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ELECTORAL

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THE ELECTORAL ACT 1963**1963, No. 16****An Act to provide for the election of members of the Legislative Assembly***[19 December, 1963]***PART I
PRELIMINARY****1. Short title and division into Parts—**(1) This Act may be cited as the Electoral Act 1963.

(2) This Act is divided into Parts, as follows:

Part I—Preliminary (Sections 1 to 4)

Part II—Qualifications of Members (Sections 5 to 15)

Part III—Registration of Electors (Sections 16 to 18)

Part IV—Individual Voters (Sections 19 to 25)

Part V—Rolls (Sections 26 to 39)

Part VI—Offences (Sections 40 to 43)

Part VII—General Elections and By-elections (Sections 44 to 76)

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Part IX—Corrupt and Illegal Practices (Sections 95 to 103)

Part X—Election Petitions (Sections 104 to 132)

Part XI—Miscellaneous Provisions (Sections 133 to 137).

See also the titles Citizenship, Constitution, and Territorial Constituencies.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Bankrupt” means a bankrupt within the meaning of the laws relating to bankruptcy in force in Western Samoa:

“Bribery” has the meaning assigned to that term by section 96 of this Act:

“By-election” means any election other than a general election:

“Candidate” means any person who has been nominated as a candidate for election as a Member of Parliament and in Parts IX and X of this Act includes any person who has declared his intention of becoming a candidate:

“Chief Returning Officer” means the Chief Returning Officer appointed under section 3 of this Act, and includes any person authorised to exercise the powers, duties and functions of the Chief Returning Officer:

"Constitution" means the Constitution of the Independent State of Western Samoa:

"Constituency" means a territorial constituency constituted under the Territorial Constituencies Act 1963:

"Corrupt practice" means any act declared by this Act to be a corrupt practice:

"Costs" includes charges and expenses:

"Deputy Registrar" means a Deputy Registrar appointed under this Act; and includes any person authorised to exercise the powers, duties and functions of a Deputy Registrar:

"Deputy Returning Officer" means a Deputy Returning Officer appointed under this Act; and includes any person authorised to exercise the powers, duties and functions of a Deputy Returning Officer:

"Election" means an election of a Member of Parliament:

"Elector", in relation to any territorial constituency, means a person registered, or qualified to be registered, as an elector of that territorial constituency:

"Electoral roll" means the roll kept by the Registrar of the electors of a territorial constituency:

"Foreign country" means any country other than Western Samoa:

"Gazette" means the Western Samoa Gazette:

"General election" means an election which takes place after the dissolution or expiration of the Legislative Assembly:

"Government" means the Government of Western Samoa:

"Illegal practice" means any act declared by this Act to be an illegal practice:

"Individual voters' roll" means the roll kept by the Registrar pursuant to Part IV of this Act:

"Main roll", in relation to any territorial constituency or individual voters, means the main roll printed for the territorial constituency or individual voters and for the time being in force:

"Matai title" means the title which is entered in the Register of Matais established and kept pursuant to the [Samoa] Land and Titles Protection Ordinance 1934, other than a title held as a complimentary honour only:

"Member" means a Member of Parliament:

"Nomination day", in relation to any election, means the day appointed by public notice as the latest day for the nomination of candidates:

"Personation" has the meaning assigned to that term by section 95 of this Act:

"Polling day", in relation to any election, means the day appointed by public notice for that election for the polling to take place if a poll is required:

"Prescribed" means prescribed by this Act or by regulations made thereunder or (for the purposes of Part X of this Act) by rules of Court:

"Presiding Officer" means the Returning Officer or any Deputy Returning Officer appointed under section 3 of this Act and presiding at any polling place or booth on the day of the polling:

"Public notice" means publication—

(a) In the *Gazette*; and

(b) In the *Savali*; and

(c) In a newspaper published in Western Samoa, or by means of notices posted in conspicuous places at Apia and at such other place or places in Western Samoa as the Chief Returning Officer and Registrar think fit, or by means of notices broadcast by radio; and

"publicly notify" has a corresponding meaning:

"Public place" has the same meaning as in section 2 of the Police Offences Ordinance 1961:

"Public servant" means a person employed in the service of the Government, not being honorary service; but does not include any person to whom subsection (2) of this section applies; and does not include—

(a) Any person by reason of his holding an office for which a salary is payable under [the Civil List Act 1964]; or

(b) Any person remunerated by fees or a commission and not by wages or salary:

"Registrar" means any person appointed as the Registrar under section 3 of this Act; and includes any person authorised to exercise the powers, duties, and functions of the Registrar:

"Returning Officer" means a Returning Officer appointed under this Act; and includes any person authorised to exercise the powers, duties, and functions of a Returning Officer:

"Roll" means an electoral roll, the individual voters' roll, a main roll, or a supplementary roll, as the case may be:

"Speaker" means the Speaker of the Legislative Assembly:

"Statement" includes not only words but also pictures, visual images, gestures, and other methods of signifying meaning:

"Supplementary roll", in relation to any territorial consti-

tuency or individual voters, means a supplementary roll printed for the territorial constituency or individual voters and for the time being in force:

"Territorial constituency" means a constituency constituted under the Territorial Constituencies Act 1963:

"Treating" has the meaning assigned to that term by section 97 of this Act:

"Undue influence" has the meaning assigned to that term by section 98 of this Act:

"Voter" means a person registered, or qualified to be registered, as a voter on the individual voters' role:

A reference to a numbered form is a reference to the form so numbered in the First Schedule to this Act.

(2) Where any person—

(a) Is appointed by the Government, or any department or agency of the Government to be a member of any Commission, Council, Board, Committee, or other body; or

(b) Is a member of any Commission, Council, Board, Committee, or other body of which any members receive any payment out of public money,—

he shall not by reason of that membership be deemed to be a public servant, whether or not he receives any travelling allowances, or travelling expenses.

Cf. 1956, No. 107, s. 2 (N.Z.); S.R. 1957/223, r. 3 (N.Z.); S.R. 1961/6, cl. 2 (N.Z.)

In subs (1), in the definition of "Matai title", the word "Samoan" has been inserted pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

In subs (1), in the definition of "public servant", the Civil List Act 1964, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Civil List Ordinance 1961.

Officers

3. Chief Returning Officer, Registrar and other officers—

(1) There shall be appointed by [the Public Service Commission of Western Samoa] a Chief Returning Officer and a Registrar of electors and voters, who shall have and exercise the powers and duties conferred on them by this Act.

(2) *Repealed by s. 2 of the Electoral Amendment Act 1975.*

(3) There may from time to time be appointed by the Chief Returning Officer, with the approval of [the Public Service Commission of Western Samoa]—

(a) Returning Officers, Deputy Returning Officers, polling officers, and such other officers as are required to carry out the provisions of this Act; and

(b) A substitute for any such officer to act in the case of the sickness, absence, death or removal of that officer.

(4) There may from time to time be appointed by the Registrar, with the approval of [the Public Service Commission of Western Samoa]—

(a) Deputy Registrars and such clerks as are required to assist the Registrar to carry out the provisions of this Act; and

(b) A substitute for any such officer to act in the case of the sickness, absence, death or removal of that officer.

(5) Every substitute while so acting shall have all the duties, powers and authorities of the officer for whom he is acting.

(6) The fact that any substitute so acts shall be sufficient evidence that a case has arisen authorising him so to act.

(7) Every Deputy Returning Officer shall have and may exercise in and about the polling place for which he is appointed all the powers and duties of a Returning Officer, and shall be subject to the authority and control of the Chief Returning Officer.

(8) Every Deputy Registrar shall have and may exercise all the powers and duties of the Registrar, and shall be subject to the authority and control of the Registrar.

(9) No candidate and no person holding any office in or being a member of any political organisation shall be an officer appointed under this section.

Cf. S.R. 1961/6. cl. 7 (N.Z.)

In subss. (1), (3), and (4) the references to the Public Service Commission of Western Samoa were substituted for references to the Public Service Commission by s. 3 of the Public Service Act 1965.

4. Returning Officers to make declaration—Every Returning Officer and every Deputy Returning Officer shall, before entering on the duties of his office, make a declaration in form No. 1 before the Chief Returning Officer, another Returning Officer, another Deputy Returning Officer or a person authorised by law to take statutory declarations.

Cf. 1956, No. 107, s. 10 (N.Z.)

PART II

QUALIFICATIONS OF MEMEBERS

5. Who may be candidates for election as Members—

(1) Subject to the provisions of the Constitution and of this Act, [any person who is registered as an elector of any constituency] is qualified to be a candidate and to be elected as a Member of

Parliament for that constituency, and any person who is registered as a voter on the individual voters' roll is qualified to be a candidate and to be elected as a Member of Parliament representing the individual voters, if in either case, as required by Article 45 of the Constitution, he—

(a) Is a citizen of Western Samoa; and

(b) Is not disqualified under the provisions of the Constitution or of any Act.

(2) Any other person shall be disqualified for being a candidate for, or being elected as a Member of Parliament.

(3) A person shall be disqualified for being a candidate for, or being elected as a Member of Parliament representing a constituency if he loses any qualification required to enable him to be registered as an elector of that constituency.

(4) A person shall be disqualified for being a candidate for, or being elected as a Member of Parliament representing the individual voters if he loses any qualification required to enable him to be registered as an individual voter.

(5) A person shall be disqualified for being a candidate or being elected as a Member of Parliament if he—

(a) Is an undischarged bankrupt; or

(b) Has 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 has been convicted in Western Samoa of a corrupt practice, unless he has received a free pardon or has undergone the sentence or punishment to which he was adjudged for the offence; or

(c) Is of unsound mind and is subject to an order of medical custody made under the Mental Health Ordinance 1961.

Cf. 1956, No. 107, s. 25 (N.Z.); S.R. 1957/223, r. 5 (N.Z.)

In subs. (1) the words in square brackets which appear in the corresponding subsection of the Bill and of the Electoral Act 1956 (N.Z.) have been inserted pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

6. Removal of name from roll without cause—Any person duly qualified as an elector or voter who has been registered on any electoral or the individual voters' roll but whose name has been removed from any roll through no fault of his own shall not, by reason only of not being registered as an elector or voter, be disqualified from becoming a candidate and being elected; but in every such case he shall forward to the Chief Returning Officer, at the time when he sends his nomination or consent to nomination, a statutory declaration to the effect that he is not

disqualified as an elector or voter, as the case may be, under the provisions of this or any other Act, that he still retains that qualification, and that his name has been removed from the roll through no fault of his own.

Cf. 1956, No. 107, s. 27 (N.Z.)

7. Effect of registration on wrong roll—The nomination of any person as a candidate for election, or his election as a Member of Parliament, shall not be questioned on the ground that, though he has chosen and is entitled to be registered as an elector of any constituency, he was not in fact registered as an elector of that constituency but was registered in error as an elector of some other constituency.

Cf. 1956, No. 107, s. 28 (N.Z.)

8. Public servants may become candidates or be elected—

(1) Any public servant who desires to become a candidate for election as a Member of Parliament shall, on application, be granted special leave of absence for the purpose of his candidature.

(2) That special leave shall commence on a day to be selected by him, being not later than nomination day, and in the event of his nomination as a candidate, shall continue until the 7th day after polling day, unless he withdraws his nomination.

(3) During the period of that special leave he shall not be required or permitted to carry out any of his official duties, nor shall he be entitled to receive in respect of that period any salary or remuneration as a public servant except to the extent to which he takes during that period any leave with pay to which he is entitled.

(4) Except as provided in the foregoing provisions of this section his rights as a public servant shall not be affected by his candidature.

Cf. 1956, No. 107, s. 30 (N.Z.); S.R. 1957/223, r. 94 (N.Z.)

No member of the Police Service may engage in politics; see s. 9 of the Police Service Act 1977

9. Members disqualified from being public servants—If any public servant is elected as a Member of Parliament he shall, forthwith upon the date on which he is declared so elected, be deemed to have vacated his office as a public servant.

Cf. 1956, No. 107, s. 31 (N.Z.); S.R. 1957/223, r. 93 (N.Z.)

As to ineligibility of elected Members of the Legislative as directors of the Bank of Western Samoa, see s. 17 of the Bank of Western Samoa Ordinance 1959.

Vacancies

10. How vacancies created—The seat of a Member of Parliament shall become vacant on the occurrence of any of the events specified in subclauses (a), (b) and (c) of clause (2) of Article 46 of the Constitution, and in addition he shall be disqualified from holding his seat,—

- (a) If on 3 consecutive sitting days he fails, without permission of the Speaker of the Legislative Assembly, to attend in the Assembly; or
- (b) If he takes any oath or makes any declaration or acknowledgement of allegiance or adherence to any foreign country; or
- (c) If he does or concurs in or adopts any act whereby he may become a subject or citizen of any foreign country, or entitled to the rights, privileges, or immunities of a subject or citizen of any foreign country; or
- (d) If he becomes a bankrupt; or
- (e) If he is convicted in Western Samoa or in American Samoa of a crime punishable by death or by imprisonment for a term of 2 years or upwards, or has been convicted in Western Samoa of a corrupt practice, unless he has received a free pardon; or
- (f) If he becomes a public servant; or
- (g) If on an election petition the Court declares his election void; or
- (h) If he becomes of unsound mind and subject to an order of medical custody made under the Mental Health Ordinance 1961; or
- (i) If being a Member representing a constituency he ceases to be qualified to be a candidate to represent that constituency, or if being a Member representing the individual voters he ceases to be qualified to be a candidate to represent them; or
- (j) If while he is a Member of Parliament he has sexual intercourse with any person other than his spouse by valid marriage; or
- (k) If while he is a Member of Parliament he is guilty of conduct unbecoming a Member of Parliament.

Cf. 1956, No. 107, s. 32 (N.Z.); S.R. 1957/223, r. 6 (N.Z.)

11. Proof of disqualification—(1) If and as soon as the Speaker has reason to believe or suspect that any Member of Parliament has become disqualified from holding his seat on either of the grounds set out in paragraphs (j) and (k) of section 10 of this Act he shall charge that Member with such disqualifica-

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tion, and if the Legislative Assembly is then sitting shall do so orally in the Assembly.

(2) If any Member of Parliament other than the Speaker charges any other Member with having become disqualified from holding his seat on either of the grounds set out in the said paragraphs (j) and (k) other than in a sitting of the Legislative Assembly, he shall immediately notify the Speaker of that charge.

(3) If the Speaker or any other Member of Parliament charges any other Member with having become disqualified from holding his seat on either of the grounds set out in the said paragraphs (j) and (k), and that other Member does not admit the charge in writing (by cable if he is not in Western Samoa) within 7 days of it being brought to his attention, the Speaker shall refer the charge to the Supreme Court by motion, and it shall be determined by that Court pursuant to Article 47 of the Constitution.

(4) The Speaker shall give notice of his motion to the Member charged, and to the person with whom the Member charged is alleged to have had sexual intercourse or any person with whom the Member charged is alleged to have misconducted himself, unless in any case he is excused by the Court on special grounds from so doing.

(5) The person with whom the Member charged is alleged to have had sexual intercourse, or any person with whom the Member charged is alleged to have misconducted himself, as the case may be, shall be entitled to be treated as a party to the motion and to be heard thereon.

(6) On the Speaker referring a charge to the Supreme Court by motion under this section, the Assembly may by resolution suspend the Member charged until the motion has been disposed of.

(7) A Member suspended under this section shall not during the period of his suspension be entitled to sit in or otherwise take part in the proceedings of the Assembly or any Committee thereof, to perform any of the functions or powers of a Member or have any of the privileges or immunities of a Member.

(8) A Member suspended under this section shall not be entitled to any pay or allowance for the period of his suspension unless the Supreme Court holds that he is not disqualified.

(9) If the Speaker is charged by any other Member with having become disqualified from holding his seat as a Member on either of the grounds set out in the said paragraphs (j) and (k), the Deputy Speaker shall perform the functions and duties of the Speaker under the foregoing provisions of this section.

12. Registrar of Court to notify cause of vacancy in certain cases—The Registrar of the Supreme Court shall, within 48 hours after adjudication as a bankrupt of a Member of Parliament, or after his conviction of an offence punishable by death or by imprisonment for a term of 2 years or upwards, or after he has been convicted of a corrupt practice, notify the fact to the Speaker.

Cf. 1956, No. 107, s. 34 (N.Z.); S.R. 1957/223, r. 95 (N.Z.)

13. Registrar of Births and Deaths to notify Speaker of death of Member—The Registrar of Births and Deaths by whom the death of any Member of Parliament is registered shall, within 24 hours of making the registration, notify the fact to the Speaker.

Cf. 1956, No. 107, s. 35 (N.Z.); S.R. 1957/223, r. 96 (N.Z.)

The reference to the Registrar of Births and Deaths has been substituted for a reference to the Registrar of Deaths pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

14. Offence for disqualified member to sit—Every Member of Parliament who sits or votes therein being disqualified under the provisions of this Act and knowing that he is so disqualified or after his seat has become vacant under this Part of this Act shall be liable to a fine not exceeding [\$60] for every day on which he so sits or votes.

Cf. 1956, No. 107, s. 26 (N.Z.); S.R. 1957/223, r. 92 (N.Z.)

15. No person to be elected for more than one constituency—(1) Where a Member of Parliament for any constituency is also elected as a Member of Parliament for any other constituency his election for that other constituency shall be void.

(2) Where at elections held on the same polling day any person is elected as a Member of Parliament for 2 or more constituencies, his election shall in every case be void.

Cf. 1956, No. 107, s. 36 (N.Z.)

PART III

REGISTRATION OF ELECTORS

16. Qualifications of electors—(1) Subject to the provisions of the Constitution and of this Act every person shall be qualified to be registered as an elector of a constituency if—

(a) He is the holder of a Matai title; and

- (b) His name appears for the time being on the Register of Matais established and kept pursuant to the [Samoan] Land and Titles Protection Ordinance 1934; and
- [(bb) He is of or over the age of 21 years; and]
- (c) He is not disqualified as a candidate for election by virtue of any of the provisions of section 5 of this Act.
- (2) Any person whose name appears on the individual voters' roll shall not be qualified to be registered as an elector of any constituency.

Cf. 1956, No. 107, s. 39 (N.Z.); S.R. 1957/223, r. 10 (N.Z.)

In subs. (1) (b) the word "Samoan" has been inserted pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

Para. (bb) was inserted by s. 2 of the Electoral Amendment Act 1964.

17. Compilation of electoral rolls—(1) For each constituency the Registrar shall from time to time compile an electoral roll, which he shall make and keep as complete and accurate as possible.

(2) Subject to [Part V] of this Act, the Registrar shall make such additions to, deletions from and other amendments to each electoral roll as appear to him to be necessary as he receives information as to the conferring of titles, deaths of title-holders, other losses of titles, Court orders as to rightful title-holders, other disqualifications, choices of constituencies by plural title holders and registration errors.

