



Tonga

LEGISLATIVE ASSEMBLY ACT

1988 Revised Edition



LEGISLATIVE ASSEMBLY ACT

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LEGISLATIVE ASSEMBLY ACT

Ordinance No. 7 of 1915; Acts No. 10 of 1938, 9 of 1946, 8 of 1948, 16 of 1951, 14 of 1952, 17 of 1957, 6 of 1958, 4 of 1964, 7 of 1978, 4 of 1982, 16 of 1982, 13 of 1983, 14 of 1985, 6 of 1986, 46 of 1988.

AN ACT TO REGULATE THE ELECTIONS AND SITTINGS OF THE LEGISLATIVE ASSEMBLY

Commencement [4th May, 1915]

1 Short title.

This Act may be cited as The Legislative Assembly Act.

PART I - ELECTIONS

2 Duration of Assembly.

- (1) The duration of the Assembly is limited to a period of 3 years next following the date on which the representatives were elected at a general election.

General Election date.

- (2) A general election for the representatives of the nobles and the representatives of the people may be held at the same time and places.

- (3) The Prime Minister shall upon a dissolution ordered by the King or if the Assembly be not so dissolved then at a reasonable time before the duration of the Assembly would ordinarily terminate fix a day for the general election.

3 Electoral districts. Number of members.

- (1) The Kingdom shall be divided into 5 electoral districts namely —
- (a) Tongatapu
 - (b) Ha'apai
 - (c) Vava'u
 - (d) 'Eua
 - (e) Niuafu'ou and Niuatoputapu.

There shall be elected for Tongatapu 3 representatives of the nobles and 3 representatives of the people, for each of the districts of Ha'apai and Vava'u 2 representatives of the nobles and 2 representatives of the people and for each of the districts of 'Eua and Niuafu'ou and Niuatoputapu one representative of the nobles and one representative of the people: Provided that in the case of 'Eua the representative of the nobles shall be elected from the nobles of Tongatapu. (*Substituted by Act 16 of 1982.*)

Polling places.

- (2) The Prime Minister with the consent of the Cabinet shall appoint the places within each district where the election shall be held.

4 Qualifications of elector for representatives of the nobles.

Every noble shall be entitled to vote within his district at the election for representatives of the nobles to the Legislative Assembly provided always that he has not been found guilty of an indictable offence and that he is not insane or imbecile.

5 Election of representatives.

Elections shall be conducted as follows —

- (a) all representatives of the people shall be chosen by ballot, and the elections of nobles shall be in accordance with such regulations as His Majesty in Council may make;

Appointment of returning officers.

- (b) the Prime Minister shall appoint a returning officer for each electoral district and such officer shall have full charge of the

elections in the electoral district to which he is appointed, and may appoint such assistants as may be necessary;

Registration of electors.

- (c)
- (i) in each electoral district a Register shall be kept of all persons duly qualified under clause 64 of the Constitution to be electors of representatives of the people. Every Tongan upon attaining the age of 21 years, unless disqualified by clause 64 of the Constitution, shall within 3 months of attaining such age, or within 3 months after his return to the Kingdom if not already registered, make application to the returning officer of the district wherein he is then resident, as in Form I of the Schedule hereto. A registered elector may, before leaving his electoral district to reside temporarily in another district, obtain from the returning officer a certificate as in Form 2 of the Schedule hereto; (*Amended by Act 46 of 1988.*)
 - (ii) any elector whose name appears on the register of any electoral district and who by reason of change of residence has resided in any other electoral district for not less than one month shall apply to the returning officer of that district to have his name transferred to the register of the district in which he is residing;
 - (iii) every application for transfer shall be made in accordance with Form 4 of the Schedule hereto;
 - (iv) every application shall be signed in the presence of the returning officer of the district in which the applicant is resident;
 - (v) the returning officer shall note on the application to transfer the date of its receipt by him and shall, if it appears that the applicant is entitled to the transfer, register it by placing the name of the elector on the register and shall notify the returning officer of the district in which the elector was previously registered of such new registration. The returning officer of the applicant's previous district shall thereupon cancel the old registration;
 - (vi) where the name of an elector is on a register on which he is not entitled to have his name the returning officer may transfer it to another register on which the elector is entitled to have his name and shall forthwith notify the elector of the change;

- (vii) no person shall be entitled to be registered as an elector or to vote in more than one district:

Provided that should any person qualified to be enrolled as an elector fail to make application as in this sub-section provided, he shall be liable to the penalty provided in section 19 of this Act and his name shall be entered on the register by the returning officer of the appropriate district; (*Amended by Act 16 of 1951 and Act 17 of 1957.*)

Publication of registers.

