



ELECTORAL (AMENDMENT) ACT 1992

Act 15 of 1992

AN ACT TO AMEND THE ELECTORAL ACT

I assent,
TAUFA'AHAU TUPOU IV,
3rd November, 1992

[6th October, 1992]

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

1.
 - (1) This Act may be cited as the Electoral (Amendment) Act 1992.
 - (2) The Electoral Act 1989 is in this Act referred to as the Principal Act.
2. Section 4(4)(b) of the Principal Act is amended by adding the following new sub-paragraph (iii): —
 - “(iii) who is the wife of a noble, the district in which the noble is an elector.”
3. Section 9(2) of the Principal Act is amended by inserting the words “and make the declaration therein” between the word “nomination” and the words “in writing” appearing in the second sentence.

4. Section 12 of the Principal Act is deleted and substituted by the following:

“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 town or village of the candidates. The order in which the names of the candidates are printed on the ballot paper shall be determined by ballot conducted by the Returning Officer in each district immediately upon the close of nominations in the presence of such of the candidates as are present, and a police officer.
- (2) No identification, such as occupation, title, honour, or degree, shall be included on the ballot paper in addition to any candidate's name.
- (3) After checking against the final roll that the elector is entitled to vote the returning officer shall mark against the elector's name on the roll the same number as is marked on the ballot paper and then hand the ballot paper to him.
- (4) The elector shall retire to a voting cubicle or some private space in the voting area and mark his ballot paper with a "√" against the names of the candidate or candidates for whom he wishes to vote.

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.

- (5) After marking his ballot paper the elector shall fold the paper and deposit it in the ballot box.
- (6) Subsections (1), (2), (3) and (4) shall not apply to noble's elections.”.

5. Section 18 of the Principal Act is deleted and substituted by the following:

“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 freely and fairly in accordance with this Act;
- (b) to ensure compliance with the provisions of section 23; and
- (c) to maintain order in the polling station and the vicinity.”.

6. Section 20 of the Principal Act is amended as follows:
- (a) by inserting after the word “vote” in subsection (1) the words “or to be a candidate”;
 - (b) by inserting, the following subsection (3):
“(3) If any candidate is convicted of an offence under this section, whether before or after the relevant election, and he is elected as a representative at that election, the court shall declare the election of that representative to be void and if he has already taken his seat in the Legislative Assembly, he shall be unseated by the Assembly.”
7. Section 23 of the Principal Act is deleted and substituted by the following:

“23 General Offences.

- (1) Every person commits an offence who —
- (a) In any way interferes with, hinders, obstructs, annoys or pesters any elector, either in the polling station or while the elector is on the way to the polling station, with the intention of influencing the elector or advising the elector as to the elector's vote.
 - (b) At any time on polling day before the close of the poll in or in view or hearing of any public place or polling station makes a speech having direct or indirect reference to the poll;
 - (c) At any time on polling day before the close of the poll makes any statement having direct or indirect reference to the poll by means of any loudspeaker or public address apparatus or cinematograph or television, video or radio apparatus:

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

- (i) any public notice placed by the Supervisor or a Returning Officer; or
- (ii) any news in relation to an election;
- (d) At any time on polling day before the close of the poll maintains in any public place or in the vicinity of a polling station a kava booth, entertainment tent, or a vehicle whose primary purpose is to exhibit election campaign displays, for the purpose of influencing the elector as to the elector's vote;
- (e) At any time on polling day before the close of the poll, within, or at the entrance to, or in the vicinity of any polling station —

- (i) gives or offers to give any person any written or oral information as to any name or number on the final roll or any provisional roll being used at the election;
- (ii) permits or offers to permit any person to examine any copy of the final roll or any provisional roll being used at the election;

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

- (f) At any time prints or distributes or delivers to any person anything being or purporting to be an imitation of any ballot paper to be used at a poll and having thereon the names of the candidates or any of them, together with any direction or indication as to the candidate for whom any person should vote, or in any way containing any such direction or indication, or having thereon any matter likely to influence any vote;
- (g) At any time on polling day before the close of the poll exhibits in or in view of any public place, or publishes, or distributes, or broadcasts, —
 - (i) any statement advising or intended or likely to influence any elector as to the candidate for whom the elector should or should not vote; or
 - (ii) any statement advising or intended or likely to influence any elector to abstain from voting; or
 - (iii) any candidate's name, photograph, poster, emblem, slogan, or logo:

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

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

Provided further that this paragraph shall not apply to any name, photograph, poster, emblem, slogan or logo, or items of a similar nature, which are worn or displayed by any person (not being an electoral official) on his or her person or on any vehicle other than a vehicle referred to in paragraph (d);

- (h) At any time on polling day before the close of the poll prints or distributes or delivers to any person any card or paper

