



Tonga

**JUDICIAL AND LEGAL SERVICE
COMMISSION BILL 2019**



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JUDICIAL AND LEGAL SERVICE COMMISSION BILL 2019

A BILL FOR AN ACT TO CONSTITUTE A JUDICIAL AND LEGAL SERVICES COMMISSION, TO MAKE PROVISION RELATING TO JUDICIAL AND LEGAL OFFICE AND RELATED MATTERS

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

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the Judicial and Legal Service Commission Act 2019.

2 Interpretation

In this Act, unless the contrary otherwise requires –

“**Commission**” means the Judicial and Legal Service Commission established under this Act;

“**complaint**” means a complaint under Part IV about a judicial or legal officer;

“investigation committee” means an investigation committee appointed under section 17;

“Head of Department” has the same meaning as in the Public Service Act;

“Head of Jurisdiction” means —

(a) in relation to member of the Court of Appeal, a Supreme Court Judge or a Judge of the Land Court, the Lord Chief Justice; and

(b) in relation to a Magistrate, the Chief Magistrate;

“judicial officer” means —

(a) the Lord Chief Justice;

(b) a member of the Court of Appeal;

(c) a Judge of the Supreme Court;

(d) a Judge of the Land Court; or

(e) a Magistrate;

“law practitioner” has the same meaning as in the Law Practitioners Act;

“legal officer” means the Attorney General and the Director of Public Prosecutions;

“Minister” means the Minister of Justice;

“Public Service Commission” means the Public Service Commission constituted under the Public Service Act; and

“sentence” includes any order or decision of a court consequent on a conviction for an offence or a finding of guilt in respect of an offence.

PART II - THE JUDICIAL AND LEGAL SERVICE COMMISSION

3 The Commission

- (1) There shall be established a Judicial and Legal Service Commission.
- (2) The Commission is a body corporate capable of owning property, being a party to contracts, and suing and being sued.
- (3) The Commission shall comprise of five members, appointed by the Minister with the consent of Cabinet, consisting of –
 - (a) the Lord Chief Justice who shall be Chairperson;
 - (b) the Chairman of the Public Service Commission;
 - (c) the President of the Tonga Law Society;

- (d) two members of integrity appointed by the Minister from the public who are persons of good character; and
 - (e) Chief Executive Officer for Justice who shall be the secretariat and who shall not be entitled to vote.
- (4) The members of the Commission except the ex-officio members, shall serve for a term of 4 years and may be eligible for re-appointment for one further term only.
- (5) The Commission may co-opt any other person to attend a meeting of the Commission.

4 Meetings

- (1) The Commission may set its own procedures.
- (2) The quorum for a meeting of the Commission is three members inclusive of the Chairperson.
- (3) The Commission shall cause full and accurate minutes to be kept of the proceedings of each meeting of the Commission.

5 Delegation

- (1) The Commission may delegate to a member, officer or committee of the Commission the exercise of any of its functions but such delegation shall not prevent the exercise of the function by the Commission.
- (2) This section does not authorise —
- (a) the delegation of any function relating to complaints, except to an investigation committee; or
 - (b) the delegation of this power of delegation.
- (3) A delegation may be —
- (a) general or limited; and
 - (b) revoked, wholly or partly, by the Commission.
- (4) A delegate is, in the exercise of a delegated function, subject to such conditions as are specified in the instrument of delegation.

6 Staff

The Ministry of Justice shall provide the necessary staff and facilities for the Commission.

PART III - FUNCTIONS OF THE COMMISSION

7 Appointment, terms of employment and disciplining of Judicial and Legal Officers

Subject to the Constitution, the Commission shall make recommendations to the King in Council on the appointment, terms of employment and disciplining of –

- (a) judicial officers; and
- (b) legal officers.

