



I assent,

GEORGE TUPOU V,

23rd July, 2008

AN ACT

TO ESTABLISH A COMMISSION TO CONSIDER ASPECTS OF CONSTITUTIONAL AND ELECTORAL REFORM IN TONGA, TO MAKE RECOMMENDATIONS AND PRODUCE DRAFT LEGISLATION IN PREPARATION FOR 2010 ELECTIONS UNDER THE CHANGED SYSTEM AND FOR OTHER RELATED PURPOSES

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

- 1. This Act may be cited as the Constitutional and Electoral Commission Act 2008. **Short title**
- 2. In this Act – **Definition**
 - “commission” means the Constitutional and Electoral Commission established by this Act;
 - “secretariat” means the secretariat established under Schedule 1.
- 3. (1) The Constitutional and Electoral Commission is hereby established. **Establishment of Commission**
- (2) The provisions in Schedule 1 apply to the composition and operation of the Commission.
- 4. (1) The Commission shall examine, enquire into and report on such proposals or matters relating to constitutional or electoral reform as are – **Main function of the Commission**
 - (a) specified in Schedule 2; or
 - (b) referred to it by the Privy Council or by resolution of the Legislative Assembly.

- (2) In exercise of its functions under subsection (1), the Commission shall –
- (a) work within the timeframe established by this Act for the performance of its functions;
 - (b) take into account all of the relevant considerations that are brought to its attention concerning constitutional and electoral reform in the Kingdom;
 - (c) engage specialists to report and advise on aspects of constitutional and electoral reform;
 - (d) convene public forums throughout the Kingdom to obtain views from the people;
 - (e) consider convening a constitutional convention;
 - (f) report and make interim recommendations on constitutional and electoral reform to the Privy Council and the Legislative Assembly, and publish such report and recommendations and seek and take into account comments thereon;
 - (g) report and make final recommendations on constitutional and electoral reform to the Privy Council and the Legislative Assembly and publish such report and recommendations;
 - (h) include with its interim and final reports, draft legislation to give detailed effect to its recommendations; and
 - (i) rely upon and supervise the secretariat to foster the work of the Commission.

**Considerations
that the
Commission
shall take
into account**

5. (1) The Commission, in carrying out its functions under this Act, shall in addition to any other matters that it considers relevant, take into account the following –
- (a) the reports, proposals and matters for reform considered by and reported on by the National Committee for Political Reform in its Report dated 31 August 2006;
 - (b) the reports, proposals and matters for reform considered by and reported on by the Tripartite Committee elected by the Legislative Assembly on 2 July 2007;
 - (c) the views expressed in the Press Release of 26 September 2006 issued from the Palace by the Lord Chamberlain, and in His Majesty's Speech from the Throne on 23 November 2006;
 - (d) written submissions made to it by –
 - (i) His Majesty the King;
 - (ii) Cabinet;

- (iii) the Legislative Assembly or any member thereof; and
 - (iv) a group of no less than 200 members of the public aged 21 years or over who have signed the submission; and
 - (e) legal and other expert reports and advices that have been commissioned by it.
- (2) The Commission is an independent body and is obliged to consider but not agree with or act upon any recommendations, opinions or advice that it receives.
- 6.** In the performance of its functions under this Act, the Commission shall comply with the dates specified in the timetable in Schedule 3 to this Act, or with such other dates as may be specified or substituted by the Privy Council by Order in Council. **Timetable**
- 7.** Reports and recommendations prepared under section 4(2)(f) and (g) shall, as far as possible, include – **Commission's interim and final Reports and Recommendations**
- (a) specific recommendations for or against reform in any particular area;
 - (b) the principal reasons for and against change, and reasoned arguments for and against each recommendation;
 - (c) an assessment of how an appropriate balance may be achieved for the Kingdom;
 - (d) priorities for consideration and implementation of change, consistent with the general expectation that substantial changes shall be made by 2010 and that Legislative Assembly elections under the changed system will then be held; and
 - (e) if change is recommended, discussion of, and a recommendation as to, whether to effect change by adopting constitutional conventions or amending the Constitution or other laws.
- 8.** (1) Reports prepared by or for the Commission under section 4(2)(c), unless for good reason the Commission decides otherwise, shall be published by the Commission in such ways that it thinks best for general information. **Publication of reports and other material**
- (2) The Commission may also publish other material that it considers useful.
- 9.** (1) Without limiting the Commission's authority to convene public meetings where and when it thinks fit, it shall be sufficient compliance with its obligations to hold public forums under section 4(2)(d) if the Commission – **Public Forums**
- (a) holds at least one such meeting on Tongatapu, Vava'u, Ha'apai, 'Eua and the Niuas;

