another, is guilty of the offence of false impersonation and is liable to a fine not exceeding \$2000 or to imprisonment for any period not exceeding 2 years, or to both such fine and imprisonment.
- (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, is guilty of the offence of giving false information and is liable to a fine not exceeding \$1000 or to imprisonment for any period not exceeding 1 year or to both such fine and imprisonment.
- (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.

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 \$2000 or to imprisonment for a term not exceeding 3 years, or to both such fine and imprisonment.
- (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 \$2000 or to imprisonment for any period not exceeding 3 years or to both such fine and imprisonment.
- (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.

- (1) It an offence —
 - (a) to hinder, obstruct, annoy, pester or otherwise influence any person in the vicinity of a polling station who is proceeding to vote;

- (b) to make an election speech in the vicinity of a polling station;
 - (c) to maintain a kava booth or entertainment tent within 50 metres of a polling station;
 - (d) to hinder, obstruct, annoy, threaten or abuse any official at a polling station.
- (2) If a police officer has reasonable grounds to believe that any person has committed an offence against subsection (1), he may arrest the alleged offender without warrant.
- (3) A person guilty of an offence against this section is liable on conviction to a fine not exceeding \$500 or to imprisonment for any period not exceeding one year, 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 \$10,000.
- (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 one month after an election, every candidate shall deliver to the Supervisor a sworn statement of his election expenses, itemised and complete in all respects.
- (5) It is an offence for any candidate to spend on an election campaign more than the sum of \$10,000 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.

- (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 Supervisor of Elections shall also be a respondent.
- (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 proved 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) Whereon 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.

A person who is unseated pursuant to this Act may not be nominated as a candidate at any election held within 5 years of the date when he is ordered to be unseated.

41 Regulations.

The Prime Minister, with the consent of His Majesty in Council, 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 procedure of Electoral Appeal Committees and for the calling of witnesses and payment of expenses.

42 Transitional.

- (1) For the purposes of any election held before 30 June 1990, this Act shall be read as if —
 - (a) in sections 3(3) and 20(1) the words “kept under the Legislative Assembly Act” were inserted after the word “roll” wherever it occurs;
 - (b) in section 12(2) the words “final roll” were replaced with the words “electoral roll kept under the Legislative Assembly Act”;
 - (c) in section 21 (3) the words “within 3 months of any election” were replaced with the words “after the day this Act comes into force”;
 - (d) in section 24(1), the words “after the day this Act comes into force” were inserted after the word “spend”; and
 - (e) in section 24(2)(a) and (b) the words “within 6 months of an election” were deleted.
- (2) This section shall cease to have effect on 1 July 1990.

Passed in the Legislative Assembly this 24th day of October, 1989.

SCHEDULE

The Electoral Act, 1989

Form 1 (Section 4(3))

CLAIM TO BE REGISTERED AS AN ELECTOR

To the Supervisor of Elections

I hereby claim to have my name inserted in the register of electors for the electoral district of
(here insert name of electoral district).

My qualification is as follows:

I am a Tongan subject.

I am of the age of 21 years or upwards.

I am resident of the district of(here insert name of electoral district).

I can read and write the Tongan language.

I have not been convicted of an unpardoned criminal offence punishable by imprisonment for more than 2 years.

I am resident at within the electoral district of (here insert name of electoral district). I hereby declare that the above particulars respecting my claim are true to the best of my knowledge and belief.

Dated the day of 19

.....
Signature of Claimant.

THE ELECTORAL ACT, 1989

FORM 2 (Section 4(3))

CERTIFICATE OF REGISTRATION AS AN ELECTOR

This is to certify that (here insert full name of elector) of is a registered elector for the electoral district of (here insert name of electoral district) and is qualified to vote at any election of representatives of the people for that electoral district.

Dated the day of 19

.....
Signature of Supervisor of Elections.

FORM 3 (Section 4 (6))

APPLICATION FOR TRANSFER

To the Supervisor of Elections

I hereby apply for a transfer of my name from the register of electors for the electoral district of

to that for the electoral district of in which district I have resided for a period of not less than one month.

Name in full

Former village and island,

Present village and island

Dated the day of 19

.....
Signature of applicant

witness

THE ELECTORAL ACT, 1989

FORM 4 (Section 9(2))

NOMINATION OF CANDIDATE FOR LEGISLATIVE ASSEMBLY

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

.....
Signatures of Proposers.

I assent to the above nomination and do hereby declare that I have not been convicted of an unpardoned criminal offence punishable by imprisonment for more than 2 years and that I am not in accordance with clause 65 of the Constitution, in arrears under any judgment given by a Court in the Kingdom for the payment of any sum.

.....

Signature of Candidate.

Date

THE ELECTORAL ACT, 1989

FORM 5 (Section 12 (1))

BALLOT PAPER

KO E SILA

TOHI PALOTI MA'A E FAKAFOFONGA 'O E KAKAI

VAHEFONUVA

(fai'anga fili)

(ta'u)

'Oku ou loto ke fakafofonga ma'a e kakai ki he Fale Alea 'o Tonga 'i he

19- 19

HINGOA

KOLO

- 1.
- 2.
- 3.
- 4.
5. (o hokohoko ki he tokolahi 'o e kau kanititeiti)

TOKANGA: 'Oku pan ke tamte,"i 'c hc taha fili takiteha "aki ha peni vaitohi pc peni v ahev ahc' a c hingoa koto a pc "i he pep a palo ti, tuku kehe' a c hingoa "o e kau fakafofonga 'e toko 'oku nc f'di. Hill cni pea fakahu ki he loto puha paloti.

THE ELECTORAL ACT, 1989

FORM 6 (Section 14)

OATH OF ELECTOR

I swear before God that my name is

and that I am a resident ofand that I am over the age of 21 years and that I have not been convicted of a criminal offence punishable by 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