8 Judicial education

- (1) The Commission may organise and supervise an appropriate scheme for the continuing education and training of judicial officers and court staff.
- (2) In organising a scheme, the Commission shall —
 - (a) ensure that it is appropriate for the judicial system of Tonga, having regard to the status and experience of judicial officers and court staff;
 - (b) invite suggestions from and consult with judicial officers and court staff as to the nature and extent of an appropriate scheme;
 - (c) have regard to the differing needs of different classes of judicial officers and court staff and give particular attention to the training of newly appointed judicial officers and court staff; and
 - (d) have regard to such other matters as appear to the Commission to be relevant.

9 Other functions

- (1) The Commission may —
 - (a) liaise with the heads of jurisdiction in relation to issues affecting the administration of the court system, particularly issues affecting more than one court;
 - (b) develop recommendations about judicial services and court administration generally;
 - (c) liaise with persons or organisations in connection with any of its functions; and
 - (d) exercise any other function specified under this Act.
- (2) Nothing in this section limits any discretion that a court has in the management of its cases, determining sentences, or in performing its judicial functions.

10 Committees

- (1) The Commission may establish committees to assist it in performing its functions.
- (2) The procedure for the calling of meetings of a committee and for the conduct of business at those meetings shall be as determined by the Commission or (subject to any determination of the Commission) by the committee.

PART IV - COMPLAINTS AGAINST JUDICIAL AND LEGAL OFFICERS**11 Complaints**

- (1) A person may complain to the Commission about a matter that concerns or may concern the ability or behavior of a judicial or legal officer.
- (2) A complaint shall be in writing and shall identify the complainant and the judicial or legal officer concerned.
- (3) The Commission shall not deal with a complaint (otherwise than to summarily dismiss it under section 15) unless it appears to the Commission that —
 - (a) the matter, if substantiated, may justify removal of the judicial or legal officer from office; or
 - (b) although the matter, if substantiated, might not justify removal of the judicial or legal officer from office, the matter warrants further examination on the ground that it may affect or may have affected the performance of judicial or legal, or official duties by the officer.

12 Complaints details

- (1) A complaint may be made in relation to a judicial or legal officer's competence in performing judicial or legal, or official duties, so long as the Commission is satisfied as to the matters mentioned in section 11(3).
- (2) A complaint may be made in relation to a matter, and be dealt with, even though the matter is already or has been the subject of investigation or other action by the Commission or an investigation committee or by any other body or person.
- (3) Without limiting the foregoing, a complaint may be made in relation to a matter, and be dealt with, even though the matter constitutes or may constitute a criminal offence.
- (4) The Commission may adjourn consideration of any matter if it is being dealt with by a court or for any other appropriate reason.

13 References by Minister

- (1) The Minister may refer a matter relating to a judicial officer to the Commission.
- (2) A reference under this section shall be treated as a complaint under this Act.

14 Preliminary examination

- (1) The Commission shall conduct a preliminary examination of a complaint.
- (2) In conducting the preliminary examination, the Commission may initiate such inquiries into the subject-matter of the complaint as it thinks appropriate.
- (3) The examination or inquiries shall, as far as practicable, take place in private.
- (4) The Commission shall, following the preliminary examination —
 - (a) summarily dismiss the complaint;
 - (b) classify the complaint as serious if the grounds of complaints if substantiated could justify removal of the judicial or legal officer from office; or
 - (c) in any other case, classify the complaint as minor.

15 Dismissal of complaints

The Commission shall dismiss a complaint if in its opinion —

- (a) the complaint is one that it is required not to deal with;
- (b) the complaint is frivolous, vexatious or not in good faith;
- (c) the subject-matter of the complaint is trivial;
- (d) the matter complained about occurred at too remote a time to justify further consideration;
- (e) in relation to the matter complained about, there is or was available a satisfactory means of redress or of dealing with the complaint or the subject-matter of the complaint;
- (f) the complaint relates to the exercise of a judicial or legal, or other function that is or was subject to adequate appeal or review rights;
- (g) the person complained about is no longer a judicial or legal officer; or
- (h) having regard to all the circumstances of the case, further consideration of the complaint would be or is unnecessary or unjustifiable.

