



Tonga

**ACT OF CONSTITUTION OF TONGA
(AMENDMENT) (NO. 3) ACT 2010**

Act No. 39 of 2010



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ACT OF CONSTITUTION OF TONGA (AMENDMENT) (NO. 3) ACT 2010

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**AN ACT TO MAKE VARIOUS FURTHER AMENDMENTS TO REVISE
THE CONSTITUTION AS AMENDED BY TWO PREVIOUS ACTS IN 2010**

I assent,
GEORGE TUPOU V,
24th September 2010.

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

1 Short title, interpretation

- (1) This Act may be cited as the Act of Constitution of Tonga (Amendment) (No. 3) Act 2010.
- (2) In this Act, the Act of Constitution of Tonga, as amended, is referred to as “the Constitution”.

2 Amendment of certain references to Chief Justice

- (1) The Tongan language version of the Constitution is amended by repealing the expression “Tu’i Fakamaau Lahi” wherever it occurs and replacing it with “Eiki Fakamaau Lahi”.
- (2) The English language version of the Constitution is amended by repealing the expression “Chief Justice” wherever it occurs and replacing it with “Lord Chief Justice”.

3 Clause 31A amended – Attorney General

Section 31A of the Constitution is amended by –

After the words “The King in Privy Council” in sub-clauses (1) and (4), inserting “, after receiving advice from the Judicial Appointments and Discipline Panel,”.

4 Clause 83A inserted – Rule of Law and Judicial Independence

The Constitution is amended by inserting the following clause –

“83A Rule of law and Judicial Independence

The existing underlying constitutional principles of the Rule of Law and Judicial Independence shall always be maintained.”.

5 Clause 83B inserted – Lord Chancellor

The Constitution is amended by inserting the following clause –

“83B The Lord Chancellor

- (1) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall appoint a Lord Chancellor who shall have primary responsibility for –
 - (a) the administration of the courts;
 - (b) all matters related to the Judiciary and its independence;
 - (c) the maintenance of the rule of law; and
 - (d) such related matters as are specified in this Constitution or any other Act.
- (2) The Lord Chancellor shall, unless otherwise provided by law, have complete discretion to exercise his functions, powers and duties, independently without any interference whatsoever from any person or authority.
- (3) The Lord Chancellor may, with the consent of the King in Privy Council, make regulations for the following purposes –
 - (a) to establish an age at which the Attorney General, a Judge, a Magistrate and the Lord Chancellor shall retire from office;
 - (b) to regulate a judicial pension scheme;
 - (c) to provide for administrative arrangements for and related to the Office of the Lord Chancellor.

- (4) The Lord Chancellor shall be a person who is qualified to be a Judge of the Supreme Court and he shall, subject to any contractual arrangements, hold office during good behaviour.
- (5) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall determine the terms of appointment of the Lord Chancellor, and shall have the power to dismiss him.”.

6 Clause 83C inserted – Judicial Appointments and Discipline Panel

The Constitution is amended by inserting the following clause –

“83C Judicial Appointments and Discipline Panel

- (1) There is hereby established, as a Committee of the Privy Council, a Judicial Appointments and Discipline Panel comprising –
 - (a) the Lord Chancellor, who shall be the Chairman;
 - (b) the Lord Chief Justice;
 - (c) the Attorney General; and
 - (d) the Law Lords, being such persons versed in the law as the King from time to time shall so appoint.
- (2) The Judicial Appointments and Discipline Panel shall recommend to the King in Privy Council –
 - (a) the appointment of eminently qualified persons to the Judiciary, and as Lord Chancellor and to any other office that the King requires;
 - (b) the disciplining of members of the Judiciary;
 - (c) the dismissal of members of the Judiciary for bad behaviour through gross misconduct or repeated breaches of the Code of Judicial Conduct;
 - (d) the remuneration and terms of service of members of the Judiciary;
 - (e) a Judicial Pensions Scheme;
 - (f) a Code of Judicial Conduct; and
 - (g) the appointment of assessors to the Panel of Land Court Assessors.

7 Clause 84 repealed – The Courts

Clause 84 of the Constitution is repealed and replaced with –

“84 The Courts

- (1) The judicial power of the Kingdom shall be vested in the superior courts of the Kingdom (namely the Court of Appeal, the Supreme Court, and the Land Court) and a subordinate court namely the Magistrate's Court.
- (2) The Judiciary of the Kingdom shall comprise –
 - (a) the Lord President of the Court of Appeal and Judges of the Court of Appeal;
 - (b) the Lord Chief Justice, who shall be the professional Head of the Judiciary, and Judges of the Supreme Court;
 - (c) the Lord President of the Land Court and Judges of the Land Court; and
 - (d) the Chief Magistrate and the Magistrates.”.

8 Clause 85 amended – Court of Appeal

Clause 85 of the Constitution is amended by –

- (a) repealing “Chief Justice of Tonga” and replacing it with “Lord President of the Court of Appeal”; and
- (b)
 - (i) in sub-clause 1, after the words “the King with the consent of Privy Council”, inserting “after receiving advice from the Judicial Appointments and Discipline Panel,”.
 - (ii) in sub-clause 2, after the words “the King in Privy Council”, inserting “, after receiving advice from the Judicial Appointments and Discipline Panel,”.

9 Clause 86 amended – Supreme Court

Clause 86 of the Constitution is amended by –

- (a) in sub-clause (1) after the words “Lord Chief Justice”, inserting the words “, who shall be the professional Head of the Judiciary,”; and
- (b) after the words “The King in Privy Council” in sub-clauses (1) and (2), inserting “, after receiving advice from the Judicial Appointments and Discipline Panel,”.

10 Clause 86A inserted – Land Court

The Constitution is amended by inserting the following clause –

“86A The Land Court

- (1) The Land Court shall consist of a Lord President and other Judges, assisted by assessors, as may be appointed from time to time by the King with the consent of Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel.
- (2) The King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel, shall determine the terms of appointment of the Lord President and Judges of the Land Court and may dismiss them.”.

11 Clause 88 amended – Acting Judge

- (1) Clause 88(1) of the Constitution is amended by, after “King in Privy Council” inserting “, after receiving advice from the Judicial Appointments and Discipline Panel,”.
- (2) Clause 88(2) of the Constitution is amended by repealing “Cabinet” and replacing it with “the King in Privy Council, after receiving advice from the Judicial Appointments and Discipline Panel”.

Passed in the Legislative Assembly this 20th day of September 2010.