



Tonga

# LAW PRACTITIONERS ACT 1989

No. 21 of 1989





## LAW PRACTITIONERS ACT 1989

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## LAW PRACTITIONERS ACT 1989

*No. 21 of 1989*

**AN ACT TO PROVIDE FOR LAW PRACTITIONERS; FOR THEIR PROFESSIONAL CONDUCT AND DISCIPLINE; FOR ESTABLISHMENT OF THE TONGA LAW SOCIETY; AND FOR CONNECTED PURPOSES**

I assent,  
TU'IPELEHAKE  
9th November, 1989.

Commencement [1 January, 1990]

**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 and commencement.**

This Act may be cited as the Law Practitioners Act, 1989 and shall come into operation on 1 January, 1990.

**2 Interpretation.**

In this Act unless the context otherwise requires, —

“**Chief Justice**” means the Chief Justice of the Supreme Court of Tonga or Justice acting in that capacity or in the event of a vacancy, a Judge of the Supreme Court;

“**Committee**” means the Disciplinary Committee established under Section 19;

“**Kingdom**” means the Kingdom of Tonga;

“**Law Practitioner**” means a person qualified under Section 3 to act as such;

“**Practising certificate**” means a Law Practitioners practising certificate issued under Section 7;

“**Law Society**” or “**Society**” means the Tonga Law Society established under Section 13;

“**prescribed**” means prescribed by regulations under Section 28;

“**Registrar**” means the Registrar of the Supreme Court;

“**Roll**” means the Roll of Law Practitioners.

### 3 Law Practitioners.

- (1) Save as provided in this Act, no person shall practice as a law practitioner within the Kingdom of Tonga unless:
  - (a) his name is on the Roll of Law Practitioners; and
  - (b) he has in force a valid practising certificate.
- (2) Subject to subsection (3), a person shall be deemed to practise as a law practitioner if for gain or reward whether directly or indirectly, he does any of the following:
  - (a) appears for or represents any person or party in any proceedings before any court, inquiry or commission;
  - (b) advises any person on any matter of law or legal procedure;
  - (c) draws or prepares on behalf of any other person:
    - (i) any instrument relating to legal proceedings;
    - (ii) any instrument relating to land;
    - (iii) any other instrument relating to real or personal estate;
    - (iv) a will or other testamentary instrument;
    - (v) any papers on which to found or oppose a grant of probate or letters of administration.
- (3) A person shall not be deemed to be practicing as a law practitioner in respect of an act carried out by him —

- (a) as a notary public;
- (b) in the course of his duty as a public officer;
- (c) with respect to subsection 2(b), incidentally to his practice in a related profession including, but not limited to, accountancy, engineering, architecture and surveying; and
- (d) as a mere engrossment of instruments or documents.

#### **4 Keeping the Roll.**

- (1) The Registrar of the Supreme Court shall continue to keep a list of all enrolled law practitioners called the Roll of Law Practitioners.
- (2) The Roll may be kept by means of a computer.
- (3) If the Roll is kept by means of a computer, the Registrar shall make any entry available for inspection in legible form during office hours, without payment, by any person who applies to inspect it.
- (4) If the Roll is not kept by means of a computer, any person may inspect it during office hours without payment.

#### **5 Enrolment.**

The Chief Justice may enrol a person on the Roll of Law practitioners if he is satisfied —

- (a) that the person has sufficient professional knowledge and experience and training in a common law jurisdiction; and
- (b) as to the person's character and his suitability to be a law practitioner; and
- (c) that the person intends to practise in Tonga as a law practitioner.

#### **6 Removal or restoration of name on request.**

- (1) The Registrar, on the application of a law practitioner, may remove his name from the Roll.
- (2) Where a name has been removed from the Roll under subsection (1) the Registrar may, on the application of that former law practitioner and on payment of any fee prescribed, enter the name on the Roll again.

#### **7 Practising Certificate.**

- (1) A Law Practitioner's Practising Certificate shall, with respect to a resident of Tonga, be issued for a calendar year, and with respect to a non resident

of Tonga, shall be issued for such period or for such particular purpose, as the Chief Justice directs.

- (2) The Registrar shall, within a reasonable time after seeking representations from the Tonga Law Society, issue a Practising Certificate to a law practitioner who applies for one if the Registrar is satisfied that –
  - (a) the law practitioner's name is on the Roll;
  - (b) he is not suspended from practice;
  - (c) his application is made in the manner (if any) prescribed;
  - (d) if the Law Society has made representations, the Chief Justice after considering them has approved the issue of a certificate;
  - (e) he has –
    - (i) held a law practitioner's certificate for any year within the previous 5 years; or
    - (ii) newly been enrolled on the Roll; or
    - (iii) the consent of the Chief Justice to the issue of a certificate; and
  - (f) he has paid the fee of \$60 or such other fee as is prescribed.
- (3) A Practising Certificate may be either or both —
  - (a) restricted; or
  - (b) issued subject to conditions in any manner prescribed.
- (4) The Registrar shall once in every calendar year during the month of March cause to be published in the Gazette a list of all persons holding practising certificates.

