



Tonga

**ELECTORAL BOUNDARIES
COMMISSION (AMENDMENT) BILL 2012**



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ELECTORAL BOUNDARIES COMMISSION (AMENDMENT) BILL 2012

**A BILL FOR AN ACT TO AMEND THE ELECTORAL BOUNDARIES
COMMISSION ACT 2010 TO PRESCRIBE DIFFERENT PRINCIPLES
AND CONSIDERATIONS TO BE USED BY THE COMMISSION IN
DETERMINING THE BOUNDARIES OF ELECTORAL
CONSTITUENCIES, AND FOR OTHER PURPOSES**

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

1 Short title

- (1) This Act may be cited as the Electoral Boundaries Commission (Amendment) Act 2012.
- (2) The Electoral Boundaries Commission Act 2010 is in this Act referred to as the Principal Act.

2 Long title amended

The long title of the Principal Act is amended by repealing the word “Districts” and replacing it with “Constituencies”.

3 Section 2 amended

In section 2 of the Principal Act, the definition “Electoral District” is repealed and replaced with –

““**island group**” means one of the following –

- (a) Tongatapu;
- (b) Vava’u;
- (c) Ha’apai;
- (d) ‘Eua;
- (e) the Niuas.”.

4 Section 10A inserted

The following section is inserted the Principal Act as section 10A –

“10A Communications from Prime Minister

If the Prime Minister wishes to communicate with the Commission he shall do so in writing and a copy of every communication made under this section to the Commission in any year shall be included in the annual report of the Commission for that year laid before the Legislative Assembly under section 22.”.

5 Section 14 amended

Section 14 of the Principal Act is amended by –

- (a) inserting the following subsections –

“(3) As soon as the accounts have been audited, the Commission shall forward a copy of the statement of accounts referred to in subsection (1) to the Cabinet, together with a copy of any report made by the auditor on that statement of accounts or on the accounts of the Commission.

- (4) The accounts of the Commission, as soon as may be after the close of each financial year and after audit, shall be published in such manner as the Cabinet decides.”; and

- (b) renumbering the present subsection (3) as subsection (5).

6 Sections 17 and 18 replaced

Sections 17 and 18 of the Principal Act are repealed and replaced with the following sections –

“17 Determination of boundaries

- (1) Each determination of electoral boundaries shall be made by dividing Tonga into 17 electoral constituencies in accordance with the principles specified in this section and section 18.
- (2) Subject to subsection (3) electoral constituencies within any island group that includes more than one electoral constituency shall contain an equal number of residents.
- (3) If, in the opinion of the Commission, in taking into account the considerations specified in subsection (4), electoral constituencies within any island group that includes more than one electoral constituency (including an island group that incorporates a merged population pursuant to section 18) should contain unequal numbers of residents, the Commission may in determining electoral constituencies in such island group make an allowance by way of addition or subtraction of population to an extent not exceeding 10 per centum more or less:

Provided that it shall not be a ground for contesting the validity of any election that electoral constituencies within any such island group vary in population size by more than 10 per centum.

- (4) The Commission shall give due consideration to –
 - (a) the principle of population equality between electoral constituencies;
 - (b) density of population;
 - (c) physical features including the natural boundaries of islands;
 - (d) local, town, district and traditional divisions and administrative areas;
 - (e) the keeping of villages, estates, districts and communities of interest intact where possible;
 - (f) community of interests within the proposed electoral constituency, including economic, social and regional interests;
 - (g) means of communication and travel within the proposed electoral constituency;
 - (h) geographical distribution of the settlements and the ease of communications between persons therein and their representative; and
 - (i) the contiguity of electoral boundaries.

18 Principles in determining boundaries

The Commission shall observe the following general principles in determining electoral boundaries –

- (a) electoral constituencies should be allocated between the various island groups according to population distribution; but if in the opinion of the Commission the population of an island group is too small to justify that island group comprising a complete electoral constituency, then the population of that island group should for the purposes of the determination of electoral constituencies be merged with the population of another island group, and in such case the principle specified in this subparagraph shall apply as if that merged population comprised a single island group;
- (b) the principle set out in paragraph (a) should only be departed from if the Commission considers that there is strong justification on the basis of those considerations specified in section 17(4);
- (c) the drawing of boundaries along roads and coastlines wherever possible.”.