- (b) is represented by at least one Commissioner;
 - (c) advertises the meeting by announcements on radio at least one week before it is held.
- (2) The Commission shall decide the topics for discussion and the format of the public meetings and may impose such restrictions on speakers as may be necessary to enable the maximum number of people to be heard within the timeframe set.
- Constitutional Convention** 10. (1) In accordance with section 4(2)(e) the Commission may decide to convene a Constitutional Convention.
- (2) A Constitutional Convention shall, if held, be held within the time specified in Schedule 3 or such other date specified by Order in Council.
- (3) The Commission shall decide who to invite to attend the Constitutional Convention, but at least the following shall be invited to attend and participate –
- (a) all members of the Legislative Assembly;
 - (b) respected leaders and members of the public selected so as to represent a variety of employment, social status and interests; and
 - (c) such other persons specified by Order in Council.
- (4) The Commission shall organize and fund the Constitutional Convention, set the Agenda and decide to what extent it shall be open to the public.
- (5) The Commission shall take into account the views expressed at the Convention and any decisions reached, but the Commission shall not be obliged to agree with or give effect to such views or decisions.

Passed by the Legislative Assembly this 22nd day of July, 2008.

SCHEDULE 1

(Section 3(2))

COMPOSITION AND OPERATION OF COMMISSION

1. Composition of Commission

- (1) Subject to paragraphs (4) and (5), the Commission shall consist of 5 Commissioners appointed by the Privy Council –
 - (a) on the recommendation of Cabinet, one person who has held high public office in the Kingdom, who shall be the Chairman;
 - (b) one person recommended by the Nobels’ representatives of the Legislative Assembly;
 - (c) one person recommended by the People’s representatives of the Legislative Assembly;
 - (d) two persons recommended by the Judicial Services Commission

Provided that no person shall be eligible for appointment as a Commissioner if he is a member of Cabinet, the Legislative Assembly, or the Judicial Services Commission.
- (2) Commissioners shall hold office until 3 months after the Commission makes its final report under section 4(2)(g) or such later time as may be specified by Order in Council.
- (3) If a Commissioner resigns, dies, or becomes incapable of performing his duties, then in such as case, he shall cease forthwith to be a Commissioner and a substitute may be appointed by the Privy Council on the recommendation of –
 - (a) in the case of an appointment under clause (1)(a) of this Schedule - Cabinet;
 - (b) in the case of appointment under clause (1)(b), (c) or (d) of this Schedule - the Privy Council on the recommendation of the Nobels’ representatives or People’s representative of the Legislative Assembly or Judicial Services Commission respectively.
- (4) During a vacancy which leaves the Commission with 4 active members, the 4 Commissioners shall comprise the Commission for the purposes of the Act.
- (5) The Chairman and Commissioners or any person employed at the Secretariat or as a consultant shall not be subject to the Public Service Act 2002 by virtue of such appointment.

2. Remuneration

The members of the Commission and any person employed at the Secretariat or as a consultant, may be engaged on a part-time or full-time basis and shall be paid such remuneration or allowances, or both, as may be determined by the Commission with the consent of Privy Council.