## **8 Rights of appearance.**

Every person who is a law practitioner under this Act

- (a) may subject to any restriction or condition imposed under Section 7 appear as counsel in any court in the Kingdom;
- (b) is an officer of the court.

## **PART II - COMMISSIONERS FOR OATHS**

### **9**

- (1) The Chief Justice may appoint, under his signature and the seal of the Supreme Court, law practitioners as Commissioners for Oaths.

- (2) The appointment of a Commissioner for Oaths is only valid while he has in force a valid practising certificate.
- (3) Commissioners for Oaths have power to take affidavits and declarations.
- (4) Section 88(1) of the Magistrates' Courts Acts applies to the making and taking of affidavits under this section.
- (5) At the foot or end of every affidavit shall be appended the words:  
“Sworn before me (name) .....  
Commissioner for Oaths at (place of swearing).....  
on the ..... day of ..... 19 ..... and the  
Commissioner shall insert the date on which the affidavit is sworn and  
shall affix his signature and seal to the affidavit.
- (6) Commissioners for Oaths may charge such fees as are prescribed for taking affidavits and declarations before a magistrate.

## PART III - OFFENCES

### 10 Offence in practise without practising certificate.

- (1) Any person who –
  - (a) practises as a law practitioner; or
  - (b) in any way holds himself out as entitled by law to practise as a law practitioner,without having in force a valid practising certificate, shall be guilty of an offence and shall be liable to imprisonment for any period not exceeding 2 years or to a fine not exceeding \$1000 or to both.
- (2) Subsection (1) does not apply to a person who proves that he acted without receiving or without expectation of any fee, gain or reward, directly or indirectly.
- (3) Without prejudice to any proceedings under subsection (1), failure by an enrolled law practitioner in practice to have in force a practising certificate may be treated as professional misconduct for the purposes of Section 21(1) (a).

### 11 Unqualified person not to pretend to be law practitioner.

Any person (including a body corporate) who is not on the roll of law practitioners and who either by himself or together with others, wilfully and falsely, —

- (a) pretends to be a law practitioner; or
- (b) takes or uses any name, title, addition or description implying that he is a law practitioner,

shall be guilty of an offence and shall be liable to imprisonment for any period not exceeding 2 years or to a fine not exceeding \$1000 or to both.

## 12 Only law practitioners entitled to fees etc.

No fee, reward, outlay or expenses on account of or in relation to any act or proceeding done or taken by any person who is not a law practitioner and who —

- (a) acts as a law practitioner; or
- (b) gives legal advice or draws or prepares any instrument or papers to which Section 3(2) (c) applies,

shall be recoverable by any person in any action, suit or matter.

## PART IV - TONGA LAW SOCIETY

### 13 Establishment.

- (1) There is established by this Act the Tonga Law Society.
- (2) The Society is a body corporate with perpetual succession and a common seal and in its corporate name is capable of —
  - (a) suing and being sued;
  - (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
  - (c) borrowing or lending money;
  - (d) entering into contracts; and
  - (e) doing anything which a body corporate may lawfully do or perform or which is calculated to facilitate the discharge of its functions.

### 14 Membership.

The membership of the Society shall consist of —

- (a) all persons holding a current law practitioner's certificate;
- (b) persons elected by the Society as honorary members; and

- (c) such other legally qualified persons for the time being resident in Tonga as are elected by the Society as members.

## 15 Functions and objects.

- (1) The functions and objects of the Society are —
  - (a) to promote the interests of the legal profession in Tonga and the interests of the public in relation to legal matters;
  - (b) to promote and encourage proper conduct among law practitioners;
  - (c) to suppress and prevent illegal, dishonourable or improper practices by law practitioners;
  - (d) to maintain the integrity of the legal profession in Tonga;
  - (e) without prejudice to Section 20, to investigate complaints of professional misconduct against law practitioners;
  - (f) to intervene in any application for enrolment, re-enrolment or certification as a law practitioner;
  - (g) to maintain and improve the standards of learning of law practitioners;
  - (h) to assist the Government and the Courts in all matters affecting legislation, law reform and the administration and practise of the law;
  - (i) to assist law reform and to represent the views, interests and wishes of law practitioners in relation to law reform;
  - (j) to assist in the preparation, circulation and publication of legal decisions given in the courts of Tonga; and
  - (k) such other functions as may be decided by the Society in general meeting with the concurrence of the Minister of Justice.
- (2) The Society shall have such other functions as are conferred on it by this or any other Act.