16 Reference of complaint

A complaint made to the Commission in accordance with this Act shall, if it is not dismissed under section 15, be referred to —

- (a) the relevant head of jurisdiction if the Commission thinks that the complaint does not warrant reference to an investigation committee; or
- (b) an investigation committee.

17 Constitution of an investigation committee

- (1) If the Commission decides to refer a complaint to an investigation committee it shall appoint an investigation committee in accordance with subsection (2).
- (2) An investigation committee shall comprise of a chairman who is or has been a judge and not more than two other persons appointed by the Commission.
- (3) More than one investigation committee may be constituted, and sit, at any time to deal with different complaints.
- (4) An investigation committee may deal with two or more complaints, if the Commission considers it appropriate in the circumstances.

18 Examination of complaint

- (1) An investigation committee shall examine a complaint and investigate the subject-matter if necessary.
- (2) The examination or investigations shall, as far as practicable, take place in private.

19 Hearings

- (1) An investigation committee may hold hearings in public or in private in connection with the complaint.
- (2) If a hearing or part of a hearing is to take place in private, the investigation committee may give directions as to the persons who may be present.
- (3) At a hearing –
 - (a) the judicial or legal officer complained about may be represented by a law practitioner; and
 - (b) if, by reason of the existence of special circumstances, the investigation committee consents to any other person being represented by a law practitioner, the person may be so represented.
- (4) At a hearing –
 - (a) counsel assisting the investigation committee; or

- (b) any person authorised by the investigation committee to appear before it at the hearing,
- may, so far as the investigation committee thinks appropriate, call, examine and cross-examine witnesses.

20 Powers concerning evidence

An investigation committee may, for the purposes of a hearing —

- (a) by summons in writing, require the attendance of a witness to attend and (if specified in the summons) to produce documents; and
- (b) take evidence on oath or affirmation, and a member of the investigation committee may administer an oath or affirmation to a person appearing before the investigation committee at the hearing.

21 Dismissal of complaint

An investigation committee may recommend to the Commission that a complaint be dismissed if it is of the opinion that —

- (a) the complaint should be dismissed on any of the grounds on which the Commission may dismiss a complaint under section 15; or
- (b) the complaint has not been substantiated.

22 Report of the committee

The investigation committee shall report on the findings of its investigation to the Commission.

23 Power of Commission on receiving report

The Commission, on receiving a report may —

- (a) ask the investigation committee to undertake further investigation, or to provide a supplementary report on issues specified by the Commission;
- (b) decide to take no action, and advise the Minister accordingly; or
- (c) recommend to the King in Council, the appropriate sanction to be imposed.

24 Re-classification of complaints

- (1) An investigation committee may, after a complaint has been referred to it, reclassify the complaint at any time before disposing of it, if that action appears appropriate.

- (2) An investigation committee shall furnish a report to the Commission setting out its reasons for reclassifying a complaint.

25 Extension or partial dismissal of complaint

- (1) The Commission or an investigation committee, in dealing with a complaint about a judicial or legal officer, is not limited to the matters raised initially in the complaint.
- (2) If, in dealing with a complaint about a judicial or legal officer, matters which might constitute grounds for a complaint about another judicial or legal officer come to the attention of the Commission or an investigation committee, it may treat the original complaint as extending to the new matters.
- (3) A power to dismiss a complaint includes a power to dismiss a part of a complaint.

26 Procedure

- (1) The Commission or an investigation committee shall cease dealing with a complaint about a judicial or legal officer if the officer ceases to hold office for any reason.
- (2) If the Commission or an investigation committee is dealing with more than one matter concerning a judicial or legal officer, it may not deal with all of the matters if it is satisfied that it has dealt with one or more of the matters.
- (3) Nothing in this section prevents the referral of, or the making of a report about, a complaint.

