

ELECTORAL AMENDMENT

WESTERN SAMOA

Arrangement of Provisions

Title

1. Short Title and commencement
2. Interpretation
3. Chief returning Officer, Registrar and other officers
4. Who may be candidates for election as members
5. Qualifications of Electors
6. Rules for determining place of residence within Western Sa
7. Compilation of electoral rolls
8. Procedure
9. Qualifications of voters
10. Registration of electors
11. Retention on the Roll
12. Signing and witnessing of applications for registration etc
13. Procedure following application for registration
14. Applications received while rolls temporarily closed.
15. Notice to be given when person ceases to be qualified
16. Time limit for objections and hearings
17. Removal of names from roll by Registrar
18. Closing of Rolls
19. False statements or declarations
20. Head of State to give notice to Chief Returning Officer
21. Chief Returning Officer to give public notice of election and nomination day

22. Chief Returning Officer to give public notice of by-election and nomination day
  23. Main rolls to be printed
  24. Polling Places
  25. Who may vote
  26. Who may not vote
  27. Special voters
  28. Voting by special voters
  29. Time for presentation of Election petition
  30. Trial of Petition
  31. Certificates of Identity etc
  32. Amendments to First Schedule
- Schedule

1990 No. 20

AN ACT to amend the Electoral Act 1963

BE IT ENACTED by the Legislative Assembly of Western Samoa in Parliament assembled as follows:-

1. Short Title and commencement - (1) This Act may be cited as the Electoral Amendment Act 1990 and shall be read together with and deemed part of the Electoral Act 1963 (hereinafter referred to as the principal Act).

(2) This Act shall be deemed to have come into force on the 27th day of November 1990 .

2. Interpretation - Section 2 of the principal Act is amended by inserting in their proper alphabetical positions the following new definitions:-

"Adult" means a person of or over the age of 21 years; and where public notice has been given in respect of a Polling day includes a person who will have attained the age of 21 years on or before that day;

"Assistant" means a person appointed as an assistant under section 25A of this Act.

3. Chief returning Officer, Registrar and other officers - Section 3 of the principal Act is amended by inserting a new subsection to be known as subsection (2) as follows :-

" (2) The Public Service Commission may appoint the same person to hold office both as Chief Returning Officer and Registrar of electors and voters."

4. Who may be candidates for election as members - Subsection (1) of section 5 of the principal Act is amended by inserting immediately after the word "constituency" where that word first occurs, the words "and is the holder of a Matai title".

5. Qualifications of Electors - Section 16 of the principal Act is repealed and the following section is substituted:-

" 16. Qualifications of Electors - (1) Subject to the provisions of the Constitution and of this Act every adult person shall be qualified to be an elector of a constituency if -

(a) He is a Western Samoan citizen; and

(b) His name does not appear on the individual voters roll.

(2) The constituency in which an elector shall be registered shall be determined according to the following provisions:-

(a) If the elector is the holder of a Matai title he shall be registered in the constituency in respect of which the title exists or, if he is a plural title

title holder, he shall be registered in the constituency in respect of which one of those titles exists, as he may at any time choose.

(b) If the elector is not the holder of a Matai title but his spouse or one of his grandparents, parents, or a brother or sister is (or if that person is dead, was at the time of his or her death) the holder of a Matai title then, subject to paragraph (c) of this subsection, the elector shall be registered -

(i) if there is only one title to which this paragraph applies, in the constituency in respect of which that title exists or existed; or

(ii) if there is more than one title to which this paragraph applies, in such constituency in respect of which one of those title exists or as the case may be existed as the elector may at any time choose;

(c) Paragraph (b) of this subsection shall not apply in respect of any Matai title acquired by a brother or sister of an elector from or through the spouse of such brother or sister;

(d) If the elector is not a person to whom either paragraph (a) or (b) of this subsection applies then the elector shall be registered in either -

(i) the constituency in which it is confirmed to the satisfaction of the Registrar that he is rendering service to a village; or

(ii) the constituency in which that person is a bona fide resident at the time he applies for registration, as that elector may choose;