## 16 Powers of the Society.

- (1) The Society shall have all such powers, rights, and authorities as are reasonably necessary or expedient for or conducive to the exercise of any of its functions.
- (2) Without prejudice to subsection (1) of this section, the Society shall in addition to any other powers conferred on it by this or any other Act, have the following powers:

- (a) To provide or arrange for the provision of services and facilities for practitioners, including seminars and educational and training services and facilities;
- (b) To publish or arrange for the publication of such periodicals, pamphlets, or other publications as it may consider of benefit to the public or to practitioners in relation to the practise of the law and the activities of the Society;
- (c) To make recommendations on any application made for admission as a law practitioner or any other application made under this Act;
- (d) To institute prosecutions against practitioners or other persons for the breach of any statute, rules, or regulations relating to the practise of the law;
- (e) To appoint any practitioner to perform any work or services for the Society, or to appear before any court, tribunal, or other body in any of the foregoing matters or in any other matters in which the Society is concerned or interested;
- (f) To pay all costs, witnesses' expenses, and other payments incidental to or connected with any application or proceedings to which the Society is a party or at the hearing of which it is entitled to appear;
- (g) To pay the whole or any part of the expenses incurred by members in attending meetings of the Council of the Society or meetings of any committee appointed under the Constitution of the Society;
- (h) To establish or join in establishing any body whether incorporated or not and whether in Tonga or elsewhere, for the purpose of the exercise of any of the Society's functions or powers;
- (i) To act in combination or association with, or otherwise co-operate with, any person or body, whether incorporated or not, and whether in Tonga or elsewhere, for the purpose of the exercise of any of the Society's functions or powers.

## 17 Constitution.

The Constitution of the Society is set out in the Second Schedule to this Act and may be amended with the consent of the Chief Justice as provided in that Constitution.

## **PART V - PROFESSIONAL PRACTISE, CONDUCT AND DISCIPLINE**

### **18 Rules on professional practise conduct and discipline.**

Without prejudice to any other provision of this Act, the Society in general meeting, with the concurrence of the Chief Justice, may make rules for regulating the professional practise, conduct and discipline of law practitioners.

## **PART VI - DISCIPLINARY COMMITTEE**

### **19 Disciplinary Committee.**

- (1) The Society shall appoint from among its members a Disciplinary Committee.
- (2) The Committee shall, in accordance with this Act, hear and determine complaints relating to the professional conduct of law practitioners.
- (3) The Committee shall consist of a chairman and not less than 2 nor more than 4 other members.
- (4) The Chairman shall preside at all meetings of the Committee.
- (5) Three members, who must include the chairman, constitute a quorum.
- (6) Questions before the Committee shall be decided by a majority of votes of the members present and voting at the meeting.
- (7) The chairman has a deliberative vote and, in the event of an equality of vote, also has a casting vote.
- (8) Subject to this Act, the Committee shall regulate its meetings, proceedings and conduct as it thinks fit.

### **20 Complaints to Disciplinary Committee.**

- (1) Any person, including —
  - (a) the Attorney-General;
  - (b) the Chief Justice;
  - (c) any judge or magistrate; and
  - (d) the Secretary of the Society,

may make a complaint in writing to the Disciplinary Committee relating to the professional conduct of a law practitioner.

- (2) The Council of the Society may appoint one of its members to assist a complainer in the presentation of his complaint to the Committee.
- (3) Before hearing any complaint the Committee shall serve a copy of the complaint on the law practitioner and shall give him adequate time to investigate the complaint and to submit a written response to the Committee.
- (4) The rules of natural justice shall apply to the hearing of a complaint by the Committee and in particular the complainer and the law practitioner are entitled either personally or by a law practitioner —
  - (a) to be present throughout the hearing;
  - (b) to examine witnesses or cross-examine them as the case may be;
  - (c) to produce witnesses; and
  - (d) to make oral submissions to the Committee.