(3) Subject to this Act, each person qualified to be registered as an elector shall be entitled to have his name entered on the electoral roll for the constituency to which his title or one of his titles belongs.

(4) A person shall not be entitled to be registered as an elector in more than one constituency or more than once in one constituency, notwithstanding that he may be a plural title-holder.

(5) Each plural title-holder may at any time choose in respect of which of his titles he will be registered as an elector, and notify the Registrar in writing accordingly. Subject to Part V of this Act, a choice made and notified to the Registrar may be revoked, and a fresh choice be made and notified to the Registrar, at any time.

Cf. 1956, No. 107, s. 40 (N.Z.); S.R. 1957/223, r. 11 (N.Z.)

In subs. (2) the expression "Part V" has been substituted for the expression "Part VI" pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

18. Procedure—(1) In compiling an electoral roll for a constituency, the Registrar shall be entitled to rely primarily on the last previous electoral roll for that constituency and on the Register

of Matais but he shall not include any person who holds a complimentary honour only.

(2) As soon as possible after the Chief Returning Officer gives public notice of a general election under section 45 of this Act or a by-election under section 47 of this Act and before the roll for any constituency is closed for the purposes of that election:

- (a) The Registrar shall give a public notice addressed to all plural title-holders who are qualified to be registered as electors and who have not made and notified a choice under subsection (5) of section 17 of this Act;
- (b) The Registrar may also give individual notices in writing to all or any persons who are known to him, whether from the Register of Matais or otherwise, to be plural title-holders who are qualified to be registered as electors and who have not made and notified a choice under subsection (5) of section 17 of this Act but failure to give any individual notice shall not invalidate any roll or any election;
- (c) Such public notice and such individual notices shall require each person to whom they are addressed to make and notify a choice under subsection (5) of section 17 of this Act within 14 days of the date thereof;
- (d) If a plural title-holder has not made and notified such a choice by the expiration of such period of 14 days, and the Registrar is satisfied that he is qualified to be registered as an elector, the Registrar shall make a choice for him and register him accordingly;
- (e) The Registrar may either consult any Matai or Pulenu'u of any constituency, or convene and attend a meeting in any constituency of the Matais and Pulenu'u belonging thereto, for the purpose of checking and correcting (if necessary) the electoral roll for that constituency.

PART IV

INDIVIDUAL VOTERS

19. Qualifications of voters—(1) Subject to the provisions of the Constitution and of this Act every person shall be qualified to be an individual voter and to have his name entered on the individual voters' roll if he is a citizen of Western Samoa of or over the age of 21 years and not disqualified as a candidate for election by virtue of any of the provisions of section 5 of this Act, and if—

- (a) His name was entered on the European electoral roll on the 30th day of November 1963; or

(b) He—

(i) Is the child of a father whose name was entered on, or who if alive on the 30th day of November 1963 would have qualified to have his name entered on, the European electoral roll on the 30th day of November 1963; and

(ii) Was unborn or had not attained the age of 21 years on the 30th day of November 1963; or

(c) He acquired his citizenship of Western Samoa by naturalisation [or by registration]; or

(d) He acquired his citizenship of Western Samoa by birth and is the child of a father who is not a citizen of Western Samoa or of a father who if alive at the date of the commencement of the Citizenship of Western Samoa Ordinance 1959 would not have automatically qualified to be a citizen of Western Samoa by virtue of any provision of that Ordinance.

(2) Notwithstanding the provisions of subsection (1) of this section no person shall be qualified to have his name entered on the individual voters' roll if he—

(a) Holds a Matai title or is exercising any customary right or privilege in regard to customary land; or

(b) Is married to a person holding a Matai title or exercising any customary right or privilege in regard to customary land.

In subs. (1) (c) the words "or by registration" were added by s. 23 (2) of the Citizenship Act 1972.

20. Registration of absentee voters—Notwithstanding anything to the contrary in this or any other Act, if any person would be qualified to have his name entered on the European electoral roll on the 30th day of November 1963 on application, but it is impossible or difficult for him to claim such entry before the 30th day of November 1963 by reason of absence from Western Samoa at any time during the period between the first reading of this Act in the Legislative Assembly and the 30th day of November 1963, he may, at any time within 6 months of returning to Western Samoa, claim to have his name entered on the European electoral roll, and the Registrar may enter his name on that roll, and any such entry shall be deemed to have been made on the 30th day of November 1963.

21. Registration of voters—Every person desirous of having his name entered on the individual voters' roll shall (unless his

NEW DOCUMENT



Western Samoa

Analysis

Title
1. Short title

2. Chief Returning Officer and Registrar

1975, No. 27

AN ACT to amend the Electoral Act 1963.

[23 December 1975]

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

1. Short title—This Act may be cited as the Electoral Amendment Act 1975 and shall be read together with and deemed to be part of the Electoral Act 1963* (hereinafter referred to as the principal Act).

2. Chief Returning Officer and Registrar—Section 3 of the principal Act is hereby amended by repealing subsection (2).

* 1963, No. 16

Amendments: 1964, No. 21; 1969, No. 18
1969, No. 27

By Authority

D. SLADE, ACTING GOVERNMENT PRINTER, APIA; WESTERN SAMOA — 1978



Samoa i Sisifo

Vaevaeina

Igoa
1. Igoa puupuu

2. Alii Ofisa Sili Fai-Palota ma le
Resitara

1975, Nu. 27

O SE TULAFONO e toe teuteu a'i le Tulafono o Faiga-Palota 1963. [23 Tesema 1975]

UA FAIA e le Fono Aoao Faitulafono a Samoa i Sisifo i totonu o le Palemene ua potopoto e faapea:—

1. Igoa puupuu—E mafai ona ta'ua le Tulafono lenei o le Tulafono Toe Teuteuina o Faiga-Palota 1975 ma o le a faitauina faatasi ma faatatauina e avea o se vaega o le Tulafono o Faiga-Palota 1963* (ua taua mulimuli ane iinei o le Tulafono autū).

2. Alii Ofisa Sili Fai-Palota ma le Resitara—Ua toe teuteuina nei le Fuaiupu e 3 o le Tulafono autu i le soloia o le faafuaiupu (2).

* 1963, Nu. 16

Toe Teuteuga: 1964, Nu. 21; 1969, Nu. 18;
1969, Nu. 27



WESTERN SAMOA

ANALYSIS

Title
1. Short title

2. Qualifications of electors

1964, No. 21**AN ACT to amend the Electoral Act 1963.**

[30 December 1964]

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

1. Short title—This Act may be cited as the Electoral Amendment Act 1964, and shall be read together with and be deemed part of the Electoral Act 1963 (hereinafter referred to as the principal Act).

2. Qualifications of electors—Subsection (1) of section 16 of the principal Act is hereby amended by inserting after paragraph (b), the following paragraph:

“(bb) He is of or over the age of twenty-one years; and”



SAMOA I SISIFO

VAEVAEINA

Igoa
1. Igoa puupuu

2. Uiga Agava'a o tagata Palota.

1964, Nu. 21

O SE TULAFONO e toe teuteu a'i le Tulafono o Faiga-Palota 1963 [30 Tesema 1964]

UA FAIA e le Fono Aoao Faitulafono a Samoa i Sisifo i tonu o le Palemene ua potopoto e faapea—

1. Igoa puupuu—E mafai ona ta'ua le Tulafono lenei o le Tulafono Toe Teuteuina o Faiga-Palota 1964, ma o le a faitauina faatasi ma faatatauina o se vaega o le Tulafono o Faiga-Palota 1963 (ua ta'ua mulimuli ane iinei o le Tulafono autū).

Uiga Agava'a o Tagata Palota—Ua toe teuteuina nei le puipui (1) o le fuaiupu e 16 o le Tulafono autū i le faaofina, ina ua tuana'i le parakarafa (b), o le parakarafa lenei ua tuuina atu i lalo:

“(bb) Ua na aulia po ua sili a'e tausaga o lona olaga i lo le luasefulu-tasi tausaga; ma”



Western Samoa

Analysis

Title	2. Hours of polling
1. Short title	3. Adjournment of Poll

1969, No. 27

AN ACT to amend the Electoral Act 1963, regarding hours of polling.
[11 December 1969]

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

1. Short title—This Act may be cited as the Electoral Amendment Act (No. 2) 1969, and shall be read together with and be deemed part of the Electoral Act 1963 (hereinafter referred to as the principal Act).

2. Hours of polling—Subsection (1) of section 65 of the principal Act is hereby amended by deleting the word “six” and substituting the word “seven”.

3. Adjournment of Poll—Section 87 of the principal Act is hereby amended by deleting, the figure one in brackets, “(1)”; and also by deleting, from the proviso, the word “nine” and substituting the word “ten”.

BY AUTHORITY:

J. W. MEREDITH, GOVERNMENT PRINTER, APIA, WESTERN SAMOA—1970



Samoa i Sisifo

Vaevaeina

Igoa
1. Igoa puupuu

2. Itula e fai ai palota
3. Tolopoina o le Palota

1969, Nu. 27

O SE TULAFONO e toe teuteu ai le Tulafono o Faiga-Palota 1963, e faasino i itula e fai ai palota.

[11 Tesema 1969]

UA FAIA e le Fono Aoao Faitulafono a Samoa i Sisifo i totonu o le Palemene ua potopoto e faapea—

1. **Igoa puupuu**—E mafai ona taua le Tulafono lenei o le Tulafono Toe Teuteuina o Faiga-Palota (Nu.2) 1969, ma o le a faitauina faatasi ma faatatauina o se vaega o le Tulafono o Faiga-Palota 1963 (ua taua mulimuli ane iinei o le Tulafono autu).

2. **Itula e fai ai palota**—Ua toe teuteuina nei le faafuaiupu (1) o le fuaiupu e 65 o le Tulafono autu i le soloia o le upu “ono ma ua suia loa i ai le upu “fitu”.

3. **Tolopoina o le Palota**—Ua toe teuteuina nei le fuaiupu e 87 o le Tulafono autu i le soloia o le fuainumera o le tasi i totonu o puipui, “(1)”; ma i le soloia foi, mai le aiaiga faatuutuuga, o le upu “iva” ma ua suia loa i ai le upu “sefulu”.

BY AUTHORITY:

J. W. MEREDITH, GOVERNMENT PRINTER, APIA, WESTERN SAMOA—1970



	Analysis
Title 1. Short title	2. Deposit by candidate

1969, No. 18

AN ACT to amend the Electoral Act 1963, regarding deposits by candidates. [5 November 1969]

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

1. Short title—This Act may be cited as the Electoral Amendment Act 1969, and shall be read together with and be deemed part of the Electoral Act 1963 (hereinafter referred to as the principal Act).

2. Deposit by candidate—Subsection (1) and (2) of section 49 of the principal Act are hereby repealed, and the following subsections are hereby substituted therefor:

(1) Every candidate, or some person on his behalf, shall deposit with the Chief Returning Officer, the sum of forty tālā not later than noon on nomination day.

(2) If the total number of votes received by any unsuccessful candidate is less than one half of the total number of votes received by the successful candidate, or, where there are two successful candidates, the one who receives the lower total number of votes, the deposit of the unsuccessful candidate shall be forfeited to the Government but in every other case shall be returned to the person who paid it.



Vaevaeina

Igoa
1. Igoa puupuu

2. Tupe e totogi mai e se sui ua faatu

1969, Nu. 18

O SE TULAFONO e toe teuteu a'i le Tulafono o Faiga-Palota 1963, e uiga i tupe e totogi mai e sui ua faatutu mai.
[5 Novema 1969]

1. Igoa puupuu—E mafai ona ta'ua le tulafono lenei o le Tulafono Toe Teuteuina o Faiga-Palota 1969, ma o le a faitauina faatasi ma faatatauina o se vaega o le Tulafono o Faiga-Palota 1963 (ua ta'ua mulimuli ane iinei o le Tulafono autu).

2. Tupe e totogi mai e se sui ua faatu—O faafuaiupu (1) ma le (2) o le fuaiupu e 49 o le Tulafono autu ua soloia nei, ma ua suia loa i faafuaiupu nei ua tuuina atu i lalo:

(1) O sui taitasi uma ua faatu, po o se tasi tagata e avea ma ona sui, o le a tatau lava ona na tuuina mai i le Alij Ofisa Sili Fai-Palota, le tupe e fasefulu tālā ia le silia i lo le tutonu o le la i le aso o filifiliga.

(2) Afai o le aofaiga atoa o palota na maua e so o se sui na faatu mai ua le faamanuiaina e itiiti ifo i lo le tasi le afa o le aofaiga atoa o palota na maua e le sui na faatu mai ua faamanuiaina, po o, pe afai e to'alua sui na faatutu ua faamanuiaina, o le o ia lea ua na maua le aofaiga atoa o palota e i lalo ifo, o le a taofia loa le tupe na totogi mai e le sui na faatu mai ua le faamanuiaina ma totogi atu i le Malo a e peitai, i isi itu taitasi uma, o le a toe faafo'ina atu lava lea tupe le na ia totogiina mai.

BY AUTHORITY:

D. E. STONEHAM, GOVERNMENT PRINTER, APIA, WESTERN SAMOA — 1969

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name is already on the roll) deliver or send by post to the Registrar a claim and declaration in form No. 2.

Cf. S.R. 1957/223, r. 13 (N.Z.)

22. Retention on the roll—Every person whose name is entered on the individual voters' roll shall be entitled to have his name retained on that roll so long as he remains qualified to be an individual voter.

23. Procedure following claim for registration—(1) If the Registrar is satisfied that any voter who claims to be registered as a voter is qualified to be registered he shall forthwith enter his name on the roll.

(2) If after making such inquiries as he thinks fit the Registrar is not so satisfied he shall with 5 days of the receipt of the claim give notice in writing to the claimant setting forth the particulars of which proof is required.

(3) If the claimant fails to furnish proof of his qualifications satisfactorily to the Registrar within 10 days after the giving of notice to him under subsection (2) of this section, the Registrar shall refuse the claim and forthwith notify the claimant accordingly.

(4) Within 14 days after the giving to the claimant of a notice of refusal under subsection (3) of this section, the claimant may require the Registrar to refer his claim to a Magistrate's Court.

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

Cf. 1956, No. 107, s. 49 (N.Z.); S.R. 1957/223, r. 14 (N.Z.)

24. Voter required to notify Registrar on occurrence of certain events—(1) Every person whose name is entered on the individual voters' roll and who takes a Matai title or begins to exercise any customary right or privilege in regard to customary land or who marries a person holding such a title or exercising any such right or privilege shall notify the Registrar in writing of that event within one month of its occurrence, and on failure so to do shall be liable to a fine not exceeding [\$40].

(2) On learning of the occurrence of that event the Registrar shall forthwith delete the name of that person from the individual voters' roll.

(3) In the event of an election being held after the occurrence of that event and before the name of that person has been deleted from the individual voters' roll, he shall not be entitled to

vote at that election and any vote he may cast shall be disregarded and shall not invalidate the election.

25. Voter's name entered or re-entered—(1) No person whose name has been deleted from the individual voters' roll pursuant to subsection (2) of section 24 of this Act by reason of taking a Matai title or beginning to exercise any customary right or privilege in regard to customary land shall be eligible to have his name re-entered on the individual voters' roll if he should cease to hold a Matai title or to exercise any customary right or privilege in regard to customary land.

(2) No person whose name has been deleted from the individual voters' roll pursuant to subsection (2) of section 24 of this Act by reason of marrying a person holding a Matai title or exercising any customary right or privilege in regard to customary land shall be eligible to have his name re-entered on the individual voters' roll if his spouse should die or they should be divorced or if his spouse should cease to hold such a title or to exercise any such right or privilege:

Provided that a woman whose name was on the European electoral roll on or before the 30th day of November 1963, or was ever on or qualified to be on the individual voters' roll, and who lost her qualification to be on the latter roll only by reason of her marriage, and who has not subsequently been disqualified from being on the latter roll for any other reason, shall be eligible, on the death of her husband or on her divorce from him, to have her name entered or re-entered on the individual voters' roll.

PART V

ROLLS

Objections and Alterations

26. Elector's or voter's objection—(1) Any elector or voter may at any time object to the name of any person being on the roll for a constituency, or individual voters, upon the ground that—

- (a) The person is not qualified as an elector in terms of section 16 of this Act; or
- (b) The person is not qualified as a voter in terms of section 19 of this Act; or
- (c) The name should appear on some other roll; or
- (d) The person whose name is objected to is also registered as an elector or voter under the same or another name either on the same or another roll.

(2) Every objector shall make his objection in writing specifying particulars of the objection and the grounds thereof, and shall serve his objection on the Registrar and a copy thereof on the person objected to.

(3) Unless within 10 days after the service of the copy of the objection the person objected to agrees with the Registrar that the latter may delete the entry objected to, or satisfies the Registrar that he is entitled to have the entry objected to retained on the roll, or the objection is withdrawn, the Registrar shall refer the objection to a Magistrate's Court, and shall notify the parties of the time and place appointed for the hearing.

Cf. 1956, No. 107, s. 52 (N.Z.); S.R. 1957/223, rr. 16 (2), 17 (a) to (c) (N.Z.)

27. Registrar's objection—(1) The Registrar may at any time object to the name of any person being on a roll on the ground that that person is not qualified to be registered as an elector or voter, as the case may be.

(2) The Registrar shall forthwith give notice in writing to the person objected to of the objection and of the particulars and grounds thereof.

(3) Unless within 10 days after the giving of notice of the objection to the person objected to he agrees with the Registrar that the latter may delete the entry objected to, or satisfies the Registrar that he is entitled to have the entry objected to retained on the roll, or the objection is withdrawn, the Registrar shall refer the objection to a Magistrate's Court and shall notify the person objected to of the time and place appointed for the hearing.

(4) Nothing in this section shall affect the provisions of this Act as to the removal by the Registrar of names from any roll.

Cf. 1956, No. 107, s. 53 (N.Z.); S.R. 1957/223, r. 18 (a) (N.Z.)

28. Time limit for objections and hearings by Magistrate's Court after closing of rolls—When the roll for any constituency or individual voters has been closed in accordance with subsection (1) of section 34 of this Act—

(a) No objection shall be made under section 26 or section 27 of this Act in respect of any roll unless 35 clear days before polling day remain:

(b) No application or objection referred to a Magistrate's Court under section 23, section 26 or section 27 of this Act shall be determined by the Court within the period of 14 clear days before polling day.

Cf. 1956, No. 107, s. 54 (N.Z.)

29. Procedure on reference of claim or objection to Magistrate's Court—(1) The following provisions of this section shall apply with respect to proceedings on the reference to a Magistrate's Court of a claim under section 23 of this Act or of an objection under section 26 or section 27 of this Act.

(2) The Registrar, any claimant, any objector, and the person objected to may appear before the Court either in person or by some person appointed by him in writing or by a barrister or solicitor.