- (d) on or before the 30th day of June in each election year the Prime Minister shall cause to be published in the Gazette lists of qualified electors for each district. Such lists shall show the full name and address of each elector;

Powers of returning officers.

- (e) the returning officers shall have the following powers in respect of their respective electoral districts —
- (i) to correct any apparent errors or mistakes;
 - (ii) on the written application of an elector to change the original name or address of such elector to an altered name or address;
 - (iii) to re-instate the name of any person in the register struck out by mistake, or to insert therein the name of any person inadvertently omitted from the register;
 - (iv) to strike off a register the name of a deceased elector, or of an elector who has become disfranchised to vote in that electoral district for any reason whatsoever;
 - (v) to administer oaths;

Persons entitled to vote at elections.

- (f) the persons entitled to vote at any elections shall respectively be all persons whose names are included in the electoral register for the electoral district to which that election relates;

Appeal against returning officer in respect of registration.

- (g) 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 against the decision of a returning officer in respect of registration;

Any duly qualified elector whose application for registration as an elector has been refused, or whose name has been wrongfully removed from the register, may appeal in writing to the Electoral

Appeal Committee. On any such appeal 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;

Writ of election.

- (h) for the purpose of every general election of representatives 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; *(Amended by Act 17 of 1957.)*

Notice of day of nomination of candidates.

- (i)
- (i) on receiving the writ for the election of representatives to the Legislative Assembly the returning officer shall mark therein and initial the date of the receipt, and shall by fono through district and town officers publish the date when he will receive the nomination of a candidate or candidates for the seat or 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 Niuatoputapu and Niuafu'ou;
- (ii) the day so fixed shall not be less than 21 nor more than 28 days after the day on which the writ is received;

Nomination of candidates.

- (j)
- (i) on the day and at the place so fixed the returning officer 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;
- (ii) Every candidate shall be nominated in writing in accordance with Form 3 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; *(Amended by Act 17 of 1957.)*

- (iii) at the time of nomination the candidate shall deposit with the returning officer the sum of \$100 and shall receive from the returning officer a duly signed Government revenue receipt therefor. On the completion of the election a candidate receiving 6 and 2 thirds per cent in the case of the Electoral District of Tongatapu (including Eua and the Niuas) or 10 per cent in the case of the Electoral Districts of Ha'apai and Vava'u or more of the total votes polled in that electoral district shall be returned the sum of \$100 on presentation of the receipt, together with a certificate from the returning officer that the candidate is entitled to the refund, at Treasury or a Sub-Treasury. A candidate failing to receive 6 and 2 thirds per cent in the case of the Electoral District of Tongatapu (including Eua and the Niuas) or 10 per cent in the case of the Electoral Districts of Ha'apai and Vava'u of the total votes polled in that electoral district shall forfeit his deposit, and the sum so deposited shall be paid into General Revenue on the certificate of the returning officer; (*Amended by Act 8 of 1948 and Act 4 of 1982.*)
- (iv) if at 3 p.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;

Time of polling.

- (k) on the day or days fixed by the returning officer he 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;

Duty of registered elector of people to vote.

- (l) each duly registered elector of the people shall vote at all elections for a representative from his electoral district:

Provided that a returning officer may at his discretion exempt in writing a registered elector from voting on the grounds of ill-health or old age;

Method of voting.

- (m) the ballot of each voter shall consist of a printed paper, showing on the face thereof the names and addresses of the candidates.

The returning officer shall distribute to each of the electors present a ballot paper and explain to the electors that each shall vote for only the number of vacant seats that there may be in that electoral district. Each elector shall strike out with a pen or pencil all names on the ballot paper other than those of the representatives he wishes

to elect. Upon completion of the ballot paper an elector shall sign it and deposit it in the ballot box;

Voting by elector temporarily in a district other than his own.

- (n) 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.

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 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 returning officer of the district wherein the elector is registered as soon as may be practicable;

Challenge of elector.