## **21 Powers of Committee**

- (1) Where —
  - (a) the Committee is satisfied after hearing a complaint against a law practitioner that he has been guilty of professional misconduct; or
  - (b) a law practitioner is convicted by a court of an act involving dishonesty or is sentenced to a term of imprisonment of 2 years or more,the Committee may exercise its powers under this section.
- (2) The Committee may —
  - (a) recommend that the name of the law practitioner be struck off the Roll;
  - (b) recommend that the practising certificate of the law practitioner be suspended for such time as the Committee may determine;
  - (c) except in the circumstances referred to in subsection (1)(b), recommend the imposition on the law practitioner a fine not exceeding \$1,000;
  - (d) censure the law practitioner.
- (3) Where the Committee has censured a law practitioner or has recommended that such practitioner be fined, it may also recommend to the Chief Justice that his practising certificate is made subject to such conditions as the Committee may recommend.

- (4) The Committee may in its discretion award costs of a hearing to or against the complainer, the law practitioner or the Society.
- (5) The Society may in its discretion pay any Costs awarded against a complainer.

## **22 Powers of Chief Justice.**

- (1) Where the Disciplinary Committee of the Law Society has made a recommendation to him under section 21(2) or (3), the Chief Justice may, after the disposition of any appeal under section 23 or at the expiration of the time limited for such appeal —
  - (a) order that the name of the law practitioner be struck from the roll;  
or
  - (b) suspend the law practitioner's practising certificate, for such time as seems proper;
  - (c) fine the law practitioner any sum not exceeding \$1,000;
  - (d) impose such conditions with respect to the law practitioner's practising certificate as seem proper.
- (2) Any fine imposed under this section shall be paid into the general revenue of the Kingdom.

## **23**

- (1) Where —
  - (a) a complainer;
  - (b) the law practitioner; or
  - (c) the Society,is aggrieved by a decision of the Committee under Section 21 he or it may appeal within 14 days of receipt by him of notice to the Supreme court.
- (2) Part VII of the Magistrates' Courts Act applies to an appeal under this section as it applies to an appeal from a judgment, sentence or order of a magistrate.

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## PART VII - COSTS

### 24 Recovery of costs.

A law practitioner is entitled in respect of services rendered as a lawyer to sue for, and recover —

- (a) his taxed costs; or
- (b) in the case of an agreement as to costs in terms of Section 25, the amount of such agreed costs.

### 25 Agreement on costs.

- (1) A law practitioner may make a written agreement with his client regarding the amount and manner of payment of costs for the whole or any part of any past, present or future services rendered or to be rendered as a law practitioner.
- (2) Such an agreement shall exclude any further claim by the law practitioner in respect of any costs for the conduct and completion of the business regarding which the agreement is made.
- (3) Such an agreement may be reviewed by the Supreme Court on application by petition by either party and if in the opinion of the Court the agreement is unreasonable the Court may —
  - (a) increase or reduce the amount payable; or
  - (b) cancel the agreement and tax the costs,and in either case may make such order as to the costs of the review as seems fit to the Court.

### 26 Taxation of costs

- (1) The Supreme Court on application by a law practitioner or his client may tax any costs in respect of services rendered by the law practitioner —
  - (a) in an account rendered and not yet paid; or
  - (b) in an account already paid, on application within six months of payment.
- (2) For the purposes of such a taxation the Court may call on any person to render accounts relating to those services.

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## PART VIII - MISCELLANEOUS

### 27 Saving for jurisdiction of courts.

Nothing in this Act shall affect the jurisdiction exercisable by any court over law practitioners.

### 28 Regulation

The Minister of Justice may, with the consent of Cabinet, make regulations for the better carrying out of the purposes of this Act, including, without limiting this generality, —

- (a) prescribing anything which may or shall be prescribed under this Act;
- (b) regulating the remuneration of law practitioners.

### 29 Repeal and saving.

- (1) Section 16 (Licensed Lawyers) of, and the Schedule to, the Supreme Court Act are repealed.
- (2) All persons who immediately prior to the commencement of this Act —
  - (a) had their names on the register of licensed lawyers kept under section 16(4) of the Supreme Court Act; and
  - (b) held a valid current licence under section 16(1) of that Act,are deemed to be enrolled on the Roll of Law Practitioners under this Act.
- (3) A practising certificate shall be in the form set out in the First Schedule to this Act.
- (4) The Supreme Court Taxation of Costs Rules, made by the Judge of the Supreme Court on 28 September 1959 and amended by rules published at page 132 of the 1979 Tonga Government Gazette Supplement, are hereby deemed to be regulations made pursuant to section 28 of this Act and shall remain in full force and effect until amended or repealed by the Minister of Justice with the consent of Cabinet.

**FIRST SCHEDULE**

**LAW PRACTITIONERS ACT**

**PRACTISING CERTIFICATE**

No. .... dated the ..... day of ..... 19....

