



## IN THE SUPREME COURT OF TONGA

### PRACTICE DIRECTION No. 1 of 2020

## REQUIREMENTS AND PROCEDURE FOR APPLICATIONS FOR APPOINTMENT OF KING'S COUNSEL

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1. This Practice Direction comes into force on 15 May 2020. It repeals and supersedes Practice Directions No. 1 of 1994 and No. 3 of 2009.
2. Within common law jurisdictions, appointment to the senior ranks of the Bar (the "Inner Bar") or "taking silk" is intended to recognise those whose skill, integrity, independence and standing in the profession justify an expectation on the part of the public and the judiciary that they will provide outstanding services, as Counsel, to the administration of justice.
3. In the Kingdom of Tonga, appointment to the rank and dignity of King's Counsel is a prerogative power of the Sovereign exercised by His Majesty in Council.
4. On 26 February 2014, the Privy Council decided [PC 2/2014] upon a protocol for the appointment of King's Counsel. This Practice Direction incorporates that protocol.
5. Henceforth, appointments to the rank of King's Counsel will be made by His Majesty after consideration of recommendations from the Lord Chief Justice of Tonga and advice from His Majesty's Counsellors.
6. There will be no further appointments to the honour of Senior Counsel (S.C.) in Tonga. Existing Senior Counsel may continue to use the letters S.C. after their name unless they have been appointed by His Majesty as King's Counsel in which case they shall use only the designation K.C. after their name.

### REQUIREMENTS

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7. As a general rule, to be considered for appointment, Applicants must possess and be able to demonstrate the following qualities, expertise and experience:
  - 7.1 learning in the law so as to provide perspective and sound advice to clients and to assist in the judicial interpretation and development of the law;
  - 7.2 experience by having been in regular practice in Tonga for a period of not less than 10 years and appearing in major trials and appeals, including against silk, with or without a junior;

- 7.3 excellence and skill in the presentation and testing of litigants' cases, so as to enhance the likelihood of just outcomes in adversarial proceedings;
- 7.4 integrity, honesty and exemplary character worthy of confidence and implicit trust by the judiciary, colleagues and the public at all times;
- 7.5 respect for the ethical requirements of legal practice so as to advance the open, fair and efficient administration of justice;
- 7.6 independence, especially in cases where commitment to counsel's duty to the courts may conflict with the client's interests; and
- 7.7 leadership and high standing in the profession.

## **PROCEDURE**

- 8. Applications for silk must be in writing and contain the following:
  - 8.1 full name;
  - 8.2 date of birth;
  - 8.3 residential and professional contact details in Tonga and overseas;
  - 8.4 date/s of call to the Bar in Tonga and overseas;
  - 8.5 details of:
    - 8.5.1 actual practice at the Bar in Tonga and overseas;
    - 8.5.2 any specialist fields of practice;
    - 8.5.3 any legal publications;
    - 8.5.4 any national honours or awards;
    - 8.5.5 any criminal convictions;
    - 8.5.6 any professional misconduct proceedings;
    - 8.5.7 any undischarged judgment debts;
  - 8.6 a declaration of intention to remain in practice in the Kingdom of Tonga for the foreseeable future;
  - 8.7 copies of:
    - 8.7.1 the applicant's national identity card or birth certificate;
    - 8.7.2 three written testimonials as to the applicant's good character;

- 8.7.3 a police report from Tonga and any foreign jurisdiction in which the applicant has practised; and
- 8.8 such further information and/or documents as the applicant wishes to provide in support of the application.
9. Subject to the procedures herein, all applications for silk will be received and treated on a confidential basis.
10. Commencing 1 June 2020, applications will open on 1 June and close on 30 June each year (or, if either date falls on a weekend or public holiday, the next working day).
11. Applications are to be addressed to the Lord Chief Justice and must be received at the Supreme Court Registry no later than 4 pm on the closing date.
12. The Lord Chief Justice will thereafter consult with other members of the Judiciary and the President of the Tonga Law Society as to the suitability of each applicant for appointment.
13. By 31 July of each year in which applications are received, the Lord Chief Justice shall convey his recommendations to His Majesty in Council (via the Lord Privy Seal).
14. Notice of all appointments by His Majesty in Council shall be communicated by the Lord Privy Seal to the successful applicant/s, the Lord Chief Justice and the President of the Tonga Law Society.
15. On a convenient day thereafter, a special ceremony will be conducted before a full Bench of the Supreme Court at which all newly appointed silks shall appear to take their bows and receive his or her Letter of Appointment.
16. Any applicant who has been unsuccessful is at liberty:
- 16.1 to seek an audience with the Lord Chief Justice for the provision of feedback on the applicant's application; and
- 16.2 to apply again.
17. Further, and notwithstanding the foregoing, His Majesty may appoint persons of distinction well versed in the law to be King's Counsel *honoris causa*.



A handwritten signature in blue ink, appearing to read "Michael H. Whitten".

**Michael H. Whitten QC**  
Lord Chief Justice  
15 May 2020