(e) For the purposes of paragraph (d) of this subsection "service" in relation to a village means service to a Church in that village, or to the Village Council, or to any community project or work related activity in that village;

(f) If the elector is not resident in Western Samoa and is not a person to whom paragraph (a), (b), or (d) of this subsection applies the elector shall be registered

in the constituency in which he last resided in Western Samoa;

(g) If the elector has never resided in Western Samoa and none of paragraphs (a), (b), (d) or (f) apply to that elector then the elector shall be registered in a constituency in which the Registrar is satisfied that he has family ties;

(3) Where a person makes a choice of constituency pursuant to subsection (2)(a) or (2)(b)(ii) of this section he shall notify the Registrar accordingly. Subject to Part V of this Act, a choice made may be revoked, and a fresh choice made and notified to the Registrar at any time.

(4) A person who is registered as an elector may by notification to the Registrar require the Registrar to remove his name from any roll.

(5) Where a person revokes a choice of constituency or requires the Registrar to remove his name from any roll he shall forthwith surrender to the Registrar his Certificate of Identity, and shall not be entitled to be registered on any other roll until he has done so, or until he satisfies the Registrar that his certificate has been lost. "

6. Rules for determining place of residence within Western Samoa - The principal Act is amended by inserting immediately after section 16 the following new section:-

"16A. Rules for determining place of residence within Western Samoa - (1) Subject to the provisions of this section, the place where a person resides within Western Samoa at any material time or during any material period shall be determined for the purpose of this Act by reference to the facts of the case.

(2) For the purposes of this Act a person can reside in one place only.

(3) A person resides at the place where that person chooses to make his home by reason of family or personal relations or for other domestic or personal reasons.

(4) Where the property on which a person's home is located is divided between two or more constituencies, that person shall,-

(a) If his dwelling is located wholly within one of those constituencies, be deemed to reside in that constituency; or

(b) In any other case, be deemed to reside in the constituency in which is located-

(i) The front door or other main entrance of his dwelling; or

(ii) Where his dwelling is an apartment, the front door or other main entrance of the building in which the apartment is situated.

(5) A person who is detained in any penal institution or hospital by virtue of any enactment shall not, by reason only of that detention, be treated for the purpose of subsection (3) of this section as residing there.

(6) The place where, for the purposes of this Act, a person resides shall not change by reason only of the fact that the person-

(a) Is occasionally or temporarily absent from that place; or

(b) Is absent from that place for any period because of his service or that of his spouse as a member of Parliament; or

(c) Is absent from that place for any period because of his occupation or employment or that of his spouse; or

(d) Is absent from that place for any period because he or his spouse, is a student,-

even if such absence involves occasional or regular residence at another place or other places.

(7) Except as provided in subsection (6) of this section, a person who has permanently left his former home shall be deemed not to reside at that place, notwithstanding his home for the time being is temporary only.

(8) A Western Samoan citizen who is outside Western Samoa shall be deemed to reside where he had his last home in Western Samoa; but nothing in this subsection shall affect the application of section 16 of this Act for the purpose of determining the qualification of any person for registration as an elector or section 70B of this Act.

(9) In the case of a person who is appointed to be a member of the Cabinet, or who is the spouse of any person so appointed, the following provisions shall apply notwithstanding anything to the contrary in this section, namely,-

(a) So long as he holds that office he shall be deemed to continue to reside at the place of residence in respect of which he was registered as an elector of a constituency (in this subsection referred to as the original constituency), notwithstanding his absence therefrom at the seat of Government or otherwise, unless and until he duly applies for registration as an elector of another constituency of which he is, apart from the provisions of this paragraph, qualified to be an elector;

(b) Upon being registered as an elector of the other constituency pursuant to an application as aforesaid, the applicant shall cease to be entitled to continue to be registered under this subsection as an elector of the original constituency.

(10) A person whose home is on any ship, boat, or vessel permanently located in any harbour shall be deemed to reside in the electoral district in which the wharf or landing place in the harbour is situated. "

7. Compilation of electoral rolls - (1) Subsection (1) of section 17 of the principal Act is amended by omitting the words "from time to time compile" and substituting the words "compile and at all times maintain".