.....of ..... is hereby authorised to act as a law practitioner and as counsel in any court in Tonga for the period..... pursuant to the Law Practitioners Act, 1989 and subject to such conditions or restrictions as are set out hereunder

**SECOND SCHEDULE**

## Section 17

**CONSTITUTION OF TONGA LAW SOCIETY****1. NAME**

1.1 The Society shall be called “The Tonga Law Society”.

**2. MEMBERSHIP**

2.1 The membership of the Society shall consist of —

- (a) all persons holding a current practising certificate;
- (b) persons elected by the Society as honorary members; and
- (c) such other legally qualified persons for the time being resident in Tonga as are elected by the Society as members.

**3. REGISTER OF MEMBERS**

3.1 The name, classification and place of business of every member shall be recorded by the Secretary and these records shall constitute and be called the Register of Members. The Register of Members at any meeting of the Society shall prima facie be deemed to be a correct and complete list and classification of the members of the Society. The Register of Members shall be amended and corrected by the Secretary as necessary.

3.2 A member changing his or her business address must forthwith notify the Secretary of his or her new address.

**4. GENERAL FUNCTIONS OF SOCIETY**

4.1 The functions and objects of the Society are —

- (a) to promote the interests of the legal profession in Tonga and the interests of the public in relation to legal matters;
- (b) to promote and encourage proper conduct among law practitioners;
- (c) to suppress and prevent illegal, dishonourable or improper practices by law practitioners;
- (d) to maintain the integrity of the legal profession in Tonga;
- (e) without prejudice to Section 20, to investigate complaints of professional misconduct against law practitioners;
- (f) to intervene in any application for enrolment, re-enrolment or certification as a law practitioner;

- (g) to maintain and improve the standards of learning of law practitioners;
- (h) to assist the Government and the Court in all matters affecting legislation, law reform and the administration and practice of the law;
- (i) to assist law reform and to represent the views, interests and wishes of law practitioners in relation to law reform;
- (j) to assist in the preparation, circulation and publication of legal decisions given in the courts of Tonga; and
- (k) such other functions as may be decided by the Society in general meeting with the concurrence of the Minister of Justice.

## 5. GENERAL POWERS OF THE SOCIETY

5.1 The Society shall in addition to any other powers conferred to by any Act have the following powers: —

- (a) To provide or arrange for the provision of services and facilities for practitioners, including seminars and educational and training service and facilities;
- (b) To publish or arrange for the publication of such periodicals, pamphlets, or other publications as it may consider of benefit to the public or to practitioners in relation to the practice of the law and the activities of the Society;
- (c) To make recommendations on any application made for admission as a law practitioner or any other application made under this Act;
- (d) To institute prosecutions against practitioners or other persons for the breach of any statute, rules, or regulations relating to the practice of the law;
- (e) To appoint any practitioner to perform any work or services for the Society, or to appear before any court, tribunal, or other body in any of the foregoing matters or in any other matters in which the Society is concerned or interested;
- (f) To pay all costs, witnesses' expenses, and other payments incidental to or connected with any application or proceedings to which the Society is a party or at the hearing of which it is entitled to appear;
- (g) To pay the whole or any part of the expenses incurred by members in attending meetings of the Council of the society or meetings of any Committee appointed under the Constitution of the Society;

- (h) To establish or join in establishing any body whether incorporated or not and whether in Tonga or elsewhere, for the purpose of the exercise of any of the Society's functions or powers;
- (i) To act in combination or association with, or otherwise co-operate with, any person or body, whether incorporated or not, and whether in Tonga or elsewhere, for the purpose of the exercise of any of the Society's functions or powers.

## 6. COUNCIL

- 6.1 The affairs of the Society shall be managed by a Council consisting of —
- (a) President;
  - (b) Vice-President;
  - (c) Treasurer; and
  - (d) Five other members of the Society.
- 6.2 The Council shall be elected annually and shall hold office until election of its successor.
- 6.3 If any casual vacancy occurs in the office of the President, the Vice President shall take that office.
- 6.4 If any casual vacancy occurs in the office of Vice-President the Council may appoint a person whether already a member of the Council or not to fill that vacancy. If the person so appointed is already a member of the Council, the further vacancy so created shall be filled in terms of the next following sub-clause.
- 6.5 If any casual vacancy occurs in the office of member of the Council the Council may: —
- (a) appoint a member of the Society, or
  - (b) hold an election to be conducted as nearly as the circumstances may allow in the manner set out in Rule 7 on a date to be fixed by the Council to fill that vacancy.

## 7. ANNUAL ELECTIONS

- 7.1 Nominations for all elections to the Council must be in writing signed by two members of the Society with the consent of the nominee endorsed and must be left with the Secretary at least fourteen clear days before the date on which the annual general meeting is to be held.
- 7.2 Notice of the date on which nominations close shall be embodied in or accompany the notice of the annual general meeting.