27 Medical examination

- (1) The Commission or investigation committee may, if an investigation committee is of the opinion that a judicial or legal officer about whom a serious complaint has been made may be physically or mentally unfit to exercise efficiently the functions of a judicial or legal office, request the officer to undergo such a medical examination as the investigation committee specifies.
- (2) The investigation committee may, if the judicial or legal officer refuses or fails to undergo the medical examination, and if it considers the matter to be sufficiently serious, form an opinion that the matter could justify removal of the officer from office.

28 Release of information

- (1) An investigation committee may give directions preventing or restricting the publication of evidence given before the investigation committee or of matters

contained in documents lodged with the investigation committee or the Commission.

- (2) A person who makes a publication in contravention of a direction under this section commits an offence and shall, upon conviction, be liable to a fine not exceeding \$10,000 or imprisonment for a period not exceeding 3 years, or both.

29 Disclosure of information

- (1) A person who is or who has been a member or officer of the Commission or of a committee of the Commission or a member of an investigation committee shall not disclose any information obtained by the person in the course of his office in relation to a complaint except —
- (a) with the consent of the person from whom the information was obtained;
 - (b) in connection with the administration or execution of this Act;
 - (c) for the purposes of any legal proceedings arising out of this Act or of any report of any such proceedings; or
 - (d) with other lawful excuse.
- (2) A person who contravenes this section commits an offence and shall, upon conviction, be liable to a fine not exceeding \$10,000 or imprisonment for a period not exceeding 3 years, or both.

PART V - MISCELLANEOUS

30 Acting member of Commission

If a complaint is made about a judicial officer who is a member of the Commission, the Minister with the consent of Cabinet may appoint another judicial officer to act as a member of the Commission in the member's place until the complaint is resolved.

31 Liability for proceedings

- (1) Nothing done by the Commission or an investigation committee or any member of or any person acting under the direction of the Commission or investigation committee shall subject a member or a person so acting personally to any action, liability, claim or demand.
- (2) In proceedings for defamation in relation to a complaint or in relation to any hearing or other matter connected with a complaint, there is a defence of absolute privilege for a publication to or by the Commission or investigation committee or to any member or officer of the Commission or investigation committee, as such a member or officer.

32 Operation of certain other Acts

- (1) The Public Service Act does not apply to or in respect of the appointment of a member of the Commission or an investigation committee and such a member is not, as a member, subject to that Act.
- (2) If by or under any other Act provision is made —
 - (a) requiring a person who is the holder of a specified office to devote the whole of his time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member of the Commission or an investigation committee or from accepting and retaining any remuneration payable to the person under this Act as an appointed member of the Commission.

33 Savings and Transitional

Any appointment of a judicial officer or legal officer in force immediately before the commencement of this Act, shall continue in force as if made under this Act.

Passed by the Legislative Assembly this day of 2019.

EXPLANATORY NOTES

(These notes do not form part of the Bill and are only intended to explain its purpose and scope)

- (1) This Bill is consequential to the Act of Constitution of Tonga (Amendment) Bill 2019 and deals with the establishment, functions and roles of the Judicial and Legal Service Commission.
- (2) Apart from some modifications to certain sections, the Bill is almost identical to the Judicial Services Commission Act 2006 which was repealed in 2010 and its role and function subsequently taken over by the Judicial Appointments and Discipline Panel.
- (3) The substantial modifications are to –
 - (a) section 2, where a new definition of “legal officer” is inserted;
 - (b) section 3, where the membership of the Commission is reconstituted; and
 - (c) section 7, where it provides that judicial and legal officers shall be recommended by the Commission to the Prime Minister, and Cabinet, who will advise the King in Privy Council on their appointment.
- (4) Part III of the Bill provides for the appointment process and functions of the Commission.
- (5) Part IV of the Bill sets out a comprehensive process in dealing with complaints against judicial and legal officers and the disciplinary procedure to be undertaken.

Hon. Sione Vuna Fa’otusia
Minister of Justice and Prisons