- Chairman** 3. The Chairman shall be the head of the Commission and shall be responsible for the efficient and effective operation of the Commission.
- Meetings** 4. (1) The quorum of the Commission shall be 4 members, one of whom shall be the Chairman.
- (2) The Chairman shall –
- (a) call and attend regular meetings of the Commission;
- (b) preside over the meetings of the Commission; and
- (c) co-opt any person from the public or a specialist to any meeting of the Commission if he considers it necessary.
- (3) In meetings of the Commission, if the Commissioners do not agree, then the decision of the majority of Commissioners voting shall be the decision of the Commission; and if need be the Chairman shall have a casting vote in addition to his deliberative vote.
- (4) Subject to this Act, the Commission shall determine its own procedure.

5. Secretariat

- (1) There shall be a Secretariat for the Commission, to carry out administrative and secretarial functions, including tasks –
- (a) allocated to it by the Commission;
- (b) necessary or conducive to the purposes of the commission and for the implementation of its decisions;
- (c) allocated to it by Privy Council, which may include actions to implement decisions following on from the final report of the Commission under section 4(2)(g) of this Act.
- (2) The Chairman of the Commission shall appoint a suitably qualified person to be the Director of the Secretariat.
- (3) The qualifications of the Director are that he shall be –
- (a) a law practitioner within the meaning of the Law Practitioner’s Act, or eligible to be such; and
- (b) fluent in the Tongan and English languages.
- (4) The Director shall be responsible for the operation of the Secretariat and for the organisation of the Commission.
- (5) The Director shall be engaged full-time in the work of the Commission and Secretariat.
- (6) The Secretariat and the Director shall continue to function until such time as the Secretariat is terminated by Order in Council.

- (7) The Director may, with the approval of the Commission, engage employees and consultants to assist the Secretariat and the Commission. Public servants may be seconded to work for the Secretariat.

6. Funding of Commission

The funds available to the Commission shall be –

- (a) moneys allocated by the Legislative Assembly for that purpose; or
- (b) moneys paid to or for it by an external agency or government for general purposes, for a specific purpose.

7. Specialists

The Commission may, for the purpose of any aspect of its functions or for specialised the examination by the Commission of any particular matter, engage specialists on a temporary basis to –

- (a) consider any matter which should, in the opinion of the Commission, be referred to such person and to report thereon to the Commission; or
- (b) advise the Commission.

8. Protection of Commission, powers and procedures

- (1) Any person appointed under this Act shall not be liable to any suit for any action done in carrying out their functions under this Act.
- (2) The power of the Commission to perform its functions is not impaired by reason of the absence or inability to act, of the Chairman, any Commissioner, or the Director.

9. Audit

The Commission shall present its financial records to the Auditor General, at the completion of their Commission.

SCHEDULE 2

(Section 4(1))

SPECIFIC MATTERS OF ENQUIRY AND REPORT

1. The Executive

The roles, functions, powers, duties of, and relationships between, the Monarch, the Privy Council, Prime Minister and Cabinet.

The size and composition of the Cabinet.

Delegation of certain authority by the King to the Prime Minister.

The principle of collective responsibility of Cabinet.

2. The Legislature

The composition and method of selection of members of the Legislative Assembly.

The term of the Legislative Assembly.

3. Relationships between the Executive and the Legislature

The roles of the King, the Prime Minister and Cabinet, including accountability measures.

The King's function in the law-making process.

The appointment of the Prime Minister from the Assembly.

The appointment of Ministers to Cabinet and the consequences.

The term of office of Cabinet Ministers.

Motions of "no confidence".

4. The electoral system.

Definition of constituencies and distribution of seats.

**The
Electorate**

SCHEDULE 3

(Section 6)

REFORM TIMETABLE

In this Schedule, “appointment” means the date on which all members of the Commission are first appointed, and if they are appointed on different dates, then the date of the appointment of the last of them.

DATE	EVENT
within 10 days of appointment	The Commission is to meet. The Director is to start full-time work at the secretariat
within 5 month of appointment	report and interim recommendations under section 4(2)(f) to be delivered
within 7 months of appointment	If the Commission decides to convene a Constitutional Convention, such convention is to be held
within 10 months of appointment	report and final recommendations under section 4(2)(g) to be delivered