- 7.3 If the number of candidates nominated for any office equals the number of vacancies the person chairing the annual general meeting shall declare those nominated to be elected.
- 7.4 If a person is a candidate for more than one office the result of the election to the office of President shall be declared first, the result of the election to the office of Vice-President, shall be declared second, and the result of the elections of members shall be declared third. If such a person is successful, his or her candidature in any elections the result of which is to be declared later than the one in which that member has been successful shall be void.
- 7.5 If the number of candidates for any office is less than the number of vacancies the person chairing the annual general meeting shall declare those nominated to be elected and shall call for nominations for any office then vacant. If nominations exceed the vacancies a ballot shall be held at the meeting.

## **8. AUDITORS**

- 8.1 One or more accountants in public practice shall be elected auditor or auditors at each annual general meeting to audit the accounts of the Society and report on them to the ensuing annual general meeting. The Council shall pay the auditors their proper professional remuneration out of the funds of the Society.

## **9. PROCEEDINGS OF COUNCIL**

- 9.1 The Council may meet together for the despatch of business, adjourn and otherwise regulate its meetings as it thinks fit. The President or failing the President, the Vice President, or failing the Vice-President, some member elected by the Council shall be the person chairing each meeting. Questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the person chairing the meeting shall have a second or casting vote. The President may, or in the President's absence, the Vice-President may, and the Secretary on the requisition of any three members of the Council shall at any time convene a meeting of the Council. It shall not be necessary to give notice of a meeting except to a member's address in the Register of Members.
- 9.2 The quorum necessary for the transaction of the business of the Council shall be five.
- 9.3 Subject to the presence of the necessary quorum, the Council may act notwithstanding any vacancies in its membership or that it may afterwards be discovered that there was some defect in the election of any member of the Council or that he or she was disqualified.
- 9.4 The Council may buy real or personal property or sell, lease, mortgage, exchange or otherwise dispose of any real or personal

property vested in the Society and may exercise all such powers of the Society as are not by the Act or by these Rules required to be exercised by the Society in general meeting and the generality of the foregoing shall not be prejudiced by any express power given to the Council by the Act or these Rules or otherwise.

## **10. ADMINISTRATION**

- 10.1 A Secretary and any other person or persons deemed necessary for the conduct of the affairs of the Society shall from time to time be appointed or engaged by the Council upon such terms as the Council may think fit and they shall be paid out of the funds of the Society such remuneration as the Council may from time to time to determine.
- 10.2 The Council may from time to time appoint a law practitioner to act for the Society generally or in any specific matter and he or she shall be paid out of the funds of the Society such a fee or other remuneration, as the Council determines.

## **11. RESIGNATION**

- 11.1 Any member of the Council may resign from the Council by writing to the president or Secretary.
- 11.2 Subject to the provisions of the Act and to the provisions of these Rules any member of the Society may with the leave of the Council resign by writing to the President or Secretary and that resignation shall be effective as soon as the leave of the Council is given.

## **12. GENERAL MEETINGS**

- 12.1 A general meeting of the members of the Society shall be held each year no later than the thirtieth day of September. The Council shall decide the date and the venue.
- 12.2 The abovementioned general meetings shall be called annual general meetings: all other general meetings shall be called special general meetings.
- 12.3 At least twenty-eight clear days' notice specifying the place and time of the annual general meeting and the general nature of the business to be transacted at that meeting shall be given to all members of the Society.
- 12.4 The business to be transacted at every annual general meeting shall be as follows: —
  - (a) To receive and consider the Annual Report from the Council;
  - (b) To receive and consider the financial statement and balance sheet signed by the Society's auditors;
  - (c) Election of President and Vice-President;

- (d) Election of Treasurer;
- (e) Election of Council members;
- (f) Election of Members to other Committees;
- (g) General business.

### **13. NOTICE OF MOTION**

13.1 Subject to the provisions of Rule 29 any member of the Society desiring to move any motion at an annual general meeting on any matter not covered by the notice convening the meeting shall notify the Secretary at least ten clear days before the meeting. The Secretary shall then send a copy of the motion with the proposer's name to each member of the Society or when this is not practicable, shall send a summary of the motion and shall state where the full text of the motion may be seen.

### **14. SPECIAL GENERAL MEETINGS**

14.1 The Council may convene a special general meeting of the Society at any time and at any place and shall give reasonable opportunity for all members to attend.