(3) In the case of an objection the person objected to may forward to the Registrar of the Court a statement signed by him giving reasons why the entry objected to should be retained on the roll, and the Court shall take any such statement into account in determining the objection.

(4) If any person objected to does not either appear or forward a statement as aforesaid the Court shall make an order that the entry objected to be removed from the roll.

(5) Except as otherwise provided in this Act, the entry objected to shall not be removed from the roll until the objection has been determined.

(6) At the hearing of an objection no grounds of objection shall be taken into account except those specified in the written objection.

(7) In any proceedings to which this section applies the Court may make such order as to costs as it thinks fit.

(8) Subject to the provisions of this section, the ordinary rules of procedure of the Court shall apply.

(9) The Registrar shall make any additions, deletions, and alterations to the roll that may be necessary to give effect to the orders of the Court.

Cf. 1956, No. 107, s. 55 (N.Z.); S.R. 1957/223, rr. 17 (e) to (i) and (m), 18 (j) (N.Z.)

Purging of Rolls

30. Registrar of Births and Deaths to notify adult deaths—[The Registrar of Births and Deaths] shall within 48 hours after the registration of the death of any adult person notify the Registrar to enable him to amend any roll if necessary.

Cf. 1956, No. 107, s. 46 (N.Z.)

The reference to the Registrar of Births and Deaths was substituted for a reference to the Registrar of Deaths pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

31. Registrar of Marriages to notify women's marriages—

(1) The Registrar of Marriages shall within 48 hours after the marriage of any woman elector or voter send notice thereof to the Registrar.

(2) On receipt of any such notice the Registrar shall take all proper steps, after verification of the particulars contained in the notice, to amend any roll if necessary.

(3) If for any reason the alteration is not made in the appropriate roll before polling day the elector or voter shall, if otherwise qualified, be entitled to vote at that election in respect of her former name as appearing on the roll.

Cf. 1956, No. 107, s. 47 (N.Z.)

32. Removal of names from roll by Registrar—(1) The Registrar shall, at any time except as provided in subsection (3) of this section, remove from any roll—

(a) The name of every person not qualified to be registered as an elector or voter who requests in writing that his name be removed from the roll; and

(b) The name of every person of whose identity the Registrar is satisfied and whose death has been notified to him by [the Registrar of Births and Deaths].

(2) Notwithstanding anything in this Act the Registrar, on being satisfied that the name of any person has been omitted or removed from any roll by mistake or clerical error, or through false information, may restore the name of that person to the roll at any time not later than 14 clear days before polling day.

(3) Except as provided in subsection (2) of this section it shall not be lawful for the Registrar to enter on or remove from any roll the name of any person after the date fixed for the closing of the roll and before the day following the polling day in connection with which the roll has been closed.

(4) If the Registrar offends against the provisions of this section he shall be liable to a fine not exceeding [£40] for every name improperly entered on or removed from the roll.

Cf. 1956, No. 107, s. 57 (N.Z.); S.R. 1957/223, rr. 19, 20 (N.Z.); S.R. 1961/6, cl. 19 (N.Z.)

In subs. (1) (b) the reference to the Registrar of Births and Deaths was substituted for a reference to the Registrar of Deaths pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

33. Assistance to be given Registrar—(1) All members of [the Police] shall at the request of the Registrar assist him by informing him of the name of any person who they believe is registered as a voter but not qualified to be so registered and

shall give the Registrar any information he requests relating to the qualifications of any person for registration as a voter.

(2) All members of [the Police] shall also assist the Registrar by making such enquiries and obtaining such information as he requests.

Cf. 1956, No. 107, s. 51 (N.Z.)

In subss. (1) and (2) the references to the Police were substituted for references to the Police Force by s. 3 (3) of the Police Act 1969.

The references to the Police are now to be read as references to the Police Service, see s. 3 (3) of the Police Service Act 1977.

Closing and Printing of Rolls

34. Rolls closed by Chief Returning Officer—(1) In every year in which a general election or by-election is to be held, all rolls or the roll as the case may be, shall be closed on a date to be fixed by the Chief Returning Officer, and after such date no name shall be added to the roll to which it relates until after that election.

(2) At least 15 days before the date so fixed, the Chief Returning Officer shall give public notice thereof.

Cf. S.R. 1957/223, rr. 21 (1) and (2) (N.Z.); S.R. 1960/60, r. 6 (N.Z.)

35. Main rolls to be printed—(1) As soon as practicable after the closing of all the electoral rolls, the Registrar shall cause the roll for each constituency to be printed, containing the names, numbered consecutively in alphabetical order according to the Samoan alphabet, of all persons whose names are lawfully on the roll. The roll for each constituency shall be in form No. 3 and shall be issued under the hand of the Registrar.

(2) As soon as practicable after the closing of the individual voters' roll the Registrar shall cause the roll to be printed, containing the names, numbered consecutively in alphabetical order, according to the English alphabet of all persons whose names are lawfully on the roll. The roll shall be in form No. 4, and shall be issued under the hand of the Registrar.

(3) The printed rolls so formed, signed, added to, or altered from time to time as herein provided, shall for the time being be the electoral and individual voters' rolls for Western Samoa.

Cf. S.R. 1957/223, rr. 21 (3) to (5), 22 (N.Z.)

36. Supplementary rolls to be printed—(1) The Registrar may from time to time prepare supplementary rolls containing names added to any roll after the printing of the main roll and an

indication of names removed from the main roll, and may cause the same to be printed, and every supplementary roll shall be deemed to be a part of the main roll to which it refers.

(2) The names in any supplementary roll shall be numbered consecutively, starting with the number next higher than the last number on the last printed roll for electors or voters, whether main or supplementary.

Cf. 1956, No. 107, s. 63 (3) (N.Z.); S.R. 1957/223, r. 23 (N.Z.)

37. Requirement of printing of rolls—The requirement of printing of rolls may, for the purposes of this Part of this Act, be satisfied by typewriting and any mechanical process of reproducing typewritten copies, and the term "printed" wherever used in this Part shall, where necessary, be construed accordingly.

Cf. S.R. 1957/223, r. 28 (N.Z.)

38. Inspection of main and supplementary rolls—Printed copies of the main rolls and of the supplementary rolls shall be kept for inspection by the public at the office of the Registrar in Apia, at the Post Office in Apia, and at such other convenient places as the Registrar from time to time directs.

(2) Any person may inspect at the Registrar's office without payment at any time when the office is open for the transaction of business—

(a) The main rolls and the supplementary rolls so kept;

(b) The applications of any persons who have applied or claimed to be registered as electors or voters but whose names are not on the relevant roll.

(3) A printed copy of the electoral roll for each constituency shall be kept for inspection by the public without payment at convenient times at the residence of each Pulenu'u holding office in the constituency concerned.

Cf. 1956, No. 107, s. 64 (1) and (2) (N.Z.); S.R. 1957/223, r. 25 (N.Z.)

39. Copies of rolls for Chief Returning Officer—Printed copies of the main rolls and supplementary rolls, certified correct by the Registrar, shall be supplied by him to the Chief Returning Officer, as the same are required from time to time for the purpose of conducting any election.

Cf. 1956, No. 107, s. 65 (N.Z.); S.R. 1957/223, r. 26 (N.Z.)

PART VI

OFFENCES

40. False statements or declarations—Every person who knowingly and wilfully makes a false statement in any claim, application, declaration or objection for the purposes of Part III, Part IV or Part V of this Act shall be liable to a fine not exceeding [£100] or to imprisonment for a term not exceeding 6 months.

Cf. 1956, No. 107, s. 66 (N.Z.); S.R. 1957/223, r. 29 (N.Z.)

41. Wilfully misleading Registrar—(1) Every person shall for each offence be liable to a fine not exceeding [£100] or to imprisonment for a term not exceeding 6 months who,—

- (a) Wilfully misleads any Registrar in the compilation of any roll, or wilfully enters or causes to be entered thereon any false or fictitious name or qualification or the name of any person whom he knows to be dead; or
- (b) Signs the name of any other person, whether requested to do so or not, or any false or fictitious name, to any form of claim, application, declaration or objection for the purposes of Part III, Part IV or Part V of this Act either as claimant, applicant, declarant, objector or witness; or
- (c) Signs his name as witness to any signature upon any such form of claim, application, declaration or objection without either seeing the signature written or hearing the person signing declare that the signature is in his own handwriting and that the name so signed is his own proper name.

(2) It shall be the duty of the Registrar to institute a prosecution against any person whom he believes to have committed any offence against this section, or the offence of aiding, abetting, counselling, or procuring the commission of any such offence by any person.

Cf. 1956, No. 107, s. 67 (N.Z.); S.R. 1957/223, r. 30 (N.Z.)

42. Failure to deliver claim or application—Every person shall be liable to a fine not exceeding [£40] who, having obtained possession of a claim or application for registration signed by any other person for the purpose of being delivered to the Registrar for registration, wilfully or negligently fails so to deliver it so that the claimant's or applicant's name is not entered on the roll in question.

Cf. 1956, No. 107, s. 68 (N.Z.); S.R. 1957/223, r. 31 (N.Z.)

43. Misfeasance of Registrar—Every Registrar who knowingly and wilfully does anything contrary to the provisions of Part III, Part IV or Part V of this Act or who knowingly and wilfully omits to do anything required by Part III, Part IV or Part V of this Act to be done by him, shall be liable if no other penalty is elsewhere in this Act provided, to a fine not exceeding [£40].

Cf. 1956, No. 107, s. 69 (N.Z.)

PART VII

GENERAL ELECTIONS AND BY-ELECTIONS

General Elections

44. Head of State to give notice to Chief Returning Officer—For every general election of Members of Parliament and every by-election the Head of State shall give notice in writing to the Chief Returning Officer not less than 95 clear days before the polling day fixed for that election.

Cf. 1956, No. 107, s. 70 (N.Z.); S.R. 1957/223, r. 34 (N.Z.); S.R. 1960/60, r. 9 (N.Z.)

As to general elections, see article 64 of the Constitution.

45. Chief Returning Officer to give public notice of election and nomination day—The Chief Returning Officer shall, not less than 90 clear days before polling day, give public notice of that day, and shall in the notice appoint a place in Apia and a day, being not less than 30 days (exclusive of polling day) before polling day, for receiving nominations of candidates:

Provided that, after giving any public notice, the Chief Returning Officer shall satisfy himself that the requirements of the notice are in fact adequately known in all constituencies concerned.

Cf. 1956, No. 107, s. 79 (N.Z.); S.R. 1957/223, r. 35 (N.Z.)

By-elections

46. Proceedings in a by-election—Except as provided by this Act the proceedings in a by-election shall be the same as in the case of a general election.

Cf. S.R. 1957/223, r. 33 (N.Z.)

47. Chief Returning Officer to give public notice of by-election and nomination day—(1) If the seat of a Member of Parliament becomes vacant 6 months or more before the

expiration of 3 years from the date of the last preceding general election, the Chief Returning Officer upon receipt of notice in writing from the Head of State under section 44 of this Act shall forthwith, by public notice, appoint a day not less than 90 clear days after the date of publication as polling day for a by-election to fill the same, and shall in the notice appoint a place in Apia and a day, being not less than 30 days (exclusive of polling day) before polling day, for receiving nominations of candidates.

(2) If the seat of a Member of Parliament becomes vacant less than 6 months before the expiration of 3 years from the date of the last preceding general election the seat shall remain vacant until the next general election.

Cf. S.R. 1957/223, r. 32 (2) and (3) (N.Z.)

Nominations

48. Nomination of candidates—(1) Any person qualified under Part II of this Act may, with his consent, be nominated as a candidate for election for any constituency or for the individual voters, by not less than 2 registered electors of that constituency, or by 2 registered voters, as the case may be, by a nomination paper in form No. 5.

(2) Consent to the nomination of any person shall be given by that person in writing or by telegram, but need not be given at the time when the nomination paper is lodged.

(3) Every nomination paper and every consent shall be lodged with or given to the Chief Returning Officer not later than noon on nomination day. The Chief Returning Officer shall give a receipt in writing for every nomination accepted by him.

(4) Each candidate shall be nominated by a separate nomination paper in such manner as, in the opinion of the Chief Returning Officer, is sufficient to identify the candidate.

(5) No elector or voter may nominate more than one candidate.

(6) Any registered elector or voter may inspect any nomination paper or consent at the Chief Returning Officer's office without payment at any time when the office is open for the transaction of business.

Cf. 1956, No. 107, s. 80 (N.Z.); S.R. 1957/223, r. 36 (N.Z.)

49. Deposit by candidate—(1) Every candidate, or some person on his behalf, shall deposit with the Chief Returning Officer the sum of \$40 not later than noon on nomination day.

(2) If the total number of votes received by any unsuccessful candidate is less than one half of the total number of votes

received by the successful candidate, or, where there are 2 successful candidates, the one who receives the lower total number of votes, the deposit of the unsuccessful candidate shall be forfeited to the Government but in every other case shall be returned to the person who paid it.]

(3) Where a candidate has duly withdrawn his nomination not later than 7 clear days before polling day, his deposit shall be returned to the person who paid it.

Cf. 1956, No. 107, ss. 81 (1) and (3), 83 (3) (N.Z.); S.R. 1960/60, r. 12 (N.Z.)

Subss. (1) and (2) were substituted for the original subss. (1) and (2) by s. 2 of the Electoral Amendment Act 1969.

50. Acceptance or rejection of nomination—(1) The Chief Returning Officer shall reject the nomination of any candidate—

- (a) If the nomination paper and the consent of the candidate are not lodged with him not later than noon on nomination day; or
- (b) If the nomination paper does not state that the candidate is a registered elector of a specified constituency, or, registered as an individual voter; or
- (c) If the nomination paper is not signed by at least 2 registered electors of the constituency for which the nomination is made, or, in the case of an individual voter, by at least 2 registered voters; or
- (d) If the deposit is not paid as required by this Act.

(2) In every other case the Chief Returning Officer shall accept the nomination:

Provided that nothing in this subsection shall limit the jurisdiction of the Court hearing an election petition.

Cf. 1956, No. 107, s. 82 (N.Z.)

51. Advertisement of nomination—At the hour of noon on the day appointed for the nomination of candidates, or as soon thereafter as practicable, the Chief Returning Officer, shall cause the names of all candidates so nominated to be posted in a conspicuous place outside the place named in the said public notice, and shall in each constituency give public notice of the nominations for that constituency.

Cf. 1956, No. 107, s. 84 (N.Z.); S.R. 1957/223, r. 37 (N.Z.)

52. Withdrawal of nomination—(1) Any candidate may sign and deliver to the Chief Returning Officer, not later than 7 clear

days before polling day, a paper in form No. 6 stating that the candidate withdraws his nomination. The Chief Returning Officer shall give public notice thereof.

(2) No withdrawal of nomination which does not comply with subsection (1) of this section shall have any effect.

(3) If any candidate withdraws his nomination in accordance with subsection (1) of this section, he shall not be capable of being elected at any poll which it may still be necessary to hold.

Cf. 1956, No. 107, s. 83 (N.Z.); S.R. 1957/223, r. 42 (N.Z.)

53. Procedure where nominations insufficient—(1) If there is only one member to be elected for any constituency or by individual voters, and if no candidate is nominated or if the only candidate nominated withdraws his nomination, the Chief Returning Officer shall, after the expiration of 3 months from polling day, declare the seat to be vacant and thereupon the provisions of section 47 of this Act shall apply.

(2) If there is more than one member to be elected for any constituency or by individual voters, and if no candidate is nominated or if the number of candidates nominated is less than the number of members to be elected, or if any candidate or candidates who have been nominated withdraw his or their nominations and the number of candidates who remain (if any) is less than the number of members to be elected, the Chief Returning Officer shall, after the expiration of 3 months from polling day, declare to be vacant any seat in excess of the number of remaining nominations and thereupon the provisions of section 47 of this Act shall apply to each such vacant seat.

Cf. S.R. 1957/223, rr. 39, 40 (b), 42 (N.Z.)

54. Procedure where election not contested—(1) The Chief Returning Officer shall, by public notice on or before polling day, in respect of any constituency or individual voters, declare that the candidate or candidates shall be deemed to be elected, and report accordingly to the Head of State,—

(a) If there is only one member to be elected and if only one candidate is nominated, or if any candidate who has been nominated withdraws his nomination and there remains only one candidate; or

(b) If there is more than one member to be elected and if the number of candidates nominated is equal to or less than the number of Members to be elected, or if any candidate or candidates who have been nominated

withdraw his or their nomination and the number of candidates who remain is equal to or less than the number of Members to be elected.

(2) Thereupon the Head of State shall, by warrant under his hand, declare such candidate or candidates to be elected.

Cf. 1956, No. 107, s. 85 (N.Z.); S.R. 1957/223, rr. 38; 40 (a) (N.Z.); S.R. 1960/60, r. 10 (N.Z.)

Contested Elections

55. Public Notice of polling day and candidates—If the number of candidates exceeds the number of Members to be elected, the Chief Returning Officer shall forthwith give a second public notice of polling day, and public notice of the names of the candidates.

Cf. S.R. 1957/223, r. 41 (N.Z.)

56. Form of ballot papers—(1) After nomination day the Chief Returning Officer shall cause ballot papers to be printed in form No. 7 in sufficient number for the election. The directions on the ballot papers shall be in the Samoan language and the English language.

(2) The ballot papers shall contain a list of all the persons nominated as candidates who have not withdrawn their nominations (each name being inserted once only, whether nominated in one or more nomination papers), and of no other persons, arranged in order of their surnames in large characters in accordance with the Samoan alphabet for each constituency, and in accordance with the English alphabet for individual voters, and where 2 or more candidates have the same surname, or for any other reason the Chief Returning Officer considers that confusion may arise, the candidates shall be distinguished on the ballot papers by the addition in smaller characters of their Christian names and any other matter necessary to distinguish them.

(3) If a candidate withdraws his nomination after the ballot papers have been printed the Chief Returning Officer shall, before the poll, erase his name from every ballot paper.

(4) The ballot papers to be used at any election shall be printed on paper of one uniform colour for all constituencies and another uniform colour for the individual voters.

(5) Every ballot paper shall have a counterfoil in form No. 8

(6) If the Chief Returning Officer so decides, there may also be printed on the top right-hand corner of the back of every ballot paper and in the space provided in the counterfoil

attached thereto a number (called a consecutive number) beginning for each constituency and for the individual voters with the number one in the case of the first ballot paper printed, and on all succeeding ballot papers printed the numbers shall be consecutive, so that no 2 ballot papers for the same constituency or individual voters shall bear the same number.

Cf. 1956, No. 107, s. 87 (N.Z.); S.R. 1957/223, rr. 43, 45 (N.Z.)