- (o)
- (i) should it appear to any returning officer or assistant that a person preparing to vote for representatives of the people has no right to vote it shall be lawful for the returning officer or assistant to require such person to take the following oath: "I swear before God that I am a resident of (.....), that I am over the age of 21 years and that I have not been convicted of treason, sedition, homicide, larceny (being larceny triable before the Supreme Court), bribery, perjury, forgery, embezzlement or a like crime".
- (If deponent has been convicted of any such crime and has received a free pardon in respect thereof he shall instead of the last phrase swear "I have received a free pardon in respect of my offence."); (*Amended by Act 14 of 1952, Act 17 of 1957 and Act 6 of 1958.*)
- (ii) should any person refuse to take such an oath when required he shall not be eligible to vote, and any vote that he may make shall be void;

Void ballot papers.

- (p) any ballot paper which has not been signed by the elector submitting it or 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; (*Amended by Act 7 of 1978.*)

Declaration of poll.

- (q) the officer in charge of each polling station shall after the time for voting has closed 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 Prime Minister by registered mail;

Returning Officer's decision final.

- (r) subject to the right of any candidate to demand in writing of a returning officer a recount of votes within one week of the declaration of the poll, the decision of a returning officer as to any question arising in respect to any ballot paper, or as to the number of votes counted, shall be final. All recounts of votes as provided for above shall be made by the District Electoral Appeal Committee;

Prime Minister to exercise general supervision.

- (s) the Prime Minister shall be responsible for the general management and organisation of the elections, and shall provide ballot boxes, ballot papers and such furniture as may be necessary; (*Substituted by Act 9 of 1946.*)

Deemed residence.

- (t) a person shall be deemed to be a resident of any one of the following districts —
- (i) in the case of a male elector —
 - (1) who is the holder of a tax allotment, the district in which the tax allotment of which he is the holder is situated;
 - (2) who is not the holder of a tax allotment, the district where his poll tax is payable;
 - (ii) in the case of a female elector —
 - (1) who is a married woman, the wife of any elector qualified under (i) (1) or (2) above, the district in which her husband is an elector;
 - (2) who is a widow and the holder of a tax allotment, the district in which the tax allotment is situated;
 - (3) any other female, the district in which she shall permanently reside. (*Added by Act 17 of 1957.*)

6 Death, resignation or disfranchisement of member.

If any representative shall die or shall resign his seat or shall cease to be qualified for election under clauses 23 and 65 of the Constitution or be unseated in accordance with clause 66 of the Constitution or section 9 of this Act, his seat in the Legislative Assembly shall thereupon become vacant and the Speaker of the Legislative Assembly shall issue a writ for the election of a successor. The Prime Minister shall thereupon fix the time and place of such election and the person elected thereat shall hold office for the balance of the term of his predecessor. (*Substituted by Act 17 of 1957.*)

7 Member absenting himself.

If any representative shall be absent from the Legislative Assembly for more than 12 consecutive calendar months, or except on the ground of illness, for a period of 2 weeks during the session of the Legislative Assembly, without leave of the Speaker, his seat in the Legislative Assembly shall thereupon become vacant and his successor shall be determined in accordance with the provisions of section 6 hereof. (*Substituted by Act 10 of 1938; Amended by Act 17 of 1957.*)

8 Penalty for false oath.

Any one deceiving a returning officer by making a false oath or attempting to do so shall on conviction be punished according to the law relating to perjury.

9 Bribery at election.

It shall be unlawful to use threatening language or bribery for the purpose of obtaining votes or of influencing electors in their votes and any person found guilty of such shall on conviction be punished according to the law relating to bribery and if he be a member of the Legislative Assembly he shall be unseated by the Legislative Assembly and it shall be lawful for the Minister of Police to prosecute all parties concerned in the offence.