7 Sections 19A and 19B inserted

The Principal Act is amended by inserting the following sections as 19A and 19B –

“19A Notice of proposed boundaries

- (1) When the Commission proposes to make a determination under section 17, it shall publish in the *Gazette* a notice —
 - (a) stating places at which the public may inspect, without charge —
 - (i) the names, and a description of the boundaries, of the proposed constituencies; and
 - (ii) a summary, in respect of each proposed constituency, of the reasons why the boundaries described are being proposed; and
 - (b) stating the last date on which the Commission will receive written objections to the proposed boundaries or any of them and to the proposed names or any of them (which date shall be not less than one month after the date of the publication of the said notice in the *Gazette*).
- (2) Any failure to comply with subsection (1)(a) shall not of itself invalidate any decision or proceedings of the Commission.
- (3) Where any objections are received under subsection (1)(b), the Commission shall publish in the *Gazette* a notice—
 - (a) containing a summary of the objections;

Explanatory Notes

(This note does not form part of the Bill, and is intended only to explain its purpose and effect)

The purpose of this Bill is primarily to confirm the principles on which electoral boundaries are to be redrawn by the Electoral Boundaries Commission. The opportunity is also taken to include certain other provisions to ensure that the electoral boundary process includes all the consultations and safeguards that can be managed in Tonga.

The Electoral Boundaries Commission Act 2010 was passed after considerable late night debate in the Legislative Assembly. The Assembly had before it the report of the Royal Constituency Boundaries Commission that included 3 options for deciding electoral boundaries. Option 1 was based on equal numbers in constituencies throughout Tonga so that constituency boundaries could and would include electors in different island groups if this was necessary to have equal numbers. Option 2 aimed for equal numbers of electors within island groups and it did allow, if the Commission thought appropriate and justifiable, constituencies to be drawn in such a way that island groups were largely kept together.

The Assembly chose option 2 but unfortunately the Bill that was passed was in fact the Bill that gave effect to option 1. Unless the Act is amended the Electoral Boundaries Commission may have no choice but, for example, to include bits of Tongatapu with areas of Ha'apai to make up one constituency of equal size.

This amending Bill is designed to correct this and ensure that the principles that are to be followed by the Electoral Boundaries Commission are based on keeping island groups together for electoral purposes as far as possible.

The 2010 election's electoral boundaries were correct because they were specified exactly as the transitional boundaries that would apply just for the 2010 election.

The Electoral Boundaries Commission will soon be required to draw up new electoral boundaries based on the national census results from the census planned for later in 2011. If this Bill is passed, the Commission will then be able to draw those boundaries on the criteria that the Assembly actually approved and that the Commission considers to be most acceptable and expected.

Section 2 of this Bill replaces the term "District" with the term "Constituencies" in the long title as this is the term used throughout the Act.

Section 3 of this Bill inserts in section 2 of the Act the definition of "island group" that now becomes the basis of the drawing of constituencies.

Section 4 of this Bill inserts a new section 10A into the Act – which sets out how the Prime Minister may communicate with the Commission. This provision was in the original Bill for option 2.

Section 5 of this Bill inserts new subsections into section 14, relating to the sending of the Commission's accounts to Cabinet, and how the accounts are to be published.

Section 6 of this Bill repeals and replaces sections 17 and 18 of the Electoral Boundaries Commission Act 2010.

The new sections mainly establish that –

(18(a)) “electoral constituencies should be allocated between the various island groups according to population distribution”;

compared with the existing provision that –

“The Commission shall observe the following general principles in determining electoral boundaries –

(a) maintaining population equality across all 17 electoral constituencies”.

Section 7 of this Bill inserts sections 19A and 19B into the Act. These sections were included with the original Bill and they relate to allowing the public to have a say and make objections on proposed electoral boundaries, and providing that all reports of the Commission are to be tabled in the Legislative Assembly.

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