(2) Subsection (2) of section 17 of the principal Act is amended by omitting all of the words after the word "information" and substituting the words "relevant to such roll."

(3) Subsections (3) and 5) of section 17 of the principal Act are repealed.

8. Procedure - Section 18 of the principal Act is repealed and the following section is substituted:-

" 18 Transitional - (1) Every person who is registered as an elector in any constituency on the 27th day of November 1990 shall without further application be registered on the roll compiled pursuant to section 17 of this Act after that date;

(2) Unless the Registrar in any particular case otherwise determines it shall not be necessary for any person whose name appears on the main or supplementary roll prepared for the purposes of the Plebiscite Act 1990 to comply with the provisions of section 25A of this Act for the purposes of enrolment for any election held in 1991.

(3) Any person to whom subsection (2) of this section applies may be registered as an elector or as a voter by:-

(a) Appearing before the Registrar or an assistant for the purpose of obtaining a certificate of identity; and

(b) Satisfying the Registrar as to the constituency in respect of which that person should be registered, or, as the case may be, by satisfying the Registrar that he should be registered on the individual voters' roll.

(4) This section shall apply notwithstanding any provision to the contrary in section 25A of this Act.

9. Qualifications of voters - (1) Subsection (1) of section 19 of the principal Act is amended by omitting the words "a citizen of Western Samoa of or over the age of 21 years" and substituting the words "an adult citizen of Western Samoa".

(2) Subsection (1) of section 19 of the principal Act is further amended by adding at the end of paragraph (d) the word "or" and by adding a new paragraph as follows:-

" (e) His or her spouse is registered as an individual voter."



(3) Subsection (1) of section 19 of the principal Act is further amended by omitting the word "father" wherever that word appears, and substituting in each case the word "parent".

(4) Subsection (2) of Section 19 of the principal Act is amended by adding at the end of paragraph (b) the word "or" and by adding a new paragraph as follows -

" (c) Is registered as an elector."

10. Registration of voters and electors - (1) Section 21 of the principal Act is amended by omitting the words "or send by post" and substituting the words "in person to the Registrar or an assistant" and by omitting the words "and declaration".

(2) The principal Act is further amended by inserting in Part V immediately before section 26 the following new section:-

"25A. Registration of electors - (1) Every person who wishes to be registered as an elector in any constituency shall unless his name is already on the roll make application in person to the Registrar or to an assistant appointed by the Registrar to receive such application.

(2) The Registrar shall appoint and make available such assistants as he considers necessary for the purposes of subsection (1) of this section or of section 21 of this Act and may appoint and make available assistants in any Embassy or Consulate of Western Samoa in a foreign country.

11. Retention on the roll - Section 22 of the principal Act is amended by adding a new subsection as subsection (2) as follows :-

"(2) A person who is registered as a voter may by notification to the Registrar require the Registrar to remove his name from the individual voters' roll in which event he shall forthwith surrender to the Registrar his Certificate of Identity, and shall not be entitled to be registered on any other roll until he has done so, or until he satisfies the Registrar that

his certificate has been lost. "

12. Signing and witnessing of applications for registration etc. - The principal Act is further amended by inserting immediately after section 25A (as inserted by this Act) the following new section:-

"25B. Signing and witnessing of applications for registration, etc. - (1) Every person making any application or declaration in respect of registration as an elector or voter shall do so in form 1A or 2 of the Schedule to this Act, as the case may require, and shall either sign or place his mark on the application or declaration and must add to his signature his occupation and address.

(2) Where a person making an application or declaration in respect of registration as an elector or a voter is physically disabled, the application or declaration may be signed on his behalf by a registered elector or voter who signs by direction of the physically disabled person and who indicates on the application or declaration -

(i) That the applicant or declarant is a physically disabled person.

(ii) That the application or declaration is being signed by direction of the applicant or declarant.

(3) The place in respect of which registration is claimed must be specified in such manner as to enable it to be clearly identified.

(4) The Registrar may reject any application or declaration that does not comply with subsection (1) or subsection (3) of this section or fails to supply any of the information required by form 1A or as the case may be, form 2, of the Schedule to this Act.