Death of Candidate

57. Death before close of nominations—(1) Where a candidate who has been nominated and has not withdrawn his nomination dies before the close of nominations his nomination shall be treated in all respects as if it had not been made, and his deposit shall be returned to his personal representatives or, as the case may be, to the person who paid it.

(2) Where in any such case the candidate dies on nomination day or on the day before nomination day the time for the close of nominations in that constituency, or for individual voters (if the candidate is an individual voter), shall be deemed to be postponed by 5 days.

Cf. 1956, No. 107, s. 88 (N.Z.)

58. Death after close of nominations—(1) If any candidate dies after the close of nominations and before the close of the poll or if the successful candidate dies after the close of the poll and before the declaration of the result of the poll, the provisions of this section shall apply.

(2) The election shall be deemed to have failed and the seat shall be deemed to be vacated.

(3) Where the candidate dies before polling day the Chief Returning Officer shall, upon being satisfied of the fact of the death, countermand the notice of the poll in that particular constituency or for individual voters as the case may be.

(4) Where the candidate dies on polling day before the close of the poll the Chief Returning Officer or the Presiding Officer shall, upon being satisfied of the fact of the death, immediately close the poll and declare it to be null and of no effect.

(5) Where the candidate dies after the close of the poll and before the declaration of the result of the poll, and it is found on the completion of the count of votes or on a recount that the candidate, if still living, would have been elected the Chief Returning Officer shall, upon being satisfied of the fact of the

death, endorse on the report to the Head of State the fact of the death and that the candidate, if still living, would have been elected.

(6) The provisions of this Act as to equality of votes between candidates shall apply notwithstanding the death of one of those candidates after the close of the poll.

(7) Where the poll is interrupted in consequence of the death of a candidate all ballot papers placed in the several ballot boxes shall be taken out by the several Presiding Officers and, being made up into secured packages, shall be sent unopened to the Chief Returning Officer, who shall forthwith destroy them in the presence of a Magistrate or other judicial officer.

(8) A fresh public notice shall be issued by the Chief Returning Officer forthwith for a new election and, except as otherwise provided, all proceedings in connection with the new election shall be had and taken anew.

(9) The main roll and supplementary rolls which were to be used at the election which has failed shall be used at the new election without any amendment or addition.

(10) It shall not be necessary to nominate afresh any candidate who at the time of the countermand or close of the poll was a duly nominated candidate:

Provided that any such candidate may withdraw his nomination not later than 7 clear days before the new polling day.

(11) All appointments of polling places made in respect of the election which has failed shall continue in respect of the new election.

Cf. 1956, No. 107, s. 89 (N.Z.)

Polling at Elections

59. Polling places—The Chief Returning Officer shall by public notice, given at least 7 days before polling day, appoint a sufficient number of polling places in each constituency where an election is being held and for individual voters, for the taking of the poll.

Cf. S.R. 1957/223, r. 41 (N.Z.); S.R. 1960/60, r. 11 (N.Z.);
S.R. 1961/6, cl. 30 (N.Z.)

60. Polling booths, ballot boxes, ballot papers, etc.—The Chief Returning Officer shall provide the following things for taking the poll:

(a) One or more rooms for polling booths at each polling place, and in each booth one or more inner compart-

ments, separated from but opening into the booth and having no other opening:

- (b) In each inner compartment pencils for use of the electors or voters or other suitable facilities for the marking of ballot papers:
- (c) In each booth one or more ballot boxes having a lock and key and a slit in the upper side by which the ballot papers may be put into the box:
- (d) In each booth one or more copies of the main roll and supplementary rolls for the constituency or individual voters, as the case may be, and a sufficient number of ballot papers.

Cf. 1956, No. 107, s. 92 (N.Z.); S.R. 1957/223, r. 44 (N.Z.)

61. Allocation of Officers—(1) The Chief Returning Officer shall prescribe the constituency or constituencies in which and the individual voters in respect of which Returning Officers, Deputy Returning Officers, poll clerks and interpreters shall exercise their functions.

(2) A Returning Officer shall have the powers and may perform any of the duties of the Chief Returning Officer in the constituency or constituencies or in respect of the individual voters to which he is appointed and shall be subject to the authority and control of the Chief Returning Officer.

(3) The Chief Returning Officer shall exercise supervision over the functions of Returning Officers, Deputy Returning Officers, poll clerks and interpreters, and may give any such officers directions as to the performance of their duties.

Cf. S.R. 1961/6, cl. 29 (N.Z.)

62. Deputy Returning Officers, poll clerks, and interpreters—(1) The Chief Returning Officer shall appoint for each polling booth a Deputy Returning Officer to conduct the poll at that booth and one or more poll clerks to assist the Deputy Returning Officer, and may appoint such additional Deputy Returning Officers and poll clerks and such interpreters as he considers necessary.

(2) A Returning Officer may himself exercise all the powers, duties, and functions of a Deputy Returning Officer in respect of any one polling booth.

(3) Any Returning Officer or Deputy Returning Officer may at any time on or before polling day appoint in writing a substitute to act for him in respect of that election in case of his absence from duty.

(4) If the Deputy Returning Officer fails to open the polling at any booth, or if he is absent from duty and has not appointed a substitute, any poll clerk at the booth may act for him and in that event shall be deemed to be his substitute.

(5) Every substitute while acting for any Returning Officer or Deputy Returning Officer shall have all the powers, duties, and functions of that Returning Officer or Deputy Returning Officer.

Cf. 1956, No. 107, s. 93 (N.Z.)

63. Poll clerks and interpreters to make declaration—Every poll clerk and interpreter shall before the poll, and every substitute for a Deputy Returning Officer shall before acting, make a declaration in form No. 1 before the Chief Returning Officer, Returning Officer, another Deputy Returning Officer or a person authorised to take a statutory declaration by section 21 of the Oaths, Affidavits and Declarations Act 1963.

Cf. 1956, No. 107, s. 94 (N.Z.); S.R. 1957/223, r. 47 (N.Z.)

64. Scrutineers—(1) Each candidate may, by writing under his hand, appoint one scrutineer for each polling booth at any election.

(2) Every scrutineer shall, before being allowed to act, make a declaration in form No. 1 before a Returning Officer, a Deputy Returning Officer or a person authorised to take a statutory declaration by section 21 of the Oaths, Affidavits and Declarations Act 1963.

(3) Any scrutineer who during the hours of polling leaves the polling booth to which he is appointed, without having first obtained the permission of the Presiding Officer at that polling booth, shall not be entitled to re-enter the booth or to resume his scrutiny.

(4) Nothing in this Act shall render it unlawful for a scrutineer to communicate to any person information as to the names of persons who have voted.

(5) No candidate shall act as a scrutineer under this Act.

Cf. 1956, No. 107, s. 95 (N.Z.); S.R. 1957/223, r. 4, 46 (N.Z.)

65. Hours of polling—(1) The poll at every election shall commence at 9 o'clock in the morning of polling day, and, except as otherwise provided in this Act, shall finally close at [7] o'clock in the evening of the same day.

(2) Every elector or voter who at the close of the poll is present in a booth for the purpose of voting shall be entitled to receive a ballot paper and to mark and deposit it in the same manner as if he had voted before the close of the poll.

Cf. 1956, No. 107, s. 96 (N.Z.); S.R. 1957/223, r. 48 (N.Z.)

In subs. (1) the figure "7" was substituted for the word "six" by s. 2 of the Electoral Amendment Act (No. 2) 1969.

The Ballot

66. Ballot box to be kept locked during poll—The Presiding Officer at each polling booth shall, before the opening of the poll, and in the sight of any of the scrutineers present, see that the ballot box is empty, and shall close and lock it, and retain the key in his possession; and the ballot box shall not again be opened until after the close of the poll;

Provided that, if the lock of a ballot box is damaged or defective so that the box cannot be locked, the Presiding Officer shall securely seal the box instead of locking it.

Cf. 1956, No. 107, s. 101 (N.Z.); S.R. 1957/223, r. 49 (N.Z.)

67. Persons not to remain in polling booth—Not more than 6 electors or voters shall be allowed in a polling booth or more than one elector or voter in any inner compartment at one and the same time; and no person shall be allowed to remain in any polling booth except the Presiding Officer and his clerks, any of the scrutineers, an interpreter, and as many constables as the Presiding Officer thinks necessary to keep the peace.

Cf. 1956, No. 107, s. 102 (N.Z.); Cf. 1957/223, r. 50 (N.Z.)

68. Person not to be spoken to in booth—(1) No scrutineer or other official or unofficial person shall speak to any elector or voter in a polling booth either before or after the elector or voter has given his vote, except only the Presiding Officer or poll clerk (with an interpreter if necessary), who may ask the questions he is authorised to put, and give such general directions as may assist any elector or voter to give his vote, and in particular may on request inform an elector or voter orally of the names of all the candidates in alphabetical order.

(2) Every person who offends against this section shall be liable on summary conviction to a fine not exceeding [£40], and may be at once removed from the booth by order of the Presiding Officer.

Cf. 1956, No. 107, s. 103 (N.Z.); S.R. 1957/223, r. 51 (N.Z.)

69. Questions may be put to elector or voter—(1) The Presiding Officer may, and if so required by any scrutineer shall, before allowing any person to vote, put to him the following questions:

- (a) Are you the person whose name appears as A.B. in the roll now in force for the (Name) constituency, or the individual voters' roll, as the case may be?
- (b) Are you still possessed of the qualifications in respect of which you are enrolled?
- (c) Have you already voted at this election?

(2) In every such case the Presiding Officer shall require the questions to be answered in writing signed by the person to whom they are put.

(3) Every person to whom those questions are put who does not answer them, or does not answer the first and second in the affirmative and the third in the negative, shall not be permitted to vote.

(4) Every person who wilfully and knowingly makes a false answer to any of the questions that the Presiding Officer may put to him under this section shall be liable to a fine not exceeding [£40].

Cf. 1956, No. 107, s. 104 (N.Z.); S.R. 1957/223, rr. 53 and 54 (N.Z.)

70. Issue of ballot papers—(1) Every Presiding Officer shall, in accordance with the provisions of this section, issue ballot papers to all electors or voters who apply to vote at the booth in respect of which he is appointed.

(2) The elector or voter shall state his name to the Presiding Officer and shall give such particulars as may be necessary to identify the entry in the printed rolls relating to the elector or voter.

(3) If the name of the elector or voter appears in the rolls a line shall be drawn through his name and number.

(4) If the name of the elector or voter appears in the rolls the Presiding Officer shall then issue to the elector or voter a ballot paper after he has prepared it in the following manner:

- (a) Unless a consecutive number has been printed on the ballot paper and on the counterfoil, he shall enter on both the counterfoil and the back of the ballot paper in the spaces provided a number (called a consecutive number), beginning with the number one in the case of the first ballot paper issued by him, and on all succeeding papers issued by him the numbers shall be

consecutive, so that no 2 ballot papers issued in the same booth shall bear the same number;

- (b) He shall then fold over the corner of the ballot paper on which the consecutive number appears and shall firmly fix a piece of gummed paper over that corner so as effectively to conceal the consecutive number;
- (c) On the counterfoil of the ballot paper he shall write his initials, and the number appearing in the roll against the name of the elector or voter;
- (d) He shall place his official booth stamp on the perforation between the counterfoil and the back of the ballot paper.

(5) Every Presiding Officer who fails faithfully to perform any duty imposed on him by this section, by reason whereof any of the requirements of the section are not effectively fulfilled, shall be liable to a fine not exceeding [£20]:

Provided that, insofar as the failure relates to the duty of fixing a piece of gummed paper over the consecutive numbers so as effectively to conceal it, it shall be a sufficient defence if he satisfies the Court that he took all reasonable precautions to secure the same.

Cf. 1956, No. 107, s. 105 (N.Z.); S.R. 1957/223, rr. 52, 55 (N.Z.); S.R. 1961/6, cl. 42 (N.Z.)

71. Method of voting—(1) The elector or voter, having received a ballot paper, shall immediately retire into one of the inner compartments provided for the purpose, and shall there alone and secretly indicate on the ballot paper the candidate or candidates for whom he desires to vote by marking a cross in a square set opposite to the name of each:

Provided that no ballot paper shall be rejected as informal that clearly indicates the candidate or candidates for whom the elector or voter intended to vote whether that indication is made in the manner prescribed by this section or otherwise.

(2) Every elector or voter shall, before leaving the inner compartment, fold his ballot paper so that the contents cannot be seen, and shall then deposit it so folded in the ballot box.

Cf. 1956, No. 107, s. 106 (N.Z.); S.R. 1957/223, r. 56 (N.Z.); S.R. 1961/6, cl. 43 (N.Z.)

72. Spoilt ballot papers—(1) Any elector or voter who, not having deposited his ballot paper in the ballot box, satisfies the Presiding Officer that he has spoilt it by inadvertence may be supplied with a fresh ballot paper, but only after the spoilt one has been returned to the Presiding Officer.

(2) The Presiding Officer shall—

- (a) Cancel every such spoilt ballot paper by writing across the face thereof the words "Spoilt by elector or voter, and a fresh ballot paper issued" and writing his initials thereon.
- (b) If any ballot paper is inadvertently spoilt by the Presiding Officer or any other official, cancel it by writing across the face thereof the words "Spoilt by official" and also the words "and a fresh ballot paper issued" if that is the case, and writing his initials thereon:
- (c) Retain all spoilt ballot papers in his possession until the close of the poll.

(3) The Presiding Officer shall make up into separate packets and shall deliver to the Chief Returning Officer as soon as practicable after the close of the poll all spoilt ballot papers at the polling booth at which he presided.

(4) The provisions of subsection (1) of section 83 of this Act providing for the disposal of ballot papers shall apply with respect to the disposal of spoilt ballot papers.

Cf. 1956, No. 107 (N.Z.) s. 107; S.R. 1957/223, r. 57 (N.Z.); S.R. 1961/6, cl. 44 (N.Z.)

73. Voter blind or unable to read or write—(1) Any elector or voter who is wholly or partially blind, or is unable to read or write (whether because of physical handicap or otherwise), or is not sufficiently familiar with the English language to vote without assistance, may vote in accordance with the provisions of this section.

(2) At the request of any such elector or voter who has received a ballot paper the Presiding Officer shall accompany him into one of the inner compartments provided for the marking of ballot papers, and the ballot paper may there be marked by the elector or voter with the assistance of the Presiding Officer or may be marked by the Presiding Officer in accordance with the instructions of the elector or voter.

(3) The person assisting the elector or voter shall sign his name on the back of the ballot paper and shall add the words "Witness for blind or partially blind person" or "Witness for person unable to read or write" or "Witness for person not familiar with the English language", as the case may be, and shall fold the ballot paper so that its face cannot be seen before depositing it in the ballot box.

(4) A poll clerk or some other person nominated by the elector or voter may also accompany him into the inner compartment and may, if so desired by the elector or voter, inspect the ballot paper before it is deposited in the ballot box.

(5) Every person who is present in accordance with this section or with any regulations when an elector or voter votes and who communicates at any time to any person any information obtained as to the candidate for whom the elector or voter is about to vote or has voted, or as to the number on the ballot paper given to the elector or voter, commits an offence, and shall be liable to imprisonment for a term not exceeding 3 months.

Cf. 1956, No. 107, s. 108 (N.Z.); S.R. 1957/223, r. 58 (N.Z.)

74. Procedure when second vote given in same name—If any person proposing to vote at any election gives as his name the name of any person to whom a ballot paper has already been given at the same election, he shall be dealt with in all respects in like manner as any other elector or voter:

Provided that the ballot paper of any such person shall not be deposited in the ballot box or be allowed by the Presiding Officer, but shall be set aside for separate custody.

Cf. 1956, No. 107, s. 109 (N.Z.); S.R. 1961/6, cl. 46 (N.Z.)

Preliminary Count of Votes

75. Procedure after close of poll—(1) At each polling booth the Presiding Officer shall, as soon as practicable after the close of the poll, in the presence of such of the scrutineers as choose to be present and the poll clerks, but of no other person, perform the following duties:

(a) He shall make up into separate parcels—

(i) The certified copies of the main roll and supplementary rolls on which the fact of any person having received a ballot paper has been noted; and

(ii) All the counterfoils of ballot papers that have been issued to electors or voters; and

(iii) All the spoilt ballot papers; and

(iv) All the unused ballot papers:

(b) He shall then open the ballot boxes and, taking therefrom all the ballot papers therein, proceed to ascertain the number of votes received by each candidate:

(c) He shall set aside as informal all ballot papers which do not clearly indicate the candidate for whom the elector or voter desired to vote:

(d) He shall announce the result of the voting at the polling booth at which he presides and arrange for the result of the voting to be transmitted as soon as possible to the Chief Returning Officer:

(e) He shall make up into separate parcels—

(i) The used ballot papers, together with (but in separate enclosures) the ballot papers set aside as informal, and the ballot papers set aside under section 74 of this Act; and

(ii) A certificate signed by himself of the number of votes received by each candidate, the number of ballot papers set aside as informal, the number of ballot papers set aside under section 74 of this Act, the number of spoilt ballot papers, the number of unused ballot papers, and the number of ballot papers originally delivered to him.

(2) Each parcel made up under this section shall be endorsed by the Presiding Officer with a description of its content, the name of the constituency, or individual voters, the name of the polling place, the number of the booth and the date of the polling; and the parcel shall be enclosed signed by the Presiding Officer; and the parcel shall be enclosed in paper or similar material and shall be properly secured.

(3) The Presiding Officer shall forthwith forward all the parcels mentioned in this section to the Chief Returning Officer.

Cf. 1956, No. 107, s. 111 (N.Z.); S.R. 1957/223, rr. 59, 60 (N.Z.)

PART VIII

PROCEDURE AFTER POLLING DAY

Scrutiny of the Rolls

76. Arrangements for scrutiny of the rolls—(1) The Chief Returning Officer shall make arrangements for a scrutiny of the rolls as soon as practicable after the close of the poll, and shall give at least 3 clear days' notice in writing to each of the candidates of the time and place at which he will commence the scrutiny.

(2) No person other than the Chief Returning Officer and his assistants, and one person appointed as scrutineer by each candidate for the purpose, shall be present at the scrutiny.

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

(4) A scrutineer may be appointed under this section by telegram.

Cf. 1956, No. 107, s. 112 (N.Z.); S.R. 1957/223, r. 61 (N.Z.)

77. Marked copies of rolls to be compared—(1) The Chief Returning Officer shall, in the presence and hearing of his

assistants (if any) and such scrutineers as choose to be present, but of no other person, compare one with another all the certified copies of the main roll and supplementary rolls on which the fact of any person having received a ballot paper has been noted, and shall on an unmarked copy of the main roll and every supplementary roll (called the master roll) draw a line through the number and name of any elector or voter who is shown on any of the certified copies of the rolls as having received a ballot paper.