PART II - GRATUITIES FOR MEMBERS AND STAFF OF THE LEGISLATIVE ASSEMBLY

10 Gratuities payable when member retires.

Every Member of the Legislative Assembly who has served as such for a continuous period of not less than 15 years may be granted on his retirement in a capital sum or by instalments a gratuity of an amount equal to 2 year's basic

salary at the rate of salary earned by such Member during the 12 months immediately preceding such retirement. (*Added by Act 4 of 1964; Amended by Act 13 of 1983.*)

11 Gratuities payable when member dies.

(1) Where a Member of the Legislative Assembly dies while a Member, it shall be lawful for His Majesty in Council to grant to the widow or legitimate child or children or the lawful heir of such Member a gratuity at the rate set out below in a capital sum or by instalments which shall be available for the payment of all debts and funeral and testamentary expenses of the deceased member —

- (a) if the deceased Member has served as a Member for a continuous period of not less than 15 years the gratuity shall be an amount equal to 2 years of his annual basic salary;
- (b) if the deceased Member has served as a Member for a continuous period of not less than 8 years but less than 15 years the gratuity shall be an amount equal to 2 thirds of his annual basic salary for 2 years;
- (c) in all other cases the gratuity shall be an amount equal to one third of his annual basic salary for 2 years.

(2) This section shall be deemed to have come into effect on the 12th November 1984. (*Substituted by Act 6 of 1986.*)

12 Staff benefit.

Any person, other than a pensionable officer of Government, who is employed in the staff of the Legislative Assembly, shall be entitled to the same benefits given to Members of the Legislative Assembly under sections 10 and 11 of this Act, but at the appropriate rate of his or her salary. (*Inserted by Act 14 of 1985.*)

13 Certain members excluded.

The provisions of this Part shall not apply to Members of the Legislative Assembly or the wives and children of such Members who are entitled to benefits under the Pensions Act. (*Added by Act 4 of 1964.*)

PART III - SESSIONS

14 Privy Council determines times.

The Legislative Assembly shall meet at least once in every 12 calendar months at Nuku'alofa in Tongatapu at such time as may be determined by the Privy Council. But it shall be lawful for the King to summon the Legislative Assembly for business at any time.

15 The Speaker.

The King shall appoint one of the nobles of the Legislative Assembly to be the Speaker of the Legislative Assembly who shall preside over all meetings and he shall hold office during the pleasure of the King but all other officers shall be appointed by the Legislative Assembly and it shall have power to make its own rules of procedure for governing its meetings.

16 Acting Speaker.

Should the Speaker be prevented by sickness or other reasonable cause from presiding the Prime Minister shall inform the King who shall appoint one of the nobles of the Legislative Assembly to preside temporarily over the Assembly until the Speaker be able to resume the chair and the Speaker shall resume the chair upon the first day upon which he is able to attend the meeting of the Assembly.

17 Opening and closing of the Legislative Assembly.

The sessions of the Legislative Assembly shall be opened and closed by the King either in person or by a commission of 3 nobles appointed by him.

18 Passages and expenses of members.

When the Assembly has been convoked the Prime Minister shall make all arrangements as to the arrival and departure of the members of the Legislative Assembly and the Assembly shall have the power to make such provision as it thinks fit for the members during the session.

19 Offences

If any person —

- (a) refuses, or neglects to comply with, or acts in contravention of any of the provisions of this Act, or
- (b) being a person required under this Act to make, sign or deliver any document, makes, signs or delivers, or causes to be made, signed or delivered a false document, or
- (c) being a person required under this Act to answer any question refuses to answer, or gives a false answer to that question, he shall for each offence be liable to a fine not exceeding \$60. (*Added by Act 9 of 1946.*)

SCHEDULE

Form 1

(Section 5 (c) (i))

CLAIM TO BE REGISTERED AS AN ELECTOR

To the returning officer at..... (here insert name of electoral district).

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

Name in full

Village and Island

My qualification is as follows:

I am a Tongan subject.

I am of the age of 21 years or upwards.

I am a 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 treason, sedition, homicide, larceny, (being larceny triable before the Supreme Court), bribery, perjury, forgery, embezzlement or a like crime.

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.**

(Amended by Act 16 of 1951, Act 17 of 1957 and Act 6 of 1958.)

Form 2

(Section 5 (c) (i))

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 RETURNING OFFICER,**

.....**ELECTORAL DISTRICT.**

Form 3

(Section 5 (j) (ii))

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 theelectoral district.

.....**SIGNATURES OF PROPOSERS.**

I assent to the above nomination.

.....**SIGNATURE OF CANDIDATE.**

Date

(Added by Act 9 of 1946.)

Form 4

(Section 5 (c) (iii))

APPLICATION FOR TRANSFER

To the Returning Officer of

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 theday of19

.....**SIGNATURE OF APPLICANT.**

.....**WITNESS.**

(Added by Act 17 of 1957.)