(5) Every application for registration as an elector shall be witnessed by the Registrar or an assistant.

13. Procedure following application for registration - The principal Act is further amended inserting immediately after section 25B (as inserted by this Act) the following new section-

"25C Procedure following application for registration - (1) If the Registrar is satisfied that any person who claims to be registered as an elector or a voter (whether by transfer from another territorial constituency or from the individual voters' roll or otherwise) is qualified to be registered he shall within 5 days of the receipt of the claim forthwith enter the name of the applicant on the appropriate roll.

(2) If after making such inquiries as he thinks fit the Registrar has reason to believe that any applicant is not qualified to be registered he shall within five days of receipt of the claim give notice in writing to the claimant setting forth the particulars of which proof is required.

(3) If the applicant fails to furnish proof of his qualifications satisfactorily to the Registrar within ten days after the giving of notice to him under subsection (2) of this section, the Registrar shall refuse the application and forthwith notify the applicant accordingly.

(4) Within fourteen days after the giving to the applicant of a notice of refusal under subsection (3) of this section, the applicant may require the Registrar to refer the claim to a Magistrate's Court.

(5) The Registrar shall notify the applicant of the time and place appointed for the hearing of the application by the Magistrate's Court.

(6) As soon as practicable after the registration of any person on any roll the Registrar shall send or deliver to that person a certificate of identity issued in accordance with section 135A of this Act."

14. Applications received while rolls temporarily closed - The principal Act is further amended by inserting immediately after section 25C (as inserted by this Act) the following new

section:-

"25D. Applications received while rolls temporarily closed. - (1) The Registrar shall not at any time in the period that any roll is temporarily closed, register any application as an elector or voter that the Registrar receives after 4 p.m. on the day before the commencement of that period."

15. Notice to be given when person ceases to be qualified - The principal Act is further amended by inserting immediately after section 25D (as inserted by this Act) the following new section:-

"25E Notice to be given when person ceases to be qualified - (1) Every person who ceases to be qualified to be enrolled as an elector in any constituency or as an individual voter shall give notice of that fact to the registrar within one month of his ceasing to be so qualified.

(2) Every person who fails to comply with this section commits an offence and is liable upon conviction to a fine not exceeding \$100."

16. Time limit for objections and hearings - (1) The heading to section 28 of the principal Act is amended by inserting immediately before the word "closing" the word "temporary".

(2) Section 28 of the principal Act is amended by inserting immediately before the word "closed" the word "temporarily".

17. Removal of names from roll by Registrar - Section 32 is amended by -

(a) Adding in subsection (1) the following new paragraph:-

"(c) The name of any person whom the Registrar upon enquiry is satisfied has ceased to be qualified to be enrolled on that roll if -

(i) The Registrar has notified that person by delivery to him or (if he cannot be found) by leaving at his last known address a notice of the Registrar's

intention to remove the name of that person from the roll and calling upon him to show cause why his name should not be so removed; and  
(ii) After twenty one days following the giving of that notice the person has not satisfied the Registrar that he remains qualified to be registered on that roll."

(b) Inserting in subsection (3) after the words "date fixed for the", the word "temporary".

18. Closing of Rolls - Subsection (1) of section 34 of the principal Act is amended by inserting after the words "shall be" where they first appear the word "temporarily".

19. False statements or declarations - Section 40 of the principal Act is amended by omitting the expression "\$100" and substituting the expression "\$500".

20. Head of State to give notice to Chief Returning Officer - Section 44 of the principal Act is amended by omitting the words "50 clear days" and substituting the words "35 clear days".

21. Chief Returning Officer to give public notice of election and nomination day - Section 45 of the principal Act is amended by omitting the words "45 clear days" and substituting the words "30 clear days".

22. Chief Returning Officer to give public notice of by-election and nomination day - Section 47 of the principal Act is amended by omitting the words "45 clear days" and substituting the words "30 clear days".

23. Main rolls to be printed - Section 35 of the principal Act is amended by -

(a) Omitting from subsection (1) the words "As soon as practicable after the closing of all the electoral rolls" and substituting the words "From time to time" and by further omitting the word "Samoan" and substituting the word "English".