14.2 Upon receiving a requisition in writing signed by at least eight financial members of the Society and, specifying the objects of the meeting, the Secretary shall convene a special general meeting to be held not less than ten days nor more than forty days after the Secretary receives the requisition. Such a requisition shall be deemed not to be signed by a financial member of the Society unless either the member's signature is legible or the member's signature has the member's name printed legibly beside it.

14.3 Subject to the provisions of Rule 29 at least seven clear days' notice of every special general meeting specifying the time and place of the meeting and the general nature of the business to be transacted at that meeting shall be given to all members of the Society.

14.4 No business shall be transacted at any special general meeting other than that specified in the notice convening the meeting.

### **15. QUORUM**

15.1 No business shall be transacted at any annual or special general meeting unless 50%, of the members entitled to take part in the proceedings are present. If, within half an hour from the time appointed for the meeting, the required number of members is not present, the meeting, if a special general meeting, shall lapse without prejudice to the calling of another meeting for the same purpose; if an annual general meeting it shall stand adjourned for one week at the same time and place and those members present at

such adjourned meeting shall be deemed to constitute a quorum for the purposes of holding that meeting.

**16. MINUTES**

16.1 Minutes shall be recorded, in books to be kept for that purpose, of the proceedings of all meetings of the Society and of the Council.

**17. CHAIR**

17.1 The President, or in the absence of the President, the Vice-President, shall preside at every meeting of the Society. In the absence of both president and Vice-President one of the members of the Council to be chosen by the meeting shall preside; and in the absence of the President, Vice President and all of the members of the council, then some member of the Society to be chosen by the meeting shall preside. At every meeting the person chairing the meeting shall have a deliberative and a casting vote.

**18. VOTING**

18.1 No member shall be entitled to vote on any ballot or at any meeting of the Society nor be eligible for any office or seat on the Council or to join in a requisition for a meeting under Rule 14.2 while his or her annual practising fees, or any former fees or fine or contribution or other levy or sum payable by him or her to the Society is unpaid.

**19. RESOLUTIONS BINDING**

19.1 All resolutions of the Society shall be passed by the votes of a majority of the members entitled to vote who are present at a general meeting binding on all members whether they are at the meeting or not. A declaration by the person chairing the meeting that a resolution has been carried or lost, together with an entry in the minute book of the Society, shall be conclusive evidence of the fact.

**20. IRREGULARITY OF MEETING**

20.1 If any irregularity occurs in the convening or holding of any general meeting or in any proceedings at or ancillary to any such meeting, and it is not noticed and objected to at the time, all proceedings at that meeting shall be of the same force and validity as if no such irregularity had occurred; but if any irregularity is noticed and objected to the meeting shall decide whether to uphold that objection and the meeting's decision shall be final and conclusive.

**21. FINANCE**

21.1 Each financial year shall close on the 30th day of June and the Council shall cause to be prepared as soon as convenient thereafter a full statement of the financial transactions of the Society during

the preceding year and a full balance sheet showing the financial position of the Society as at the 30th day of June in each year for presentation to the annual general meeting.

- 21.2 All moneys paid to or received by the Society shall be paid to the credit of the Society at the bank or banks appointed by the Council. All cheques drawn on that bank or banks and all withdrawals from that bank or banks shall be signed by such persons as the Council may determine.
- 21.3 The Council may refund to members of the Society any travelling or other expenses properly incurred in attending meetings of the Council or any committee or subcommittee of the Society or of the Council in connection with any other business of the Society. The Council may pay the President:
- (a) an honorarium; and/or
  - (b) a fixed allowance for general entertainment, travelling and other expenses not specifically refunded to the President pursuant to this Rule.

## **22. COMMON SEAL**

- 22.1 The Common Seal of the Society shall be kept in the custody of the Secretary, or of anyone else the Council may appoint for the purpose. It shall not be affixed to any document except upon a resolution of the Council and in the presence of three members of the Council who shall also sign the document.

## **23. DISCIPLINARY COMMITTEE**

- 23.1 The Disciplinary Committee of the Society shall consist of the following members: —  
The President,  
Vice President,  
and not less than one nor more than three other Council members to be appointed by the Council,
- 23.2 The Committee shall hear and determine complaints relating to the professional conduct of members pursuant to Section 20 of the Act or under these Rules.
- 23.3 The Chairman of the Committee shall preside at all its meetings. If the Chairman is absent the Committee shall elect one of its members to act as Chairman.
- 23.4 Three members who must include the Chairman, constitute a quorum.
- 23.5 Questions before the Committee shall be decided by a majority of votes of the members present and voting at the meeting.

- 23.6 The Chairman has a deliberative vote and in the event of an equality of votes, also has a casting vote.
- 23.7 Subject to the provisions of the Act and these Rules the Committee shall regulate its meetings, proceedings and conduct as it think fit.