- (whether or not it is an imitation ballot paper) having thereon the names of the candidates or any of them;
- (i) Exhibits or leaves in any polling booth any card or paper having thereon any direction or indication as to how any person should vote or as to the method of voting;
 - (j) In any way interferes with, hinders, obstructs, annoys, threatens or abuses any official at or in the vicinity of a polling station.
- (2) It shall be a defence to a prosecution for an offence against subsection (1)(g) of this section that relates to the exhibition in or in view of a public place of a statement, name, photograph, poster, emblem, slogan or logo, if the defendant proves that —
- (a) the exhibition was inadvertent; and
 - (b) the defendant caused the exhibition to cease as soon as the defendant was notified by the Supervisor, a Returning Officer or a Police Officer that the exhibition was taking place.
- (3) In this section “public place” has the same meaning as in section 2 of the Order in Public Places Act (Cap. 37).
- (4) Nothing in this section shall apply to any official statement or announcement made or exhibited under the authority of this Act.
- (5) If a police officer has reasonable grounds to believe that any person has committed an offence against subsection (1), he may subject to subsection (2) of this section arrest the alleged offender without warrant.
- (6) A person guilty of an offence against this section is liable on conviction to a fine not exceeding \$1000 or to imprisonment for any period not exceeding one year or to both such fine and imprisonment”.
8. The Principal Act is amended by inserting the following new section after section 23: —

“23A.

- (1) Every returning officer appointed for the purposes of this Act shall use or disclose information acquired by him in that capacity only in accordance with his official duty.
- (2) No returning officer, except for some purpose authorised by law, shall —

- (a) interfere with or attempt to interfere with a voter when marking his vote;
 - (b) attempt to obtain in the vicinity of a polling station information as to the candidate for whom any voter is about to vote or has voted;
 - (c) communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter is about to vote or has voted, or as to the number on the ballot paper given to any voter.
- (3) Every returning officer shall maintain and aid in maintaining the secrecy of the voting, and shall not communicate any information obtained at the counting as to the candidate for whom any vote is given in any particular ballot paper.
- (4) No returning officer shall directly or indirectly induce any voter to display his ballot paper after he has marked it so as to make known to any person the name of any candidate for or against whom he has voted.
- (5) Every person who contravenes any provisions of this section is guilty of an offence and is liable on conviction to a fine not exceeding \$15000 or to imprisonment for any period not exceeding 18 months or to both such fine and imprisonment.

9. Section 24(4) of the Principal Act is deleted and substituted by the following:

“24

- (4) Within one month after an election, every candidate shall deliver to the Supervisor a signed statement of his election expenses in Form 7 of the Schedule, itemized and complete in all respects”.

10. Section 40 of the Principal Act is deleted and substituted by the following:

“40

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

Provided that a person who is unseated or whose election is declared void because he was not entitled to be a candidate shall not be nominated as a

candidate only at any election which has become necessary as a result of his unseating or his election being declared void.”.

11. Form 4 of the Schedule to the Principal Act is amended by deleting the last paragraph thereof and substituted by the following:

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

- (a) I have not been convicted of a criminal offence punishable by imprisonment for more than 2 years and for which I have not been pardoned by the King;
- (b) There is no order which has been made in any Court in the Kingdom against me for the payment of a specific sum of money the whole or any part of which remains outstanding - or for me to pay by instalments the whole or any part of such instalments remain outstanding on the day on which this nomination paper is submitted to the Returning Officer, and
- (c) The above particulars are true and correct.

Dated the day of 19

Signature of Candidate.”.

12. Form 5 of the Schedule to the Principal Act is deleted and substituted with the following:

“KO E LAO KI HE FILI FALE ALEA, 1989

No

SIPINA 5 (Kupu 12(1))

PEPA PALOTI

[KO E SILA]

PEPA 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	FILI
1.		<input checked="" type="checkbox"/>
2.		<input type="checkbox"/>
3.		<input type="checkbox"/>
4.		<input type="checkbox"/>
5.		<input type="checkbox"/>
6.		<input type="checkbox"/>
7.		<input type="checkbox"/>
8.		<input type="checkbox"/>
9.		<input type="checkbox"/>
('o hokohoko ki he tokolahi 'o e kau kanititeiti)		<input type="checkbox"/>

TOKANGA:

Fakahoko 'a ho'o fili 'aki hano faka'ilonga'i'aki ha “√” 'i he feitu'u ko ia kuo faka'ilonga'i atu 'i he fili pe ko ia 'a e (ngaahi) hingoa

'o e (kau) kanititeiti 'e toko 'oku ke fili ai.

2. 'I he hili 'a ho'o fill, pea ke pelu 'a ho'o lau'i pepa paloti pea fakahu ki he loto puha paloti.'".

13. The Schedule to the Principal Act is amended by inserting the following new form as Form 7:

“Electoral Act 1989

Form 7 (Section 24)

RETURN OF ELECTION EXPENSES

I a candidate at the election for the Electoral District of held on the day of 19 hereby make the following return of all expenses incurred by me or on my behalf at the election.

EXPENDITURE

Date of Payment	Details of Payment	Amount of Payment

I declare that the above particulars are true and correct.

Date Signature"

Passed in the Legislative Assembly this 6th day of October, 1992.