(2) If on that comparison, or from the report of a Presiding Officer on the ballot papers set aside under section 74 of this Act, and after such inquiry as the Chief Returning Officer deems necessary, it appears that the same elector or voter has received more than one ballot paper, the Chief Returning Officer shall, in the presence of his assistants (if any) and such scrutineers as choose to be present, but of no other person, open the parcel or parcels of ballot papers used at the polling booth or polling booths at which that elector or voter appears to have received a ballot paper, and shall select therefrom the ballot papers which appear from their consecutive numbers and counterfoils to have been issued to that elector or voter, and shall disallow every vote appearing to have been given by means of the ballot papers so selected:

Provided that, if the Chief Returning Officer is satisfied that one and only one of the ballot papers was lawfully received by the elector or voter entitled thereto and that he was not in any way concerned in the issue of the other ballot paper or ballot papers, the Chief Returning Officer shall not disallow the vote of that elector or voter under this section but shall disallow the other vote or votes.

(3) Except in the case of the ballot papers so selected therefrom, the Chief Returning Officer shall inspect only the consecutive numbers on the ballot papers in the several parcels so opened, and shall so cover the ballot papers that no person present shall have the opportunity of determining the candidate for whom any particular elector or voter has voted.

Cf. 1956, No. 107, s. 113 (1), (2) and (4) (N.Z.); S.R. 1957/223, r. 62 (N.Z.)

78. Parcels to be secured after scrutiny—(1) When the Chief Returning Officer has selected from any parcel all the ballot papers he is required to select therefrom, he shall forthwith, in the presence of his assistants (if any) and such scrutineers as choose to be present, but of no other person, close and secure the parcel, and shall endorse thereon a memorandum of the fact of

the ballot papers having been selected from that parcel, specifying the same by the name of the person to whom the same appear to have been delivered, and shall sign the endorsement with his name.

(2) The Chief Returning Officer shall set aside all ballot papers selected by him from any parcel as herein provided, and shall in the presence of his assistants (if any) and such scrutineers as choose to be present, but of no other person, secure those ballot papers in a separate parcel, and shall endorse the parcel with a description of the contents thereof, and shall sign the endorsement with his name.

Cf. 1956, No. 107, s. 114 (N.Z.); S.R. 1957/223, r. 63 (N.Z.)

Official Count and Declaration of Poll

79. Counting the votes—(1) On completion of the scrutiny hereinbefore directed the Chief Returning Officer, with such assistants as he deems necessary, and in the presence of such of the scrutineers appointed under section 76 of this Act as choose to be present, but of no other person, shall select and open one of the parcels of used ballot papers referred to in paragraph (e) of subsection (1) of section 75 of this Act and shall mark each ballot paper therein with a number in consecutive order, beginning with the number one, so that [no 2 ballot papers in that] parcel shall bear the same number:

Provided that the procedure set out in this subsection need not be delayed until the inquiries under subsection (2) of section 77 of this Act have been completed, but the ballot papers from any particular polling booth shall not be counted until any inquiries in respect of ballot papers from that booth have been completed.

(2) When the ballot papers from the parcel so selected have been marked as aforesaid the Chief Returning Officer shall make a record of the last number marked, and shall then, in the presence of his assistants (if any) and such of the scrutineers as choose to be present, but of no other person, deal with the ballot papers as follows:

(a) He shall reject as informal any ballot paper—

(i) That does not bear the official mark if there is reasonable cause to believe that it was not issued to an elector or voter by any Presiding Officer; or

(ii) That does not clearly indicate the candidate for whom the elector or voter desired to vote; or

(iii) That has anything not authorised by this Act written or marked thereon by which the elector or voter can be identified; or

(iv) That purports to vote for more candidates than the number of candidates to be elected:

Provided that no ballot paper shall be rejected as informal by reason only of some informality in the manner in which it has been dealt with by the elector or voter if it is otherwise regular, and if in the opinion of the Chief Returning Officer the intention of the elector or voter in voting is clearly indicated:

Provided also that no ballot paper shall be rejected as informal by reason only of some error or omission on the part of an official, if the Chief Returning Officer is satisfied that the elector or voter was qualified to vote at the election:

(b) The Chief Returning Officer shall then count the number of votes received by each candidate, and the number of votes rejected as informal, and compare the result of that count with the certificate of the Presiding Officer in respect of the preliminary count, and shall, where necessary, amend that certificate, and every such certificate shall be initialled by the Chief Returning Officer:

(c) The Chief Returning Officer shall then make up and secure the parcel anew, and endorse thereon a memorandum specifying the number of ballot papers contained in the parcel, the number of votes received by each candidate, the number of informal ballot papers, the name of the polling place, and the number of the booth at which the votes were recorded; and the endorsement shall be signed by the Chief Returning Officer.

(3) After the ballot papers from one parcel have been dealt with in the manner aforesaid, those from the remaining parcels shall be successively dealt with in like manner, the marking of the ballot papers to commence with the number one in the case of each parcel.

Cf. 1956, No. 107, s. 115 (1), (2) and (3) (N.Z.); S.R. 1957/223, r. 64 (N.Z.)

In subs (1) the words in square brackets which appear in the corresponding subsection of the Bill and of the Electoral Act 1956 (N.Z.) have been inserted pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

80. Declaration of result of poll—(1) When all the ballot papers have been dealt with as aforesaid the Chief Returning Officer, having ascertained the total number of votes received by each candidate, shall forthwith declare the result of the poll including the number of votes received by each candidate by giving public notice thereof in form No. 9, and report the result

of the poll to the Head of State. Thereupon the Head of State shall, by warrant under his hand, declare the successful candidate or candidates to be elected.

(2) Where there is an equality of votes between candidates and the addition of a vote would entitle one of those candidates to be declared elected, the Chief Returning Officer shall forthwith apply to a Magistrate for a recount under section 81 of this Act, and all the provisions of that section shall apply accordingly, except that no deposit shall be necessary.

Cf. 1956, No. 107, s. 116 (N.Z.); S.R 1957/223, r. 65 (N.Z.)

Recount

81. Application to Magistrate for recount—(1) Where any candidate has reason to believe that the declaration by the Chief Returning Officer of the number of votes received by each candidate is incorrect, and that on a recount thereof the first-mentioned candidate might be found to be elected, he may, within 3 days after the public notice of the result of the election, apply to a Magistrate for a recount of the votes.

(2) Every such application shall be accompanied by a deposit of [S30].

(3) The Magistrate shall cause a recount of the votes to be commenced within 3 days after receiving the application, and shall give notice in writing to the Chief Returning Officer and to each of the candidates or their scrutineers of the time and place at which the recount will be made.

(4) The recount shall be made in the presence of the Magistrate or of an officer appointed by him for the purpose, and shall as far as practicable be made in the manner provided in the case of the original count:

Provided that no person shall be present at the recount except the Magistrate or the officer appointed by him, his assistants (if any), the Chief Returning Officer and his assistants (if any), and the scrutineers appointed under section 76 of this Act.

(5) In any case where on any recount under this section there is an equality of votes between candidates and the addition of a vote would entitle one of those candidates to be declared elected, the Chief Returning Officer shall determine by lot which candidate shall be elected.

(6) The Magistrate shall have all the powers that the Chief Returning Officer had on the original count, and may reverse any decision made by the Chief Returning Officer in the exercise of those powers.

(7) If on the recount the Magistrate finds that the declaration of the result of the poll was incorrect he shall order the Chief Returning Officer to make an amended declaration of the result of the poll by giving public notice thereof in form No. 9 and to give an amended report of the result of the poll to the Head of State. Thereupon the Head of State shall, by warrant under his hand, revoke his previous warrant and declare the successful candidates to be elected.

(8) The Magistrate may make such order as to the costs of and incidental to the recount as he deems just, and, subject to any such order, shall direct the deposit made under this section to be returned to the person who paid it.

Cf. 1956. No. 107, s. 117 (N.Z.); S.R. 1957/223, r. 66 (N.Z.)

82. Ballot papers and certificate to be compared on recount—(1) At any recount made as aforesaid the Chief Returning Officer shall produce to the Magistrate all the used ballot papers, together with the certificate stating the total number of ballot papers used at the election.

(2) If on comparing the number of ballot papers stated in the certificate with the ballot papers used at the election the Magistrate finds that any of the ballot papers have been lost, stolen, or in any way interfered with during the interval between the official count and the recount, the official count made by the Chief Returning Officer shall be deemed to be correct, and the result of the poll declared accordingly. Where in any such case there is an equality of votes between candidates and the addition of a vote would entitle one of those candidates to be declared elected, the Chief Returning Officer shall determine by lot which candidate shall be elected.

Cf. 1956, No. 107, s. 118 (N.Z.); S.R. 1957/223, r. 66 (N.Z.)

Disposal of Ballot Papers

83. Disposal of ballot papers, rolls, etc.—(1) As soon as practicable after polling day the Chief Returning Officer shall enclose in separate packets in the following manner all the parcels transmitted to him by the several Presiding Officers or made up and secured by himself, that is to say:

- (a) He shall enclose in one or more separate packets all the parcels of used ballot papers, and all counterfoils corresponding to those ballot papers; in one or more other separate packets all parcels of unused and spoilt ballot papers; in another all parcels of ballot papers set aside under section 74 and section 78 of this Act; and

in one or more other separate packets all parcels containing ballot paper accounts, copies of rolls (except the master roll), books, or other papers, as provided in this Act:

(b) He shall properly secure the said several packets, and endorse them with a description of the contents thereof respectively; and the name of the constituency or individual voters, the name of the polling place and number of the polling booth; and the date of the polling; and shall sign the endorsement; and shall forthwith forward the said packets to the Registrar of the Supreme Court:

(c) He shall also at the same time properly secure and transmit to the Registrar of the Supreme Court a parcel containing all ballot papers printed for the election and not used by the Chief Returning Officer or distributed for use to any Presiding Officer.

(2) The Registrar of the Supreme Court shall forthwith give or send to the Chief Returning Officer a receipt under his hand for the said packets and parcel.

(3) The Chief Returning Officer shall send the master roll to the Registrar appointed under section 3 of this Act and the Registrar shall keep it until the close of the next general election. Any registered elector or voter may inspect any master roll at the Registrar's office without payment of any fee at any time when the office is open for the transaction of business.

Cf. 1956, No. 107, s. 121 (N.Z.); S.R. 1957/223, r. 67 (N.Z.)

84. Disposal of packets—(1) The packets and parcel shall be safely kept for one year unopened, unless a Court of competent jurisdiction orders them, or any of them, to be opened.

(2) At the end of one year the packets and parcel shall be destroyed unopened in the presence of the Registrar of the Supreme Court and the Clerk of the Legislative Assembly.

Cf. 1956, No. 107, s. 122 (N.Z.); S.R. 1957/223, r. 67 (N.Z.)

85. Papers taken from parcels as evidence in certain cases—(1) Any ballot paper, and any copy of a roll, and any book purporting to be taken from any such parcel as aforesaid, and having written thereon respectively, under the hand of the Registrar of the Supreme Court, a certificate of the several particulars by this Act required to be endorsed on the parcel, shall be conclusive evidence in any Court or before any Committee of the Legislative Assembly that it was so taken and that it, if a

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ballot paper, was deposited, and, if a roll or book, was kept or used at the election and booth to which the endorsement and the writing relate.

(2) Every ballot paper so certified shall be evidence of a vote given at the poll, and of the correspondence of the number appearing on the ballot paper with the number appearing on any roll so certified as of the same election and booth, according to the tenor of the said ballot paper.

(3) But in the case of the ballot papers set aside or selected by a Presiding Officer or by the Chief Returning Officer the correspondence shall be evidence only of some person having voted in the name appearing on the roll.

Cf. 1956, No. 107, s. 123 (N.Z.)

Maintenance of Order at Elections

86. Presiding Officers to maintain order—(1) Every Presiding Officer shall maintain order and keep the peace at the polling place or booth where he is conducting the poll, and may, without any other warrant than this Act,—

- (a) Cause to be arrested and taken before a Magistrate any person reasonably suspected of committing or attempting to commit at the polling place or booth any of the offences mentioned in section 92 of this Act; or
- (b) Cause to be removed any person who obstructs the approaches to a polling booth, or wilfully and unnecessarily obstructs the proceedings at the polling, or conducts himself in a disorderly manner, or causes a disturbance, or wilfully acts in any manner in defiance of the lawful directions of the Presiding Officer.

(2) All constables shall aid and assist the Presiding Officer in the performance of his duty.

Cf. 1956, No. 107, s. 124 (N.Z.); S.R. 1957/223, r. 69 (N.Z.)

87. Adjournment of Poll—... Where the polling at any polling place cannot start or has to be suspended whether by reason of riot or open violence, natural disaster, or any other cause, the Presiding Officer shall adjourn the taking of the poll at that polling place to the following day, and if necessary from day to day until the poll can be taken, and shall forthwith give public notice of the adjournment in such manner as he thinks fit:

Provided that the poll shall not be kept open for more than [10] hours in all at any polling place.

Cf. 1956, No. 107, s. 125 (N.Z.); S.R. 1957/223, r. 70 (N.Z.)

The figure (1) was deleted from the beginning of this section and in the proviso the word "ten" here shown as "10" was substituted for the word "nine" by s. 3 of the Electoral Amendment Act (No. 2) 1969.

Custody of Ballot Papers

88. Prevention of irregularities as to ballot papers—In order to prevent the commission at any election of irregularities in respect of the improper possession of ballot papers the following provisions shall apply:

- (a) The Chief Returning Officer shall give to the person printing the ballot papers a receipt specifying the total number of ballot papers received by him, and it shall be the duty of the printer to see that all copies of the ballot papers other than those delivered to the Chief Returning Officer are immediately destroyed;
- (b) Every Presiding Officer shall give to the Chief Returning Officer a receipt specifying the total number of ballot papers received by him, and shall be personally responsible for the safe custody of all such ballot papers from the time they are received by him until they are disposed of in accordance with this Act;
- (c) Every Presiding Officer shall be personally responsible for the safe custody of all ballot papers used at the polling booth at which he presides from the time each ballot paper was placed in the ballot box by the elector or voter until the parcel of used ballot papers has been delivered to the Chief Returning Officer as in this Act provided and the Presiding Officer has obtained from the Chief Returning Officer a receipt in writing for the parcel, which receipt the Chief Returning Officer is in all cases required to give on such delivery;
- (d) In like manner the Chief Returning Officer shall be personally responsible for the safe custody of all ballot papers used at the polling booth at which he presides, and of all parcels of used ballot papers for which he has given a receipt to a Presiding Officer, until they have been sent by him to the Registrar of the Supreme Court as aforesaid;
- (e) Every person who fails to take reasonable steps to secure the safe custody of all ballot papers for which he is responsible, with the result that any such ballot paper is removed from his custody, shall be liable to a fine not exceeding ~~£100~~ or to imprisonment for a term not exceeding 6 months;

- (f) Every person shall be liable to a fine not exceeding **£100** who wilfully or negligently allows any copy of a ballot paper printed by him to come into the possession of any person other than the Chief Returning Officer;
- (g) Every person shall be liable to a fine not exceeding **£100** who obtains possession of or has in his possession any ballot paper other than the one given to him by the Chief Returning Officer or a Presiding Officer for the purpose of recording his vote, or retains any ballot paper in his possession after leaving any polling booth.

Cf. 1956, No. 107, s. 126 (N.Z.)

Offences at Elections

89. Interfering with or influencing electors or voters—(1) Every person commits an offence and shall be liable to a fine not exceeding **£100** who at an election—

- (a) In any way interferes with any elector or voter either in the polling booth or while on his way thereto, with the intention of influencing him or advising him as to his vote;
- (b) At any time on polling day before the close of the poll in or in view or hearing of any public place holds or takes part in any demonstration or procession having direct or indirect reference to the poll by any means whatsoever;
- (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 apparatus;
- (d) At any time on polling day before the close of the poll, prints or distributes or delivers to any person anything being or purporting to be in imitation of any ballot paper to be used at the 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;
- (e) 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, any statement advising or intended or likely to influence any elector or voter as to the candidate for whom he should vote;

Provided that this paragraph shall not apply to any statement in a newspaper published before 6 o'clock in the afternoon of the day before polling day:

Provided also that where any statement is so exhibited before polling day in a fixed position not in view of a polling place it shall not be an offence to leave it so exhibited on polling day:

Provided further that the Chief Returning Officer may at any time on polling day cause to be removed or obliterated any statement to which this paragraph applies which is exhibited within half a mile of a polling place, and may recover all expenses incurred in so doing from the persons by whom or by whose direction the statement was exhibited, as a debt due by them jointly and severally to the Government:

- (f) 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:
- (g) 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:
- (h) 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 place, or booth—
 - (i) Gives or offers to give to any person any written or oral information as to any name or number on the main roll or any supplementary roll being used at the election:
 - (ii) Permits or offers to permit any person to examine any copy of the main roll or any supplementary roll being used at the election.

(2) It shall not be an offence against this section for any person to wear or display (whether on his person or not) any party emblem.

(3) Nothing in this section shall apply to any official statement or announcement made or exhibited under the authority of this Act.

Cf. 1956, No. 107, s. 127 (N.Z.); S.R. 1957/223, r. 73 (N.Z.)

90. Publishing defamatory matter at election time—Every person shall be liable to a fine not exceeding [\$100] or to imprisonment for a term not exceeding 3 months who at any

time after public notice has been given by the Chief Returning Officer under section 45 or section 47 of this Act and before the close of the poll publishes or exposes, or causes to be published or exposed, to public view any document or writing or printed matter containing any untrue statement defamatory of any candidate and calculated to influence the vote of any elector or voter.

Cf. 1956, No. 107, s. 128 (N.Z.); S.R. 1957/223, r. 74 (N.Z.)

91. Erasing or altering official mark on ballot paper—Every person shall be liable to a fine not exceeding [\$100] who erases, obliterates, or alters any official mark, stamp, or writing on any ballot paper, or places thereon any writing, print, or other matter which might lead persons to believe that it was put thereon by any official or person duly authorised in that behalf.

Cf. 1956, No. 107, s. 129 (N.Z.); S.R. 1957/223, r. 75 (N.Z.)

92. Offences in respect of ballot papers and ballot boxes—(1) Every person commits an offence against this section who—

- (a) Forges, or counterfeits, or fraudulently defaces, or fraudulently destroys any ballot paper, or the official mark on any ballot paper:
- (b) Without due authority supplies any ballot paper to any person:
- (c) Fraudulently puts into any ballot box any paper other than the ballot paper that he is authorised by law to put therein:
- (d) Fraudulently takes out of a polling booth any ballot paper:
- (e) Without due authority destroys, takes, opens, or otherwise interferes with any ballot box, or box or packet or parcel of ballot papers, then in use for the purposes of an election, or in course of transmission by post or otherwise, or thereafter whenever the same may be kept as a record of the election.