(b) Omitting from subsection (2) the words "As soon as practicable after the closing of the individual voters' roll" and substituting the words "From time to time" and by inserting immediately before the word "roll" where it the first appears the words "individual voters".

24. Polling Places - Section 59 of the principal Act is amended by adding the following subsection as subsection (2):-

"(2) No polling place shall be appointed either for the receipt of ordinary or special votes outside the islands of Upolu, Savaii or Manono."

25. Who may vote - The principal Act is amended by inserting immediately after section 70 the following new section:-

"70A. Who may vote- Subject to section 70B and to the other provisions of this Act any person whose name lawfully appears on the main roll or any supplementary roll for a constituency or on the main or supplementary individual voters' roll as the case may be and who is qualified to be registered as an elector for the constituency or as an individual voter shall be qualified to vote at an election in that constituency or as an individual voter as the case may be."

26. Who may not vote - The principal Act is further amended by inserting immediately after section 70A (as inserted by this Act) the following new section:-

"70B. Who may not vote - Notwithstanding any other provision of this Act no person shall be entitled to vote at any election except upon production of a valid certificate

of identity issued under section 135A of this Act."

27. Special voters - The principal Act is further amended by inserting immediately after section 70B (as inserted by this Act) the following new section:-

" 70C. Special voters (1) A person who is qualified and registered to vote at any election in any constituency and wishes to cast his vote for that constituency may vote as a special voter at a polling place outside that constituency."

28. Voting by special voters - The principal Act is further amended by inserting immediately after section 70C (as inserted by this Act) the following new section:-

"70D. Voting by special voters (1) Notwithstanding anything to the contrary in this Act, a special voter may vote at such place within Western Samoa, at such time, in such manner, and upon or subject to such conditions as appear in this Act or are as may be prescribed in that behalf by regulations made under this Act.

(2) Different methods of voting may be prescribed for different classes of special voters.

(3) The ballot papers for use by special voters or by any class of special voters may be in such form as is prescribed by regulations, and the consecutive numbers of the special ballot papers for any district may be in a different series from that used for the ordinary ballot papers.

(4) Each candidate may, by writing under his hand, appoint one scrutineer to be present at the office of the Registrar when he is performing his duties in relation to declarations in respect of special votes.

(5) Every scrutineer shall, before being allowed to act, make a declaration in form 1 before a Returning Officer or the Deputy Returning Officer or a person authorised to take a statutory declaration by section 21 of the Oaths, Affidavits

and Declarations Act 1963.

(6) No candidate shall act as scrutineer under this section.

(7) Subject to the provisions of this section and section 70C of this Act, and to the provisions of any regulations made for the purposes of this section, all the provisions of this Act shall, as far as applicable and with the necessary modifications, apply with respect to voting by special voters and to their votes."

29. Time for presentation of Election petition - Section 106 of the principal Act is amended by omitting from subsections (1) and (2) the words "14 days" wherever those words occur and substituting the words "7 days".

30. Trial of Petition - (1) Subsection (1) of section 111 of the principal Act is amended by omitting the words "14 days" and substituting the words "7 days".

(2) Section 111 of the principal Act is amended by adding a new subsection as follows:-

"(3) In allocating a time for hearing an electoral petition the Court shall give priority to that petition over all matters before the Court which are not electoral petitions"

31. Certificates of Identity - The principal Act is further amended by inserting immediately after section 135 a new section as follows:-

"135A. Certificates of Identity - (1) The Registrar shall in accordance with the provisions of this Act issue to every registered elector or voter a certificate of identity PROVIDED THAT where a person continues to be a registered elector or voter by virtue of section 10 or 22 of this Act the Registrar shall issue such certificate only upon personal application of such elector or voter made to him or to an assistant.

(2) Every certificate of identity shall cease to be valid at the expiry of 10 years from the date upon which it is issued.



(3) Any person who loses his certificate of identity may apply in person to the Registrar or to an assistant for a new certificate of identity and shall upon satisfying the Registrar that the certificate has been lost and that he is the person to whom that certificate applies and upon payment of the reasonable cost thereof be entitled to receive a new certificate of identity.

