

**Constitution
Amendment
2009/17
(No. 28)**

Examined and certified by:


Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to this Act this 26th day of November 2009



Sir F. Goodwin, KBE
Queen's Representative

ANALYSIS

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| | Title | |
| 1. | Short Title | 5. Appointment of Judges |
| 2. | Jurisdiction of Divisions of the High Court | 6. Masters of the High Court |
| 3. | Judges of the High Court | 7. Court of Appeal |
| 4. | Acting Judge of the High Court | 8. Savings and transitional |

2009, No. 17

An Act to amend the Constitution

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, by the authority of the same, and in accordance with Article 41(1) of the Constitution of the Cook Islands, as follows:

1. Short Title - (1) This Act may be cited as the Constitution Amendment (No. 28) Act 2009 and shall be read together with and deemed part of the Constitution of the Cook Islands (herein referred to as "the Constitution").

2. Jurisdiction of Divisions of the High Court – The Constitution is amended by adding after Article 48(4) the following subclause –

“(5) The High Court may exercise its jurisdiction at any place within or outside of the Cook Islands and on such dates and at such times as the Chief Justice may from time to time determine.”

3. Judges of the High Court – (1) The Constitution is amended by repealing paragraphs (a) and (b) of Article 49(3) and substituting the following paragraphs –

“(a) He holds or has held office as a Judge of the High Court of New Zealand or the New Zealand Maori Land Court or an

equivalent office in any part of the Commonwealth or in a designated country; or

- (b) He has been in practice as a barrister or solicitor for a period, or periods, amounting in the aggregate to not less than 7 years in one or more of either, -
- (i) Cook Islands;
 - (ii) New Zealand;
 - (iii) a part of the Commonwealth;
 - (iv) a designated country.”

(2) Article 49 is further amended by adding after subclause (4), the following subclause -

“(5) Judges of the High Court, other than the Chief Justice, shall take seniority according to the respective dates of their appointment as judges, whether of the High Court or the Court of Appeal or of the High Court of New Zealand or of any superior court in any place outside the Cook Islands or New Zealand.”

4. Acting Judge of the High Court - The Constitution is amended by omitting from Article 51(1) the words “Minister of Justice” and substituting the words “Attorney General.”

5. Appointment of Judges - The Constitution is amended by repealing paragraph (b) of Article 52 and substituting the following paragraph -

“(b) The other Judges of the High Court shall be appointed by the Queen’s Representative acting on the recommendation of the Executive Council made on the advice of the Chief Justice and the Attorney General.”

6. Masters of the High Court - The Constitution is amended by inserting after Article 55, the following Article -

“55A. Masters of the High Court - (1) The Chief Justice may, after consultation with the Solicitor General and a senior practitioner appointed by the Law Society for the purpose, appoint Masters of the High Court.

- (2) An enactment shall prescribe, -
- (a) the qualifications of persons to be appointed Masters;
 - (b) the manner in which Masters are appointed;
 - (c) the terms and conditions of their appointment;

- (d) the jurisdiction and powers to be exercised by a Master; and
- (d) conditions for the review of, or appeals against, decisions of Masters by a Judge of the High Court.”

7. Court of Appeal - The Constitution is amended by repealing Articles 56 to 61, and substituting the following Articles -

“Court of Appeal

56. Court of Appeal established - (1) There shall be a Court of Appeal of the Cook Islands, which shall be a superior Court of record.

(2) Subject to Articles 57 and 58, the Judges of the Court of Appeal shall be -

- (a) the Chief Justice and other Judges of the High Court; and
- (b) such other persons, possessing the qualifications prescribed by subclause (3) of this Article, as may from time to time be appointed by the Queen's Representative acting on the recommendation of the Executive Council made on the advice of the Chief Justice and the Attorney General.

(3) No person shall be qualified for appointment as a Judge of the Court of Appeal under paragraph (b) of subclause (2) of this Article, unless that person is qualified under Article 49 to be appointed as a Judge of the High Court.

(4) A Judge of the Court of Appeal appointed under subclause (2)(b) of this Article shall be appointed President of the Court of Appeal by the Queen's Representative acting upon the recommendation of the Executive Council made on the advice of the Chief Justice and the Attorney General.

(5) The Chief Justice, if present, shall preside at a sitting of the Court of Appeal but otherwise, the President shall preside or in his or her absence, the senior Judge.

(6) Judges of the Court of Appeal shall take seniority according to the respective dates of their first appointment as Judges, whether of the High Court or of the Court of Appeal or of the High Court of New Zealand or of any superior court in any place outside the Cook Islands or New Zealand.

57. Number of Judges - (1) Any 3 Judges of the Court of Appeal may exercise all the powers of the Court.

(2) The judgment of the Court of Appeal shall be in accordance with the opinion of the majority of the Judges present.

(3) Notwithstanding subclause (1) of this Article, an Act may prescribe powers of the Court that may be exercised by the President, a Judge of the Court of Appeal or the Registrar on its behalf.

58. Judges not to sit on appeals from own decision - A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by him or by a Court on which he sat as a member.

59. Hearings and determination of Court of Appeal - (1) The Court of Appeal may exercise its jurisdiction at any place within or outside of the Cook Islands and on such dates and at such times as the President, after consultation with the Chief Justice, may from time to time determine.

(2) Except as provided in subclause (3) of this Article, the determination of the Court of Appeal shall be final.

(3) There shall be a right of appeal to Her Majesty the Queen in Council, with the leave of the Court of Appeal, or, if such leave is refused, with the leave of Her Majesty the Queen in Council, from judgments of the Court of Appeal in such cases and subject to such conditions as are prescribed by Act.

60. Jurisdiction of Court of Appeal - (1) Subject to the provisions of this Constitution, and as may be prescribed by Act, the Court of Appeal shall have jurisdiction to hear and determine, -

- (a) any appeal from a judgment of the High Court; and
- (b) any cause or matter removed by the High Court to the Court of Appeal.

(2) Notwithstanding anything in subclause (1) of this Article, and any limitations as may be prescribed by Act, the Court of Appeal may in any case in which it thinks fit and at any time, grant special leave to appeal to that Court from any judgment of the High Court, subject to such conditions as to security for costs and otherwise as the Court of Appeal thinks fit.

(3) In this Article the term "judgment" includes any judgment, decree, order, writ, declaration, conviction, sentence, or other determination.

61. Transmission of order of Court of Appeal - The determination of the Court of Appeal on any appeal from the High Court shall be transmitted to the Registrar of the High Court by the Registrar of the Court of Appeal under the seal of the Court of Appeal, and judgment shall thereupon be entered by the High Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the High Court as are required by that determination."