(2) Every person who commits an offence against this section shall be liable on conviction—

- (a) If an officer appointed under this Act, to imprisonment for a term not exceeding 2 years:
- (b) If any other person, to imprisonment for a term not exceeding 6 months.

(3) Every person who attempts to commit any offence against this section shall be liable on conviction to imprisonment for

term not exceeding one half of the longest term to which a person committing the offence may be sentenced.

Cf. 1956, No. 107, s. 130 (N.Z.); S.R. 1957/223 r. 75 (N.Z.)

93. Property to be stated as being in Chief Returning Officer—In any prosecution for an offence in relation to any ballot boxes, ballot papers, or marking instruments at an election the property in the boxes, papers, and instruments may be stated as being in the Chief Returning Officer.

Cf. 1956, No. 107, s. 131 (N.Z.)

94. Infringement of secrecy—(1) Every official, clerk, scrutineer, interpreter, and constable in attendance at a polling booth shall maintain and aid in maintaining the secrecy of the voting in the booth, and shall not communicate to any person, except for some purpose authorised by law, any information likely to defeat the secrecy of the ballot.

(2) No person, except for some purpose authorised by law, shall—

- (a) Interfere with or attempt to interfere with an elector or voter when marking his vote;
- (b) Attempt to obtain in a polling booth information as to the candidate for whom any elector or voter in a booth is about to vote or has voted;
- (c) Communicate at any time to any person any information obtained in a polling booth as to the candidate for whom any elector or voter at the booth is about to vote or has voted, or as to the consecutive number on the ballot paper given to any elector or voter at the booth.

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

(4) No person shall directly or indirectly induce any elector or 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 offends against this section shall be liable to imprisonment for a term not exceeding 3 months.

Cf. 1956, No. 107, s. 132 (N.Z.); S.R. 1957/223 r. 81 (N.Z.)

PART IX

CORRUPT AND ILLEGAL PRACTICES

Corrupt Practices

95. Personation—(1) Every person is guilty of a corrupt practice who commits, or aids or abets, counsels, or procures the commission of, the offence of personation.

(2) Every person commits the offence of personation who—

- (a) Votes as some other person, whether that other person is living or dead or is a fictitious person; or
- (b) Having voted at any election, votes again at the same election; or
- (c) Having voted at an election in any constituency or as an individual voter at a general election, votes again in another constituency or as an individual voter at the same general election.

(3) For the purpose of this section a person shall be deemed to have voted if he has applied for a ballot paper for himself, or has marked a ballot paper for himself, whether validly or not.

(4) It shall be the duty of the Chief Returning Officer to institute a prosecution against any person whom he believed to have committed the offence of personation, or to have aided, abetted, counselled, or procured the commission of, that offence by any person, at the election for which he is Chief Returning Officer.

Cf. 1956, No. 107, s. 140 (N.Z.); S.R. 1957/223, r. 80 (N.Z.)

96. Bribery—(1) In this section the terms “elector” and “voter” include any person who has or claims to have a right to vote.

(2) Every person is guilty of a corrupt practice who commits the offence of bribery.

(3) 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 procures any office to or for any elector or voter, or to or for any other person on behalf of any elector or voter, or to or for any other person, in order to induce any elector or voter to vote or refrain from voting; or
- (b) Corruptly does any such act as aforesaid on account of any elector or voter having voted or refrained from voting; or
- (c) Makes any such gift or procurement as aforesaid to or for any person in order to induce that person to procure,

or endeavour to procure, the return of any person at an election or the vote of any elector or voter—
or who, upon or in consequence of any such gift or procurement as aforesaid, procures, or engages, promises, or endeavours to procure, the return of any person at any election or the vote of any elector or voter.

(4) For the purposes of this section—

(a) References to giving money shall include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or endeavour to procure, any money or valuable consideration:

(b) References to procuring any office shall include references to giving, procuring, agreeing to give or procure or to endeavour to procure, any office, place, or employment.

(5) Every person commits the offence of bribery who—

(a) Advances or pays or causes to be paid any money to or to the use of any other person with the intent that that money or any part thereof shall be expended in bribery at any election; or

(b) 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.

(6) The foregoing provisions of this section shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning an election.

(7) An elector or voter commits the offence of bribery if before or during an election he directly or indirectly, by himself or by any other person on his behalf, receives, or agrees or contracts for, any money, gift, loan, or valuable consideration, office, place, or employment for himself or for any other person for voting or agreeing to vote or for refraining or agreeing to refrain from voting.

(8) Every person commits the offence of bribery if after an election he directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting or having induced any other person to vote or refrain from voting.

Cf. 1956, No. 107, s. 141 (N.Z.); S.R. 1957/223, r. 77 (N.Z.)

97. Treating—(1) Every person is guilty of a corrupt practice [who commits the offence of treating.

(2) Every person commits the offence of treating who corruptly] by himself or by any other person on his behalf, either

before, during, or after an election, directly or indirectly gives or provides, or pays wholly or in part the expense of giving or providing any food, drink, entertainment, or provision to or for any person—

- (a) For the purpose of corruptly influencing that person or any other person to vote or refrain from voting; or
 - (b) For the purpose of corruptly procuring himself to be elected; or
 - (c) On account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting.
- (3) Every elector and voter who corruptly accepts or takes any such food, drink, entertainment, or provision also commits the offence of treating.

Cf. 1956, No. 107, s. 142 (1), (2) and (4) (N.Z.); S.R. 1957/223, r. 78 (N.Z.)

In subss (1) and (2) the words in square brackets which appear in the corresponding subsections of the Bill and of the Electoral Act 1956 (N.Z.) have been inserted pursuant to s. 3 (f) of the Reprint of Statutes Act 1972.

98. Undue influence—(1) Every person is guilty of a corrupt practice who commits the offence of undue influence.

(2) Every person commits the offence of undue influence who—

- (a) Directly or indirectly, by himself or by any other person on his behalf, makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, by himself or by any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person, in order to induce or compel that person to vote for or against a particular candidate or to vote or refrain from voting, or on account of that person having voted for or against a particular candidate or having voted or refrained from voting; or
- (b) By abduction, duress, or any fraudulent device or contrivance, impedes or prevents the free exercise of the franchise of an elector or voter, or thereby compels, induces, or prevails upon an elector or voter either to vote or to refrain from voting.

Cf. 1956, No. 107, s. 143 (N.Z.); S.R. 1957/223, r. 79 (N.Z.)

Illegal Practices

99. Procurement of voting by unqualified electors or voters—Every person is guilty of an illegal practice who induces or procures to vote at any election any person whom he knows at the time to be disqualified or prohibited, whether under this Act or otherwise, from voting at that election.

Cf. 1956, No. 107, s. 148 (N.Z.)

General Provisions

100. Cinematograph films—(1) For the purposes of this section the expression “cinematograph film” or “film” includes any screen advertisement of any description.

(2) For the purposes of this Act, the exhibition of any cinematograph film except on polling day shall not be deemed to constitute bribery or treating or an illegal practice, and any payment or contract for payment in respect of any such exhibition shall not be deemed to constitute an illegal practice notwithstanding that the film may be wholly or mainly an advertisement.

Cf. 1956, No. 107, s. 149 (N.Z.)

101. Punishment for corrupt or illegal practice—Every person who is guilty of any corrupt practice or any illegal practice shall be liable on conviction—

(a) In the case of a corrupt practice, to imprisonment for a term not exceeding one year or to a fine not exceeding [£400], or to both:

(b) In the case of an illegal practice, to a fine not exceeding [£200].

Cf. 1956, No. 107, s. 150 (1), (N.Z.); S.R. 1957/223, r. 76 (N.Z.)

102. Persons charged with corrupt practice may be found guilty of illegal practice—Any person charged with a corrupt practice may, if the circumstances warrant that finding, be found guilty of an illegal practice; and any person charged with an illegal practice may be found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

Cf. 1956, No. 107, s. 151 (N.Z.)

103. Time limit for prosecutions—A prosecution against any person for a corrupt practice or an illegal practice shall be

commenced within 6 months after the offence was committed:

Provided that where the person charged has been reported by the Supreme Court in its report on the trial of an election petition to have been proved guilty of the offence a prosecution shall be commenced within 6 months after the offence was committed or within 3 months after the date of the report, whichever period is the later to expire.

Cf. 1956, No. 107, s. 152 (N.Z.)

PART X

ELECTION PETITIONS

104. Method of questioning election—(1) No election and no declaration of result or report to the Head of State shall be questioned except by a petition complaining of an unlawful election or unlawful declaration or report (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 or report shall be deemed to be an election petition, and the the Supreme Court may make such order thereon as the Court thinks expedient for compelling a declaration or report to be made or may allow the petition to be heard as provided with respect to ordinary election petitions.

Cf. 1956, No. 107, s. 155 (N.Z.)

105. 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 Chief Returning Officer or Registrar, as the case may be, 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 Apia, 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.

Cf. 1956, No. 107, s. 156 (N.Z.); S.R. 1957/223, r. 82 (1) (N.Z.); S.R. 1960/60, r. 14 (N.Z.)

106. 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 Chief Returning Officer has publicly notified the result of the poll.

(2) If the petition questions the election or result upon an allegation of a corrupt practice 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 such public notification in pursuance or furtherance of the alleged corrupt practice, 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 113 of this Act shall be deemed to be an allegation of corrupt practices, notwithstanding that the offences alleged are or include offences other than corrupt practices.

Cf. 1956, No. 107, s. 157 (N.Z.); S.R. 1957/223, r. 82 (1) (N.Z.); S.R. 1960/60, r. 14 (N.Z.)

107. Security for costs—(1) At the time of presenting an election petition or within 3 days after the expiration of the time limited for the presentation of the petition the petitioner shall give security to the satisfaction of the Registrar of the Court for all costs which may become payable by him to any witness summoned on his behalf or to any respondent.

(2) The security shall be an amount of **[\$100]** and shall be given by recognisance to the Government entered into by any number of sureties not exceeding 5 or by a deposit of money, or partly in one way and partly in the other.

(3) If no security is given as required by this section no further proceedings shall be taken on the petition.

Cf. 1956, No. 107, s. 158 (N.Z.); S.R. 1957/223, r. 82 (2) (N.Z.)

108. 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.

Cf. 1956, No. 107, s. 159 (N.Z.)

109. Rules of Court—(1) Rules of Court may be made in the manner prescribed by the Judicature Ordinance 1961 for the purposes of this Part of this Act.

(2) All rules made under this section shall be laid before the Legislative Assembly within 28 days after the date of the making thereof, if the Assembly is then in session, and, if not, shall be laid before the Assembly within 28 days after the date of the commencement of the next ensuing session.

Cf. 1956, No. 107, s. 160 (N.Z.)

As to subs (1), see s 40 of the Judicature Ordinance 1961.

Trial of Election Petition

110. Court and place of trial—Every election petition shall be tried by the Supreme Court.

Cf. 1956, No. 107, s. 161 (N.Z.)

111. Trial of petition—(1) An election petition shall be tried in open Court without assessors, 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 Parliament, or that Parliament 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, and shall disallow the vote of every person proved to have been guilty of any corrupt practice, or whose name has been wrongly placed or retained on the roll:

Provided that the vote of any person who on polling day was entitled to be registered as an elector or voter of the constituency or individual voters in question shall not be disallowed on the ground that his name has been wrongly placed or retained on any roll.

(5) On the trial of an election petition, unless the Court otherwise directs, any charge of a corrupt or illegal practice may be gone into, and evidence in relation thereto received before any proof has been given that any candidate was aware of or consenting to the corrupt or illegal practice.

(6) On the trial of an election petition complaining of an unlawful election declaration or report and claiming the seat for some person, the respondent may give evidence to prove that that person was not duly elected, in the same manner as if he had presented a petition against the election of that person.

Cf. 1956, No. 107, s. 162 (N.Z.)

112. Avoidance of election of candidate guilty of corrupt practice—Where a candidate who has been elected at any election is proved at the trial of an election petition to have been guilty of any corrupt practice at the election, his election shall be void.

Cf. 1956, No. 107, s. 163 (N.Z.)

113. 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.

(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.

Cf. 1956, No. 107, s. 164 (N.Z.)

114. Votes to be struck off for corrupt practices—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 bribery, treating, or undue influence 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, treated, or unduly influenced.

Cf. 1956, No. 107, s. 165 (N.Z.)

115. 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.

Cf. 1956, No. 107, s. 166 (N.Z.)

116. 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 by 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 or 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.

Cf. 1956, No. 107, s. 167 (N.Z.); S.R. 1957/223, r. 100 (2) (N.Z.)

117. Decisions of Court to be final—All decisions of the Supreme Court under this Part of this Act shall be final and conclusive and without appeal, and shall not be questioned in any way.

Cf. 1956, No. 107, s. 168 (N.Z.)

118. 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 and the determination so certified shall be final to all intents and purposes.

Cf. 1956, No. 107, s. 169 (N.Z.)

119. Report of Court as to corrupt or illegal practices—(1) Where in an election petition any charge is made of any corrupt or illegal practice having been committed at the

election, the Court shall, in addition to giving a certificate and at the same time, report in writing to the Speaker as follows:

- (a) Whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at the election, and the nature of the corrupt or illegal practice:
- (b) Whether any of the candidates has been guilty by his agents of any corrupt or illegal practice in reference to the election:
- (c) The names of all persons proved at the trial to have been guilty of any corrupt or illegal practice and whether they have received certificates of indemnity:
- (d) Whether there is reason to believe that corrupt or illegal practices have extensively prevailed at the election.

(2) In the case of someone who is not a party to the petition nor a candidate on behalf of whom the seat is claimed by the petition, the Court, before reporting him to have been proved guilty of any corrupt or illegal practice, shall first cause notice to be given to him, and if he appears in pursuance of the notice, shall give him an opportunity of being heard and of calling evidence in his defence to show why he should not be so reported.

(3) For the purposes of this Act, if it is reported by the Court that a corrupt or illegal practice was committed with the knowledge and consent of a candidate, he shall be treated as having been reported to have been proved guilty of that corrupt or illegal practice.

(4) If a candidate is reported to have been guilty by his agents of treating, undue influence, or any illegal practice, and the Court further reports—

- (a) That no corrupt or illegal practice was committed at the election by the candidate with his knowledge or consent, and that the offences mentioned in the report were committed without the sanction or connivance of the candidate; and
- (b) That all reasonable means for preventing the commission of corrupt and illegal practices at the election were taken by and on behalf of the candidate; and
- (c) That the offences mentioned in the report were of a trivial, unimportant, and limited character; and
- (d) That in all other respects the election was free from any corrupt or illegal practice on the part of the candidate and of his agents,—

the candidate shall not be treated for the purposes of this Act as having been proved guilty of the offences mentioned in the report.

120. Special report—At the same time as it gives its certificate at the conclusion of the trial of an election petition, the Court may make a special report to the Speaker as to any matters arising in the course of the trial an account of which, in the judgement of the Court, ought to be submitted to the Legislative Assembly.

Cf. 1956, No. 107, s. 171 (N.Z.)

121. Signature and effect of certificate and report—(1) The certificate and any report of the Court at the conclusion of the trial of an election petition shall be signed by the Presiding Judge.

(2) On being informed by the Speaker of the certificate and any report of the Court, the Legislative Assembly shall order the same to be entered in the Journals of the Assembly, and shall give the necessary directions for confirming or altering the result or for issuing a public notice for a new election, or for carrying out the determination, as the circumstances may require.

(3) Where the Court makes a special report the Legislative Assembly may make such order in respect of that report as it thinks proper.

Cf. 1956, No. 107, s. 172 (N.Z.)

Witnesses

122. Summons and examination of witnesses—(1) Witnesses may be summoned and sworn on the trial of an election petition in the same manner, as nearly as circumstances admit, as in the trial of an ordinary action.

(2) The Supreme Court may by order require any person who appears to the Court to have been concerned in the election to attend as a witness, and every person who refuses to obey any such order shall be guilty of contempt of Court.

(3) The Court may examine any person so required to attend or any person in Court, although he is not called or examined by any party to the petition.

(4) After the examination of a witness as aforesaid by the Court he may be cross-examined by or on behalf of the petitioner and each respondent, or any of them.

Cf. 1956, No. 107, s. 173 (N.Z.)

123. Certificate of indemnity to witness—(1) A person called as a witness on the trial of an election petition shall not be excused from answering any question relating to any offence at

or connected with the election on the ground that the answer thereto may incriminate or tend to incriminate himself, or on the ground of privilege:

Provided that—

(a) An answer by a person to a question put by or before the Court shall not, except in the case of any criminal proceeding for perjury in respect of the evidence, be admissible in evidence against him in any proceeding, civil or criminal:

(b) A witness who answers truly all questions which he is required by the Court to answer shall be entitled to receive a certificate of indemnity, stating that he has so answered.

(2) Where a person has received a certificate of indemnity in relation to an election, and any legal proceeding is at any time instituted against him for any offence committed by him at or in connection with the election previously to the date of the certificate, the Court having cognisance of the case shall on production of the certificate stay the proceeding, and may in its discretion award to the said person such costs as he has been put to in the proceeding.

(3) Nothing in this section shall be deemed to relieve a person receiving a certificate of indemnity from any incapacity under this Act or from any proceedings to enforce any such incapacity (other than a criminal prosecution).

Cf. 1956, No. 107, s. 174 (N.Z.)

124. Expenses of witnesses—(1) The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition, according to the scale allowed to witnesses on the trial of civil actions, may be allowed to him by the Court.

(2) Any such expenses, if the witness was called and examined by the Court, shall be deemed to be part of the expenses of the Court, and in other cases shall be deemed to be costs of the petition.

Cf. 1956, No. 107, s. 175 (N.Z.)

Costs

125. Costs of petition—(1) 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.

(2) If a petitioner fails for 6 months after demand to pay to any person summoned as a witness on his behalf, or to any respondent, any sum certified to be due to him for costs, and the failure is within one year after the demand proved to the satisfaction of the Supreme Court, every person who has under this Act entered into a recognisance relating to the petition shall be held to have made default in the recognisance, and it shall be dealt with in manner provided by [section 15 of the Government Proceedings Act 1974].

Cf. 1956, No. 107, s. 176 (N.Z.)

In subs. (2), s. 15 of the Government Proceedings Act 1974, being the corresponding enactment in force at the date of this reprint, has been substituted for s. 21 of the Crown Proceedings Act 1950 (N.Z.).

126. Costs payable by persons proved guilty of corrupt or illegal practice—(1) Where on the trial of an election petition it appears to the Court that any person has been guilty of any corrupt or illegal practice, 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.

Cf. 1956, No. 107, s. 177 (N.Z.)

Withdrawal and Abatement of Petition

127. Withdrawal of petition—(1) A petitioner shall not withdraw an election petition without the leave of the Supreme Court upon special application to be made in the prescribed manner.