(4) Where a new certificate of identity is required to be issued to any person as a result of a change of choice pursuant to subsection 3 of section 16 of this Act or as a result of that person ceasing to be a voter and becoming an elector, or ceasing to be an elector and becoming an elector the reasonable cost of a new Certificate of Identity shall be paid by that person, and notwithstanding any other provision of this Act no new Certificate of Identity shall be issued to that person until such cost has been paid.

(5) No person who applies after 4p.m. on the day before any polling day for the issue of a new certificate of identity shall be entitled to obtain a certificate of identity until after that polling day.

(6) Where any certificate of identity has lapsed through effluxion of time the registrar shall upon application made in the prescribed form by the person to whom it relates and upon the surrender by that person of the certificate which has lapsed issue to that person free of charge a new certificate of identity.

(7) Every certificate of identity shall be authenticated by the signature or seal of the Registrar (which the Registrar is authorised to have for the purpose) and shall contain or comprise:

- (a) A photograph of the person identified;
- (b) The full name and identification number of the person identified which number shall be allocated by the Registrar;
- (c) In the case of a voter, that fact;
- (d) In the case of an elector the constituency in which he is registered;

- (e) The date of birth of the person identified;
- (f) The village of the person identified;
- (g) The date of issue of the Certificate."

32. Amendments to First Schedule - (1) The First Schedule to the principal Act is amended by inserting immediately after form 1 a new form as provided in the schedule to this Act.

(2) Form 2 in the First schedule to the principal Act is amended by omitting the words "and I declare" and by omitting at the conclusion of the form all of the words after the words "right or privilege" where they last appear and substituting the following:-

Sign here.....

Signature of Witness.....

Residential address of Witness.....

Qualification of Witness....."

(3) Form 2 in the First Schedule to the principal Act is further amended by adding the following words as a footnote:-

"If you are claiming through your mother and not through your father, questions relating to your father should be read and construed as if they related to your mother and the form altered accordingly."

SCHEDULE

Form 1A

Section 12

To the Registrar of electors and voters for Western Samoa.

I.....of.....

(full residential address, and occupation or description)

hereby claim to have my name entered in the electoral roll for .....(Territorial Constituency) of Western Samoa; and I declare that the answers to the following questions are true and correct in every particular:

1. Are you a citizen of Western Samoa?

.....

2. Have you attained the age of 21 years?

.....

3. Are you an undischarged bankrupt?

.....

4. Have you been convicted in Western Samoa or in American Samoa of an offence punishable by death or by imprisonment for a term of 2 years or upwards or have you been convicted in Western Samoa of any practice declared to be a corrupt practice by the Electoral Act 1963?

.....

5. If so, have you:

(a) Received a free pardon?.....

(b) Undergone the sentence or  
punishment to which you were  
adjudged for the offence?.....

6. Are you of sound mind and not subject to an  
order of medical custody under the Mental  
Health Ordinance 1961?.....

7. What is (or was) the full name of your father?  
.....

8. If he is dead, when and where did he die?  
.....

9. What is the date of your birth?  
.....

10. What is your father's village of origin?  
.....

11. What are your grandfathers' villages of origin?  
.....

12. Do you hold a Matai title?.....

13. If so, what are the details?

Title            Village

.....  
.....  
.....  
.....  
.....

14. If you do not hold a Matai title does or did  
any of your grandparents or your parents  
hold a Matai title?

.....

15. If so, supply particulars:

Relationship      Title      Village  
(e.g. father etc)

.....  
.....  
.....  
.....

.....

16. Does or did any of your brothers or sisters hold a Matai title otherwise then through his or her spouse?

.....

17. If so, supply particulars:

Name of	Title	Village
brother or sister		

.....

.....

.....

18. What is the full name of your father?

.....

19. What is the full name of your mother?

.....

20. Are you rendering service to a village? .....

21. If so, what village?.....

22. What is the nature of the service and who can confirm it ?

.....

.....

Sign here.....

Signature of Witness.....

Residential address of Witness.....

Qualification of Witness.....