#### **24. SPECIAL COMMITTEES**

- 24.1 The Council may from time to time appoint such special committees as may be necessary for the conduct of the affairs of the Society.
- 24.2 The Council shall appoint members to each special committee either annually or otherwise as the Council shall from time to time determine.
- 24.3 The Council may determine the maximum continuous period of service by any member of any special committee.
- 24.4 The Council may determine the number of members of each special committee.
- 24.5 Where the Council determines that the members of any special committee are to be elected annually the provisions of Rule 7.1 shall apply to nominations for such special committee.
- 24.6 Unless the Council shall otherwise direct, each special committee shall elect a person to chair its meetings and he shall hold office until a successor is elected or appointed by the Council at its first meeting.

#### **25. PROPERTY OF THE SOCIETY**

- 25.1 The Council may buy, sell, improve, manage, develop, exchange, dispose of, lease, turn to account or otherwise deal with any personal property similarly in the case of real property subject to the provisions of the Land Act vested in or belonging to or being acquired or managed for the benefit of the Society.
- 25.2 In accordance with Section 13(2) (c) of the Act, the Council may borrow money required for any of the purposes of the Society, and for the purpose of securing any money so borrowed, mortgage charge or pledge any right, title, estate or interest in any real or personal property vested in or owned by or being acquired by the Society.

#### **26. FUNDS OF THE SOCIETY**

- 26.1 All the funds of the Society shall be paid to the Secretary who shall with all convenient speed place the same to the credit of the Society in a bank named for that purpose by the Council.
- 26.2 All cheques shall be signed by the Treasurer or by such one of other member or members of the Council, appointed for the purpose and

shall be countersigned by the Secretary or by an employee of the Society designated for that purpose.

- 26.3 On or before the 31st of March in each year the Secretary shall prepare and submit to the Council a list of the names of all practising members of the Society who have paid –
- (a) Membership fees for the year;
  - (b) Such other levies (if any) payable as determined by the Society.

## **27. MEMBERSHIP FEES**

- 27.1 Every member of the Society shall pay to the Society a membership fee to be determined at its first General Meeting and such membership fee may be varied from time to time by the Society at its General Meeting.
- 27.2 The Society may by special resolution at its General Meeting impose on each of its members a levy or levies.
- 27.3 The non-payment of a membership fee or any levy shall be construed as amounting to misconduct and in such cases the Council of the Society may refer the non-payment by a member to the Disciplinary Committee for disciplinary action and or for the purpose of opposing the issue of a practising certificate to a member. The Disciplinary Committee shall be free to take such steps as it considers necessary in such a case and shall also have the power of expelling such member from the Society.

## **28. AMENDING RULES AND MAKING BY-LAWS**

- 28.1 These Rules may be altered or added to at any annual or special general meeting: Provided that no such alteration or addition shall have any effect unless the Chief Justice has given his consent in writing to that alteration or addition. Notice in writing of any proposed alteration or addition and of the terms of such alteration or addition shall be delivered to the Secretary not less than forty clear days before the meeting in the case of an annual general meeting and together with the requisition for the meeting in the case of a special general meeting. Not less than twenty-eight clear days' notice of proposal to alter or add to the Rules shall be given to the members by the Secretary in accordance with these Rules.
- 28.2 The Council may make, alter, add to and revoke any by-laws (not inconsistent with these Rules) it considers advisable for the management and control of any library established, maintained or controlled by the Society and for the carrying out of these Rules. Every member of the Society shall observe and comply with the by-laws. A breach or non-observance of any by-law shall be and be deemed to be also a breach of these Rules.

28.3 A copy of these Rules and any amendments made to them and of any by-laws made under these Rules shall be made available to any financial member upon request in writing from that member and on payment of a fee (if any) fixed by the Council.

## **29. NOTICE**

29.1 A notice may be given to any member by or on the Society, or the Council, or Secretary of the Society, either personally or by sending it to that member to his or her usual or last known place of business. Where a notice is sent by post, service of the notice shall be deemed to be effective by properly addressing, prepaying and posting an envelope containing the notice. A notice of a meeting shall be deemed to be effected at the time at which the notice would be delivered in the ordinary course of post. The accidental omission to give notice of a meeting to or the non-receipt of notice of a meeting by any member shall not invalidate the proceedings at any meeting.

## **30. INTERPRETATION**

“**Act**” means the Law Practitioners Act 1989.

“**Council**” means the Council of the Tonga Law Society.

“**Society**” means the Tonga Law Society.

Passed in the Legislative Assembly this 18<sup>th</sup> day of October, 1989