(2) No such application shall be made until the prescribed notice of the intention to make it has been given in the constituency or among the individual voters to which the petition relates.

(3) Where there are more petitioners than one, an application to withdraw the petition shall not be made except with the consent of all the petitioners.

(4) If a petition is withdrawn, the petitioner shall be liable to pay the costs of each respondent.

Cf. 1956, No. 107, s. 178 (N.Z.)

128. Substitution of new petitioner—(1) On the hearing of an application for leave to withdraw a petition, any person who might in the first instance have presented the petition may apply to the Court to be substituted as a petitioner.

(2) The Court may, if it thinks fit, substitute any such applicant as petitioner, and may, if the proposed withdrawal is in the opinion of the Court the result of any corrupt bargain or consideration, by order direct that the security given on behalf of the original petitioner shall remain as security for any costs incurred by the substituted petitioner, and that to the extent of the sum named in the security the original petitioner shall be liable to pay the costs of the substituted petitioner.

(3) If the Court does not so direct, security to the same amount as would be required in the case of a new petition, and subject to the like conditions, shall be given on behalf of the substituted petitioner within 3 days after the order of substitution.

(4) Subject as aforesaid, a substituted petitioner shall as nearly as may be stand in the same position and be subject to the same liabilities as the original petitioner.

Cf. 1956, No. 107, s. 179 (N.Z.)

129. Report on withdrawal—In every case of the withdrawal of an election petition the Supreme Court shall make a report to the Speaker stating whether in its opinion the withdrawal of the petition was the result of any corrupt arrangement or in consideration of the withdrawal of any other election petition and, if so, the circumstances attending the withdrawal.

Cf. 1956, No. 107, s. 180 (N.Z.)

130. Abatement of petition—(1) An election petition shall be abated by the death of a sole petitioner or of the survivor of several petitioners.

(2) The abatement of a petition shall not affect the liability of the petitioner or any other person to the payment of costs previously incurred.

(3) On the abatement of a petition, notice of the abatement shall be given in the prescribed manner, and within 28 days after

notice is given any person who might have been a petitioner in respect of the election may apply to the Supreme Court in the prescribed manner. On any such application the Court may, if it thinks fit, substitute the applicant accordingly.

(4) Security shall be given on behalf of a petitioner so substituted, as in the case of a new petition.

Cf. 1956, No. 107, s. 181 (N.Z.)

General Provisions

131. Withdrawal and substitution of respondent before trial—(1) If before the trial of an election petition a respondent other than the Chief Returning Officer and the Registrar—

(a) Dies; or

(b) Gives the prescribed notice that he does not intend to oppose the petition; or

(c) Has his seat declared vacant in a report from the Speaker to the Head of State,—

notice thereof shall be given in the prescribed manner and, within 28 days after the notice is given, any person who might have been a petitioner in respect of the election may apply to the Supreme Court to be admitted as a respondent to oppose the petition, and shall be admitted accordingly, except that the number of persons so admitted shall not exceed 3.

(2) A respondent who has given the prescribed notice that he does intend to oppose the petition shall not be allowed to appear or act as a party against the petition in any proceedings thereon, and shall not sit or vote in the Legislative Assembly until the Assembly has been informed of the report on the petition.

(3) Where a respondent has given the prescribed notice as aforesaid, the Court shall report that fact to the Speaker.

Cf. 1956, No. 107, s. 182 (N.Z.)

132. Submission of report to Attorney-General—Where the Supreme Court reports that certain persons named have been proved at the trial of an election petition to have been guilty of any corrupt or illegal practice the report shall be laid before the Attorney-General.

Cf. 1956, No. 107, s. 183 (N.Z.)

PART XI

MISCELLANEOUS PROVISIONS

133. Service of notices—(1) Any notice under this Act may be served on any person by delivering it to that person, and may be

delivered to him either personally or by leaving it at his place of residence as stated on any roll or by posting it by registered letter addressed to him at that place of residence.

(2) A notice so posted shall be deemed to have been served at the time when the registered letter would in the ordinary course of post be delivered.

(3) Where any notice is sent by registered letter addressed to any person at his place of residence as stated on any roll, with a special request that the letter be returned to the sender at the expiration of 15 days if the person to whom the letter is addressed cannot be found, the return of the letter by the Post Office shall be deemed sufficient proof that the person has quitted that place of residence.

Cf. 1956, No. 107, s. 184 (N.Z.)

134. Chief Returning Officer and Registrar exempt from Court fees—The Chief Returning Officer and the Registrar shall be exempt from the payment of any Court fees in respect of any proceedings under this Act.

Cf. 1956, No. 107, s. 186 (N.Z.)

135. Validation of irregularities—Where anything is omitted to be done or cannot be done at the time required by or under this Act, or is done before or after that time, or is otherwise irregularly done in matter of form, or sufficient provision is not made by or under this Act, the Head of State acting on the advice of Cabinet may, by notice in the *Gazette*, at any time before or after the time within which the thing is required to be done, extend that time, or validate anything so done before or after the time required or so irregularly done in matter of form, or make other provision for the case as he thinks fit:

Provided that this section shall not apply with respect to the presentation of an election petition or to the giving of security for costs in relation to an election petition.

Cf. 1956, No. 107, s. 187 (N.Z.); S.R. 1957/233, r. 100 (3) (N.Z.)

136. Regulations—(1) The Head of State acting on the advice of Cabinet may from time to time, by Order, make all such regulations as may in his opinion be necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Regulations made under this section may prescribe

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penalties for offences against the regulations, not exceeding imprisonment for a term of 3 months or a fine of [\\$100], or both.

(3) All regulations made under this section shall be laid before the Legislative Assembly within 28 days after the date of the making thereof if the Assembly is then in session, and, if not, shall be laid before the Assembly within 28 days after the date of the commencement of the next ensuing session.

Cf. 1956, No. 107, s. 188 (N.Z.)

137. Repeals and savings—(1) The enactments specified in the Second Schedule to this Act shall cease to have effect as part of the Law of Western Samoa.

(2) The provisions of sections 20, 20A and 21 of the Acts Interpretation Act 1924 (N.Z.), (section 20A having been inserted therein by section 2 of the Acts Interpretation Amendment Act 1960 (N.Z.)) shall apply with respect to those enactments as if they had been revoked by this section.

(3) All acts done by the Head of State or the Chief Returning Officer or the Registrar or by any other officer and all applications and declarations made by any person before the commencement of this Act in relation to the first general election of Members of Parliament to be held after the commencement of this Act which would have been valid if this Act had been in force when the act was done or the application or declaration was made are hereby validated and declared to have been lawfully done or made.

Cf. S.R. 1957/223, r. 102 (N.Z.)

As to subs (2), the Act Interpretation Act 1924 (N.Z.) is no longer in force in Western Samoa as at the date of this reprint; it has been replaced by the Acts Interpretation Act 1974.

SCHEDULES

FIRST SCHEDULE

FORMS

Form I

Sections 4, 63, 64
DECLARATION BY RETURNING OFFICER, DEPUTY RETURNING OFFICER,
POLL CLERKS, SCRUTINEERS AND OTHER OFFICERS

I. A. B. (Insert full residential address and occupation or description),
solemnly and sincerely declare that I will well and truly serve in the office of—

*Returning Officer

*Deputy Returning Officer

- *Poll Clerk
- *Interpreter
- *Scrutineer for C.D., a candidate.

at the poll for the Constituency or Representative of the Individual Voters and that I will not do anything forbidden by section 94† of the Electoral Act 1963.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affidavits and Declarations Act 1963.

Declared at this)
day of 19 before me:)
E.F.)

A.B.

- *Chief Returning Officer
- *Returning Officer
- *Deputy Returning Officer
- *(Occupation or description of a) person authorised to take a statutory declaration by section 21 of the Oaths, Affidavits and Declarations Act 1963.

*Delete whichever do not apply.

†Section 94 of the Electoral Act 1963 is to be printed on the back of this form and must be read by or to the declarant.

Form 2

Section 21

To the Registrar of electors and voters for Western Samoa

I (Insert full names, full residential address and occupation or description) hereby claim to have my name entered on the individual voters' roll for Western Samoa; and I solemnly and sincerely declare:

(A) That my answers to the following questions are true and correct:

1. Are you a citizen of Western Samoa under [the Citizenship Act 1972]?
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. Was your name entered on the European electoral roll on the 30th day of November 1963?
8. What is (or was) the full name of your father?
9. If he is dead, when and where did he die?
10. Was your father's name entered on the European electoral roll on the 30th day of November 1963?
11. If not and if he died before the 30th day of November 1963, would he if alive on that day have qualified to have his name entered on the European electoral roll on that day?
12. Were you unborn or under the age of 21 years on the 30th day of November 1963?

13. Did you acquire your citizenship of Western Samoa by:

14. If the latter:

- (a) Is your father, if alive, a citizen of Western Samoa?
- (b) Would your father if alive at the date of the commencement of the Citizenship of Western Samoa Ordinance 1959 on the 8th day of September 1959 have automatically qualified to be a citizen of Western Samoa by virtue of any provision of that Ordinance?

15. Have you taken the oath of allegiance in the manner and form provided by section 12 of the Citizenship Act 1972?

- (B) That I do not hold a Matai title and am not exercising any customary right or privilege in regard to customary land.

- (C) That I am not married to a person holding such a title or exercising any such right or privilege.

AND I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths, Affidavits and Declarations Act 1963.

Signed and declared at

this day of 19) (Signature of claimant)
before me:)

(Signature and occupation or description of a person authorised to take a statutory declaration by section 21 of the Oaths, Affidavits and Declarations Act 1963)

In question 1 the Citizenship Act 1972, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Citizenship of Western Samoa Ordinance 1959.

In question 13, as to the acquisition of citizenship, see ss. 3-7 and 10 of the Citizenship Act 1972.

In question 15, s. 12 of the Citizenship Act 1972, being the corresponding enactment in force at the date of this reprint, has been substituted for s. 18 of the repealed Citizenship of Western Samoa Ordinance 1959.

Section 35(1)

Form 3

ELECTORAL ROLL FOR TERRITORIAL CONSTITUENCY

*Roll of Persons Entitled to Vote as Electors of the Territorial
Constituency of*

Number on Roll	Title (s) or Surname	Taulele'a or Christian Name (s)	Sub- village or Pitonu'u	Village or Nu'u	Occupation or Description
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.....Registrar

Roll of Persons Entitled to Vote for Representatives of the Individual Voters

Number on Roll	Surname	Christian Names	Residence	Occup- ation or Descrip- tion
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Section 48 (1)

*Delete words that do not apply.

Section 52 (1)

*Delete words that do not apply.

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Electoral

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Section 56 (1)

Form 7
BALLOT PAPER

Election of Member (s) of Parliament
to represent

The Territorial Constituency of

or

The Individual Voters

CANDIDATES

MATA'IA, Sione

TAGALOA, Levi

or

ANDERSON, Thomas

BERRY, Charles (Tailor)

BERRY, Charles (Bootmaker)

HIBBERD, Norman Frank

DIRECTIONS

The elector (or voter) may vote for only candidate (s). The elector (or voter) is to mark a cross opposite the name (s) of the candidate (s) for whom the elector (or voter) desires to vote. The vote will be invalid if names marked with a cross exceed the number to be elected.

After voting, fold this paper and place it in the ballot box. You must not take it out of the polling booth.

If you spoil this paper, return it to the Issuing Officer and obtain another.

Section 56 (5)

Form 8
COUNTERFOIL OF BALLOT PAPER

Consecutive No.

(To be entered here and also on the top right hand corner of the back of the voting paper)

Designation of Roll:

No. on Roll:

(To be entered here only)

(Stamp across the perforation so that the number)
of the polling booth shall appear on both the)
counterfoil and the voting paper)

Official
Booth
Stamp

Initials of Presiding Officer.

Section 80

Form 9
DECLARATION OF RESULT OF POLL
Territorial Constituency of
(or Individual Voters)

I HEREBY declare the result of the poll taken on the day of 19..... for
the election of a member (s) of Parliament for the Territorial Constituency of
(or for Individual voters) to be as follows:

Candidates

Votes Received

C.D.

E.F.

G.H.

I.J.

K.L.

Total number of valid votes

Number of votes rejected as informal

I therefore declare the said C.D. to be elected.

Dated at this day of 19

A.B.

CHIEF Returning Officer

SECOND SCHEDULE
ENACTMENTS CEASING TO HAVE EFFECT

Section 137

The Western Samoa Legislative Assembly Regulations 1957; S.R. 1957/223 (N.Z.)

The Western Samoa Legislative Assembly Regulations 1957, Amendment No. 1; S.R. 1960/60 (N.Z.)

**THE ELECTORAL AMENDMENT
ACT 1964**

1964, No. 21

An Act to amend the Electoral Act 1963

[30 December 1964]

1. Short title—This Act may be cited as the Electoral Amendment Act 1964, and shall be read together with and be deemed part of the Electoral Act 1963 (hereinafter referred to as the principal Act).

2. This section inserted para. (bb) in s. 16 (1) of the principal Act.

**THE ELECTORAL AMENDMENT
ACT 1969**

1969, No. 18

An Act to amend the Electoral Act 1963, regarding deposits by candidates

[5 November 1969]

1. Short title—This Act may be cited as the Electoral Amendment Act 1969, and shall be read together with and be deemed part of the Electoral Act 1963 (hereinafter referred to as the principal Act).

2. This section substituted new subsections for subss. (1) and (2) of s. 49 of the principal Act.

**THE ELECTORAL AMENDMENT
ACT (No. 2) 1969
1969, No. 27**

**An Act to amend the Electoral Act 1963, regarding hours of
polling** [11 December 1969]

1. Short title—This Act may be cited as the Electoral Amendment Act (No. 2) 1969, and shall be read together with and be deemed part of the Electoral Act 1963 (hereinafter referred to as the principal Act).

2. *This section amended s. 65 (1) of the principal Act*

3. *This section amended s. 87 of the principal Act.*

**THE ELECTORAL AMENDMENT
ACT 1975
1975, No. 27**

An Act to amend the Electoral Act 1963 [23 December 1975]

1. Short title—This Act may be cited as the Electoral Amendment Act 1975, and shall be read together with and deemed part of the Electoral Act 1963 (hereinafter referred to as the principal Act).

2. Section 3 of the principal Act is hereby amended by repealing subsection (2)

The Electoral Act 1963 is administered in the Justice Department.

**REGULATIONS APPLYING TO ELECTORAL
Election Petition Rules 1964 (W.S.R. 1964/2)**

THE ELECTORAL PETITION RULES 1964
His Highness, MALIETOA TANUMAFILI II, Head of State
ORDER

At the Government House at Apia this 17th day of March 1964.

PURSUANT to the Electoral Act 1963 the Head of State, acting on the advice of the Prime Minister, and with the concurrence of the Rules Committee constituted under section 40 of the Judicature Ordinance 1961, hereby makes the following rules.

ANALYSIS

1. Title
2. Interpretation
3. Title of proceedings

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4. Terms of petition
5. Paragraphing
6. Prayer of petition
7. Form

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8. When Chief Returning Officer or Registrar of electors and voters to be respondent

COUNSEL

9. Right to appear by counsel, etc.

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11. Petition to give name of counsel or agent
12. Petitioners may have one or different counsel or agents
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18. Publication of petition by petitioner

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20. Persons to be served
21. Service at an address for service
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23. Power of Court to order substituted service

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31. List of votes objected to, etc., to be delivered
32. List of objections to election to be delivered
33. Inspection of lists. Evidence to be restricted to lists

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34. Fixing time and place of trial
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40. Order to compel attendance
41. Witnesses' costs

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- 47. Form of application to be substituted when petition has abated
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- 49. Notice by respondent of intention not to oppose

COSTS AND FEES

- 50. Payment of costs from Law Trust Account
- 51. Execution for costs out of Supreme Court
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MISCELLANEOUS

- 53. Supreme Court holidays
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SCHEDULE

- Form 1 — Title of Proceedings
- Form 2 — Petition
- Form 3 — Bond and Security
- Form 4 — Notice of Time and Place of Trial
- Form 5 — Order for Attendance of Witness
- Form 6 — Notice of Intention to apply for Leave to Withdraw a Petition
- Form 7 — Notice of Motion for Leave to Withdraw a Petition
- Form 8 — Notice of Abatement of Petition

RULES

- 1. Title**—These rules may be cited as the Election Petition Rules 1964.

The wording of this rule and the layout of the analysis has been changed pursuant to s. 3 (f) of the Reprint of Statutes Act 1972 to accord with the usual style of drafting.

These rules were notified in the W.S. Gazette on 10 April 1964, see *Gaz.* 1964, Vol. IV, No. 22, p. 180.

- 2. Interpretation**—(1) In these rules, unless the context otherwise requires,—

“The Act” means the Electoral Act 1963:

“Counsel” means a barrister or solicitor of the Supreme Court of Western Samoa or of New Zealand:

“Court” means the Supreme Court of Western Samoa:

“Judge” means the Chief Justice or any other Judge of the Supreme Court:

“Petition” means an election petition under the Act; and “petitioner” has a corresponding meaning:

“Registrar of electors and voters” means the Registrar of electors and voters appointed under the Act:

“Registrar of the Court” means the Registrar of the Supreme Court; and includes a Deputy Registrar:

Expressions defined in the Act have the meanings so defined.

- (2) In these rules, a reference to a form by number is a reference to the form so numbered in the Schedule to these rules.

In subclause (1) as to the term “counsel”, see s. 8 of the Law Practitioners Act 1976.

- 3. Title of proceedings**—All documents to be lodged or filed in the proceedings upon an election petition and all orders made in such proceedings under the authority of these rules shall be intitled in the manner set out in form 1.

CONTENTS AND FORM OF PETITION

4. Terms of petition—Every petition shall state—

- (a) The holding and result of the election;
- (b) The nature of the right of every petitioner by virtue of which he is entitled to present the petition pursuant to section 104 of the Act;
- (c) Briefly, the facts relied on to sustain the prayer of the petition;
- (d) The specific grounds on which the complaint is founded.

5. Paragraphing—The petition shall be divided into paragraphs, each of which shall, as nearly as may be practicable, be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively; and unless otherwise ordered by the Court no costs shall be allowed for drawing or copying any petition not substantially complying with this rule.

6. Prayer of petition—The petition shall conclude with a prayer, that some specified person should be declared duly returned or elected, or that the election should be declared void, or that a return may be enforced, or as the case may be.

7. Form—A petition shall be sufficient if in form 2 or to the like effect.

PERSONS TO BE MADE RESPONDENTS

8. When Chief Returning Officer or Registrar of electors and voters to be respondent—If the petitioner is advised that, by reason of the matters alleged in the petition and by the operation of subsection (2) of section 105 of the Act, the Chief Returning Officer or the Registrar of electors and voters is deemed to be a respondent, he shall insert in the petition a statement to that effect and set out the name of the Chief Returning Officer or Registrar of electors and voters.

COUNSEL OR AGENT

9. Right to appear by counsel, etc.—A party to any proceedings under these rules may not appear or be represented by a Member of Parliament, but otherwise may appear and be represented either by a counsel or with the leave of the Court in special circumstances by any other agent but any such leave may be at any time withdrawn.

EMPLOYMENT OF COUNSEL AND AGENTS AND ADDRESSES FOR SERVICE

10. Counsel or agent to give notice to Registrar. Notices to and by counsel or agent—(1) A counsel or agent, as the case may be, representing any party shall forthwith deliver to the Registrar of the Court written notice of his appointment setting out an address for service complying with the provisions of these rules.

(2) Service of notices and proceedings upon the counsel or agent at that address shall be sufficient for all purposes, and any notice to be given by a party under these rules shall be sufficient if given by his counsel or agent on his behalf.

11. Petition to give name of counsel or agent—There shall be endorsed upon or appended to the petition the name of the counsel or agent whom the petitioner authorises to act for him, or a statement that he appears on his own behalf as the case may be, and in either case giving an address for service.

12. Petitioners may have one or different counsel or agents—Where there are more petitioners than one, each petitioner may have a different counsel or agent or they may jointly appoint one counsel or agent to act for them.

13. Situation of address for service—The address for service shall be a place not more than 3 miles from the Court.

14. Elected member's address for service—Any person returned or declared elected as a member may, at any time after he is returned or declared elected, deliver to the Registrar of the Court a memorandum signed by him or on his behalf appointing a counsel or an agent to act for him in case there should be a petition against him, or stating that he intends to appear on his own behalf and in either case giving an address for service complying with the requirements of rule 13 hereof.

15. Respondent to give address for service—Every respondent who has not complied with rule 14 hereof shall, within a week after service on him of a petition, deliver to the Registrar of the Court a writing signed by him or on his behalf appointing a counsel or an agent to act for him, or stating that he intends to act for himself, and in either case giving an address for service complying with the requirements of rule 13 hereof.

16. Notice at Registrar's office failing address for service—In default of compliance with rule 15 hereof, any notice or proceeding may be given to or served upon the said respondent by affixing it on some conspicuous place in the office of the Registrar of the Court.

17. Registrar's book of addresses for service—The Registrar of the Court shall keep a book at his office in which he shall enter all addresses for service and names of counsel or agents given under the foregoing rules. The book shall be open to inspection by any person without fee during office hours.

ADVERTISEMENT OF PETITION

18. Publication of petition by petitioner—Within 7 days after filing of the petition the petitioner shall at his own expense cause the petition to be published at least once in a newspaper published in Western Samoa, unless publication is excused by the Court or a Judge.

SERVICE OF PETITION

19. Time allowed for service—The petition shall be served not later than 7 days after the date of filing.

20. Persons to be served—The petition shall be served personally on every respondent.

21. Service at an address for service—Personal service upon a respondent who has given an address for service under rule 14 hereof shall be deemed to have been effected by leaving a copy of the petition at that address.

22. Power of Court to declare sufficient service—Where the Court or a Judge, on application made not more than 14 days after the date of the filing of a petition, is satisfied, on affidavit showing what has been done, that every reasonable effort has been made to effect service in manner hereinbefore

provided and to cause the matter to come to the knowledge of the respondent, the Court or a Judge may order that what has been done shall be considered sufficient service, subject to such conditions as it or he thinks reasonable.

23. Power of Court to order substituted service—The Court or a Judge may, if of opinion that there has been evasion of service, order that the affixing in the office of the Registrar of the Court of a notice setting out the fact that the petition has been presented, the name of the petitioner, and the prayer of the petition, shall be considered sufficient service.

SECURITY BY DEPOSIT

24. Account to which payment to be made—Security given by a deposit of money shall be given by the deposit thereof to the credit of the Law Trust Account of the Registrar of the Court.

25. Delivery of receipt and entry in deposit register—A receipt for the sum deposited shall be delivered to the Registrar of the Court, who shall file the receipt and shall enter in a book to be kept for the purpose the amount of every such deposit and the petition to which it is applicable. The book shall be open to inspection by any person without fee during office hours.

26. Disposal of deposit—The Registrar of the Court may from time to time withdraw from the said Law Trust Account the amount of the deposit or any part thereof in pursuance of any order made by the Court for payment thereof of costs, charges, or expenses, or in pursuance of any order made by the Court for the return or other disposal of any deposit or the residue or any part thereof or otherwise for the purposes of the Act, or in pursuance of any agreement in that behalf signed by all parties to the petition and filed in the Court.

SECURITY BY BOND

27. Form of bond—Security given by bond shall be given in form 3 or to the like effect stating the name and usual place of abode of each surety with such sufficient description as shall enable him to be found or ascertained.

28. One bond or separate bonds—There may be one bond executed by all the sureties or separate bonds executed by one or more, as may be convenient.

29. Approval of Registrar—The bond shall be given to the approval and satisfaction of the Registrar of the Court, who, if he has cause to believe that any surety is insufficient or that the bond is in any respect defective or inadequate, may require an affidavit of justification to be lodged with the bond or impose such other requirement as he thinks necessary.

PARTICULARS

30. Petition need not state evidence. Power to order particulars—The Court or a Judge may order a statement of such particulars as may be necessary to prevent surprise and unnecessary expense, and to ensure a fair and effectual trial to be included in the petition upon such terms as to costs and otherwise as may be ordered.

31. List of votes objected to, etc., to be delivered—When a petitioner claims the seat for an unsuccessful candidate, alleging that the candidate had a majority of lawful votes, the party complaining of or defending the election or declaration or report shall, not later than 6 days before the day appointed for trial, deliver to the Registrar of the Court, and also at the address for service, if any, given by each other party, a list of the votes intended to be objected to, and of the heads of objection to each such vote, together with sufficient copies of the list in the case of the Registrar of the Court to enable him to supply the copies required to be supplied under subclause (1) of rule 33 hereof.

32. List of objections to election to be delivered—When any respondent complaining of an unlawful election declaration or report, and claiming the seat for some person, intends to give evidence pursuant to subsection (6) of section 111 of the Act to prove that that person was not duly elected, such respondent shall, not later than 6 days before the day appointed for the trial, deliver to the Registrar of the Court, and also at the address for service, if any, given by the petitioner, a list of the objections to the election upon which he intends to rely, together with sufficient copies of the list in the case of the Registrar of the Court to enable him to supply the copies required to be supplied under subclause (1) of rule 33 hereof.

33. Inspection of lists. Evidence to be restricted to lists—(1) The Registrar of the Court shall allow inspection and supply office copies of each of the lists provided for in rules 31 and 32 hereof to each party concerned who has not already had a copy delivered to his address for service, if any.

(2) No evidence shall be given against the validity of any vote or upon any head of objection not specified in any such list, except by leave of the Court or a Judge, and upon such terms as to amendments of the list, postponement of the trial and payment of costs, as may be ordered.

TRIAL

34. Fixing time and place of trial—The date, time and place at which a petition will be tried shall be fixed by the Court in accordance with subsection (1) of section 111 of the Act.

35. Notice at Registrar's office of time and place of trial—The notice of the date, time and place at which a petition will be tried shall be given by the Registrar of the Court in form 4, or to the like effect, by affixing it on some conspicuous place in his office, and notice so given shall be deemed to be the notice required to be given by subsection (1) of section 111 of the Act.

36. Notice by Registrar to parties—The Registrar of the Court shall forthwith arrange for service of the notice of the date, time and place at which the petition will be tried upon all parties in the manner prescribed by section 133 of the Act.

37. Power of Court to postpone trial—The Court or a Judge may from time to time by order made upon the application of a party to the petition, or by notice to be given in such form as the Court or Judge may direct, postpone the trial to such day as it or he may appoint. When any such notice is received by the Registrar of the Court it shall forthwith be made public in the same manner as the original notice of the time and place of trial.

38. If Court arrives late, commencement adjourned—If the Court does not arrive at the place of trial on the day which is appointed for the trial or to which the trial is postponed, the commencement of the trial shall be deemed to stand adjourned to the ensuing day, and so on from day to day until the Court arrives.

39. Adjournments after trial commenced—No formal adjournment of the Court shall be necessary during the trial, but the trial shall be deemed adjourned and may be continued from day to day until the trial is concluded.

WITNESSES

40. Order to compel attendance—In any case in which the Court or a Judge thinks fit to compel the attendance of a witness by order pursuant to subsection (2) of section 122 of the Act, the order may be in form 5 or to the like effect.

41. Witnesses' costs—The reasonable costs of a witness shall be ascertained as provided by section 124 of the Act.

WITHDRAWAL AND ABATEMENT OF PETITION

42. Notice of intention to apply for leave to withdraw—The notice to be given under subsection (2) of section 127 of the Act of the intention of a petitioner to make an application to the Court for leave to withdraw the petition shall set out the ground of the proposed application and may be in form 6 or to the like effect, and shall at least one week before the application is heard by the Court be served on every respondent and published at least once in a newspaper published in Western Samoa.

43. Time and place of hearing application—The time and place for hearing the application shall be fixed by the Court or a Judge; and notice of the time and place so appointed shall be given to every respondent, and to every person who has given notice to the Registrar of the Court of an intention to apply to be substituted as a petitioner, and otherwise in such manner as the Court or Judge directs.

44. Form of notice of motion seeking leave to withdraw—The application to the Court for leave to withdraw the petition shall be made by motion, of which notice may be in form 7 or to the like effect, and no further notice of the motion shall be required other than the notices prescribed by rules 42 and 43 hereof.

45. Application to be substituted for petitioner—(1) Any person who might in the first instance have presented the petition may, within 7 days after the notice prescribed by rule 42 hereof is published by the petitioner, give notice in writing to the Registrar of the Court of his intention to apply, at the hearing of the application for leave to withdraw the petition, to be substituted for the petitioner.

(2) Any such person as aforesaid may, at the hearing, apply to be substituted for the petitioner, notwithstanding that he may not have given the notice referred to in subclause (1) of this rule.

46. Notice of abatement—Notice of the abatement of a petition by the death of a petitioner or surviving petitioner, as provided by subsection (3) of section 130 of the Act, may be given by any party or person interested, or by the Chief

Returning Officer or the Registrar of the Court by service and publication in the same manner as notice of an application to withdraw a petition, and may be in form 8 or to the like effect.

47. Form of application to be substituted when petition has abated—Any application made to the Court by any qualified person under subsection (3) of section 130 of the Act to be substituted as a petitioner when the petition has abated shall be made by notice given to the Registrar of the Court.

48. Death, etc., of respondent—If before the trial of the petition a respondent other than the Chief Returning Officer and the Registrar dies, or has his seat declared vacant in a report from the Speaker to the Head of State, any person who might have been a petitioner in respect of the election may give notice of such death or vacancy as aforesaid by causing the notice to be published at least once in a newspaper published in Western Samoa and by leaving a copy of the notice signed by him or on his behalf with each of them the Chief Returning Officer, the Registrar of electors and voters and the Registrar of the Court, and serving a copy on the petitioner; or notice may be given as aforesaid by the Chief Returning Officer, the Registrar of electors and voters or the Registrar of the Court.

49. Notice by respondent of intention not to oppose—The manner and time of the respondent's giving notice under paragraph (b) of subsection (1) of section 131 of the Act that he does not intend to oppose the petition shall be by leaving notice thereof in writing at the office of the Registrar of the Court at least 5 days before the day appointed for trial; and the respondent shall forthwith cause a copy of the notice to be published at least once in a newspaper published in Western Samoa and leave a copy with each of them the Chief Returning Officer and the Registrar of electors and voters and serve a copy on the petitioner.

COSTS AND FEES

50. Payment of costs from Law Trust Account—When the amount of any costs has been fixed by the Registrar of the Court upon taxation or agreed upon by the parties, the Court or a Judge may order that the amount, or the amount of any costs, charges, or expenses which has been fixed by the Court shall be payable from the Law Trust Account referred to in rule 24 hereof to the extent of the money therein available for the purpose.

51. Execution for costs out of Supreme Court—Any order of the Court declaring the amount of costs, charges, or expenses payable by any party shall for purposes of execution have the effect of a judgment for costs given in the Court.

52. Office fees—The office fees payable for inspection, office copies, and other proceedings under the Act and these rules shall be the same as those, if any, payable for like proceedings according to the practice of the Court.

MISCELLANEOUS

53. Supreme Court holidays—All days set apart or declared to be holidays of the Court under the rules of that Court in its ordinary jurisdiction shall be deemed to be holidays for the purposes of these rules.

54. Computation of time—In computing time for the doing of any act or the taking of any proceeding under these rules, time shall be reckoned in the manner prescribed by the rules or practice of the Court.

55. Supreme Court practice to be followed—In any matter not provided for by these rules, the rules of practice and procedure of the Court shall, as far as practicable, be followed.

SCHEDULE

Form 1

Rule 3

Title of Proceedings

In the Supreme Court of Western Samoa, HOLDEN AT APIA. No.
In the matter of a (Name of territorial constituency or Individual Voters)
Election Petition BETWEEN A. B. (and others), Petitioner (s) AND L. M. (and
others), Respondent (s).

Form 2

Rule 7

Petition

(Title)

TO THE SUPREME COURT OF WESTERN SAMOA

THE petition of A. B., of, (and C. D.,
of, as the case may be), whose name is
(or names are) subscribed hereto, sheweth—

1. An election for a member (s) of Parliament for the
Territorial Constituency or the Individual Voters was held, the poll wherefor
was appointed for the day of
..... 19

2. At the said election L.M., N.O., and P.Q., were candidates, and the Chief
Returning Officer has declared and reported L. M. as being duly elected (or as
the case may be):

3. Your petitioner, A.B., is a person who voted at the said election, or is a
person who had a right to vote at the said election, or was entitled to be
declared, and reported elected at the said election, or was entitled to be elected
at the said election, or was a candidate at the said election (as the case be).

4. Your petitioner, C.D. (here state in like manner the right of each
petitioner).

5. Your petitioner (s) say (s) that (here state in numbered subparagraphs the
facts relied upon).

6. The specific grounds on which your petitioner ('s) and (s') complaint is
founded are as follows: (here state the grounds either expressly or by reference
to numbered sub-paragraphs of paragraph 5).

7. (If the case so requires) Your petitioner (s) is (are) advised that by reason of
the matters aforesaid and by operation of subsection (2) of section 104 of the
Electoral Act 1963, the Chief Returning Officer (or the Registrar of electors
and voters) is deemed to be a respondent to this petition and his name is ...
WHEREFORE your petitioner (s) pray (s) that it may be determined that the
said L.M. was not duly elected (declared or reported elected) and that the

election was void (or that the said N.O. was duly elected and ought to have been declared and reported elected, or as the case may be).

Dated this day of 19.....

.....
Signature (s) of Petitioner (s)

The petitioner (s) authorise (s) Mr a counsel
(or the name of the agent and his occupation) to act as his (their) representative
and his address for service is; or

The petitioner (s) act (s) for himself (themselves) and his (their) address for
service is:.....

Form 3

Rule 27

Bond and Security

KNOW all men by these presents that we (or I), (Names of sureties or surety in full, adding residences and occupations) hereinafter called the sureties or surety, are jointly and severally (or am) bound unto the Government of Western Samoa in the sum of \$..... for payment of which unto the Government of Western Samoa, we bind ourselves, jointly and each of us severally, and the executors and administrators of us and each of us (or I bind myself, my executors and administrators) firmly by these presents.

Dated this day of 19.....

WHEREAS has (or have) presented a petition to the Supreme Court of Western Samoa under the provisions of the Electoral Act 1963 in respect of an election of member (s) of Parliament for the Territorial Constituency or the Individual Voters held on the day of

AND WHEREAS it is required that a bond should be entered into on behalf of the said petitioner (s) in accordance with the provisions of the said Act for the purposes hereinafter mentioned:

AND WHEREAS the Registrar of the Supreme Court at Apia has approved of the said sureties (or surety) for that purpose:

Now the condition of this obligation is such that if the said petitioner (s) (or any of them) shall well and truly pay all costs, charges, and expenses in respect of the election petition signed by him (or them, as the case may be) relating to the said election which shall become payable by him (or them, or any of them) under or by virtue of the said Act, or any rules made thereunder, to any person or persons, then this obligation shall be void, but otherwise shall remain in full force.

.....
Signature of Surety.

SIGNED by the above-named (Full name of surety) in the presence of:

Witness: Usual Signature:.....

Place of Abode:

Calling or Description:

Form 4

Rule 35

Notice of Time and Place of Trial

(Title)

TAKE notice that the above petition will be tried at
on the day of 19.....
at o'clock in the noon, and on such
subsequent days as may be necessary.

Dated the day of 19.....

Signature:

Registrar of the Supreme Court at Apia

Form 5

Rule 40

Order for Attendance of Witness

(Title)

To
PURSUANT to an order of the Court (or a Judge), you are hereby required to
attend before the Supreme Court at
on the day of 19..... at the
hour of (or forthwith, as the case may be) to be examined as a witness in the
matter of the above mentioned petition, and to attend the said Court until your
examination shall have been completed.

Dated this day of 19.....

..... Registrar.

Form 6

Rule 42

Notice of Intention to Apply for Leave to Withdraw a Petition

(Title)

NOTICE is hereby given that the above-named petitioner will at such time and
place as may be fixed for that purpose, being at least one week after
the day of 19..... apply to the
Supreme Court for leave to withdraw the abovementioned petition upon the
following grounds — namely, AND notice is
likewise given that any person who might in the first instance have presented
the petition in respect of the election to which the petition relates may give
notice in writing to the Registrar of the Supreme Court at Apia of his intention,
on the hearing of the application for leave to withdraw the petition, to apply for
leave to be substituted as a petitioner.

Dated this day of 19.....

Signature:

Form 7

Rule 44

Notice of Motion for Leave to Withdraw a Petition

(Title)

TAKE notice that the above-named petitioner will on the day of 19..... at the Supreme Court, Apia (being the time and place appointed by the Court in that behalf), apply to the Court for leave to withdraw the above-mentioned petition upon the following grounds — namely, and upon the further grounds that the prescribed notice of the petitioner's intention to make this application has been duly served and published.

Dated this day of 19.....

Signature:

Form 8

Rule 46

Notice of Abatement of Petition

(Title)

NOTICE is hereby given that by reason of the death of the above-named petitioner (or the survivor of the above-named petitioners) the above-mentioned petition has abated:

AND, further, that any person who might in the first instance have presented the petition may apply to the Supreme Court, by notice given to the Registrar of the Supreme Court at Apia within 28 days from the date of publication of this notice, to be substituted as a petitioner.

DATED this day of 19.....

Signature: