



ANALYSIS

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1970-71, No. 27

An Act to establish the Broadcasting and Newspaper Corporation and to define its functions and powers

(25 February 1971)

1. Short Title - This Act may be cited as the Broadcasting and Newspaper Corporation Act 1970-71.

2. Interpretation - In this Act, unless the context otherwise requires, -

"Broadcasting" means the dissemination of any form of radioelectric communication (including the wireless transmission of writing, signs, signals, pictures, images, and sounds of all kinds by means of Hertzian waves) intended to be received by the public either directly or through the medium of relay stations; and "to broadcast" has a corresponding meaning:

"Corporation" means the Broadcasting and Newspaper Corporation established by this Act:

"Minister" means the Minister appointed under the provisions of the Constitution to be the Minister responsible for the Corporation:

"Programme" includes any signal, announcement, item, communication, picture, or other matter broadcast or intended to be broadcast from a broadcasting station for reception by the public:

"Short-wave station" means a broadcasting station operating on high frequency and providing programmes for reception beyond the Cook Islands.

PART I - BROADCASTING AND NEWSPAPER CORPORATION

3. Broadcasting and Newspaper Corporation - (1) There is hereby established a Corporation, to be called the Broadcasting and Newspaper Corporation.

(2) The Corporation shall consist of three members who shall be appointed by the High Commissioner on the recommendation of the Minister and of whom one shall be appointed as Chairman.

(3) The Corporation shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property; and of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

4. Terms of office of members of Corporation - (1) Except as otherwise provided by this Act, every member of the Corporation shall be appointed for a term of three years, but may from time to time be reappointed.

(2) With respect to the first members of the Corporation, other than the Chairman, appointed under this Act, the following provisions shall apply:-

(a) One of those members shall retire at the expiration of one year from the date of their appointment, and the other member shall retire at the end of two years from that date:

(b) The member so to retire at the end of one year shall be determined by agreement of the two members; and failing agreement the member then to retire shall be determined by lot.

(3) Notwithstanding anything to the contrary in this Act, every member of the Board, unless he sooner vacates his office under section 6 of this Act, shall continue in office until his successor comes into office.

5. Deputies of members - (1) In any case in which the Minister is satisfied that any member of the Corporation is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint a deputy to act for that member during his incapacity.

(2) In the case of the incapacity of the Chairman his deputy may or may not be one of the other members, and if the deputy of the Chairman is one of the other members some other person may be appointed to act as the deputy of that member.

(3) Any deputy appointed under this section shall, while he acts as such, be deemed to be a member of the Corporation.

(4) No appointment of a deputy and no acts done by him as such, and no act done by the Corporation while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion for his appointment had not arisen or had ceased.

6. Extraordinary vacancies - (1) Any member of the Corporation may at any time be removed from office by the High Commissioner for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the High Commissioner, or may at any time resign his office by written notice given to the Minister.

(2) If any member of the Corporation dies or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed to be an extraordinary vacancy.

(3) An extraordinary vacancy shall be filled by the appointment of a person in the same manner as the appointment of the vacating member.

(4) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

(5) The powers of the Corporation shall not be affected by any vacancy in the membership thereof.

7. Meetings of Corporation - (1) The first meeting of the Corporation shall be held on a day to be appointed in that behalf by the Minister.

(2) Subsequent meetings of the Corporation shall be held at such times and places as the Corporation from time to time appoints.

(3) The Chairman of the Corporation, or any two members thereof, may at any time call a special meeting of the Corporation.

(4) At all meetings of the Corporation the quorum necessary for the transaction of business shall be two members.

(5) The Chairman shall preside at all meetings of the Corporation at which he is present.

(6) In the absence of the Chairman or his deputy from any meeting, the members present shall elect one of their number to preside at that meeting.

(7) All questions arising at any meeting of the Corporation shall be decided by a majority of the valid votes recorded thereon.

(8) At any meeting of the Corporation the Chairman or other person presiding shall have a deliberative vote and, in the case of an equality of votes, shall also have a casting vote.

(9) A resolution in writing signed, or assented to by letter or telegram, by all members of the Corporation shall be as valid and effectual as if it had been passed at a meeting of the Corporation duly called and constituted.

(10) Subject to the provisions of this Act and of any regulations thereunder, the Corporation may regulate its procedure in such manner as it thinks fit.

8. Committees - (1) The Corporation may from time to time appoint a committee or committees, consisting of two or more members, to advise the Corporation on such matters relating to broadcasting or the publication of newspapers and magazines as are referred to them by the Corporation.

(2) Any person may be appointed to be a member of any committee appointed under this section notwithstanding that he is not a member of the Corporation.

(3) Subject to the provisions of this Act, of any regulations thereunder, or of any general or special directions of the Corporation, any such committee may regulate its procedure in such manner as it thinks fit.

9. General functions of Corporation - (1) The general functions of the Corporation shall be -

- (a) To carry on a broadcasting and a newspaper and magazine service within the Cook Islands and from time to time develop, extend, and improve those services in the public interest:
- (b) To advise the Minister in respect of matters relating to broadcasting and the publication of newspapers and magazines:
- (c) To exercise and perform such functions, powers, and duties in relation to broadcasting and the publication of newspapers and magazines as are conferred or imposed on it under this Act or otherwise howsoever.

(2) It shall be the duty of the Corporation to satisfy itself that, so far as possible, the programmes broadcast and the newspapers and magazines published by the Corporation comply with the following requirements, that is to say -

- (a) That nothing is included in the programmes newspapers or magazines which offends against good taste or decency or is likely to incite to crime or to lead to disorder or to be offensive to public feeling:

(b) That the programmes newspapers and magazines maintain a proper balance in their subject-matter and a high general standard of quality:

(c) That any news given in the programmes (in whatever form) newspapers or magazines is presented with due accuracy and impartiality and with due regard to the public interest.

10. Corporation to have regard to directions of Government - In the exercise of its functions and powers the Corporation shall have regard to any representations that may be made by the Minister in respect of any function or business of the Corporation and shall give effect to any decision of the Government in relation thereto conveyed to the Corporation in writing by the Minister.

11. Powers of Corporation - The Corporation shall have such powers, rights, and authorities as may reasonably be necessary or expedient to carry out its functions, and in particular it may from time to time -

- (a) Establish, install, and operate broadcasting stations:
- (b) Establish and publish newspapers and magazines:
- (c) Record and produce for its own use or for promotion or for public sale music songs and other forms of entertainment, under its own label or otherwise:
- (d) Acquire by purchase, lease, sublease, or otherwise, any land or interest in land other than the fee simple with or without any building:
- (e) Erect, alter, or reconstruct any offices or broadcasting station, or any building or structure for use in connection with any offices or broadcasting station, or in connection with the exercise of its powers, on any land belonging to or administered by the Corporation: With the prior approval of the Minister, dispose of by sale, lease, sublease, or otherwise any land or interest in land other than the fee simple:
- (f) Acquire by purchase, bailment, or otherwise, any personal property, rights, or privileges that it thinks necessary for the purposes of this Act:
- (h) Dispose of by sale, bailment, or otherwise, or turn to account or otherwise deal with, any personal property, rights, or privileges of the Corporation:

- (i) With the prior approval of the Minister responsible for finance, and on and subject to such terms and conditions as that Minister may approve, advance money to any person or body or persons, whether incorporated or not, carrying on or intending to carry on the business of producing programmes for broadcasting or publishing newspapers or magazines whether in conjunction with any other business or not, or give in respect of any advances made to any such person or body as aforesaid by any other person any guarantee, indemnity, or security:
- (j) With the prior approval of the Minister responsible for finance, subscribe for, acquire, and hold, and dispose of or otherwise deal with, shares or stock in any company, whether incorporated within or outside the Cook Islands, carrying on or intending to carry on the business of providing programmes for broadcasting, or the business of publishing newspapers or magazines whether in conjunction with any other business or not:
- (k) Use the facilities and equipment of the broadcasting service and newspaper and magazine service in such manner as may be thought fit for the purpose of promoting and assisting in the development and carrying on of those arts and cultural pursuits which are usually included in the purpose of broadcasting and the publication of newspapers and magazines:
- (l) Take on lease, rent, or purchase houses, or purchase sites and erect houses, for the use of its officers:
- (m) Do all such things as the Corporation considers to be in the interests of the community for the purpose of developing and improving broadcasting and writing talent:
- (m) Act in combination or association with any person or body whether incorporated or not and whether in the Cook Islands or elsewhere for any of the aforesaid purposes.

12. Short-wave stations - (1) The Corporation may establish and operate short-wave stations within the Cook Islands.

(2) All programmes broadcast from short-wave stations shall be approved by the Minister.

(3) Any such approval may be general in its nature or may relate to any particular programme or any particular class of programmes.

(4) The Corporation shall, if directed by the Minister and in accordance with the directions of the Minister, broadcast any programme or matter which the Minister requires to be broadcast.

13. Programmes may be provided by contractor - Any programmes broadcast or any articles published by the Corporation may be provided by persons who, under contracts with the Corporation, have, subject to the terms and conditions of any such contract, the right to provide programmes or parts of programmes to be broadcast or articles to be published by the Corporation and the Corporation may enter into such contracts and make such arrangements as may be necessary for the purposes of this section.

14. Officers and employees - (1) The Corporation may from time to time appoint such officers and employees including acting or temporary or casual officers and employees as it thinks necessary for the efficient exercise of its functions and powers.

(2) Any person in the service of the Crown may be appointed to be an officer or employee of the Corporation but no such person shall be entitled to hold office concurrently as an officer or employee of the Corporation and as a servant of the Crown except -

(a) In the case of a person subject to the Public Service Act 1969 with the consent of the Public Service Commission; and

(b) In any other case with the consent of the Minister of the Crown to whose control he is subject.

(3) Subject to the provisions of this Act the Corporation may with the prior approval of the Minister responsible for finance pay to its officers and employees such salaries and allowances as it thinks fit and may at any time remove any officer or employee from his office or employment.

(4) The Corporation shall out of its funds subsidise or contribute to the National Provident Fund in New Zealand or any other fund or scheme established with the approval of the Minister responsible for finance for the purpose of providing superannuation or retiring allowances for its officers and employees.

(5) Any person who immediately before the date of the commencement of this Act was an officer of the Public Service and who is employed by the Corporation at that date may, at any time within one year after his appointment as an officer or employee of the Corporation, elect to resume employment in the Public Service and, in any such case, notwithstanding the provisions of any enactment to the contrary, his employment in the Public Service shall be deemed to have continued without interruption:

Provided that this subsection shall not apply to any person whose employment by the Corporation is terminated for misconduct or neglect of duty:

Provided also that no person shall be entitled to receive any salary as a member of the Public Service in respect of any period during which he was employed by the Corporation.

15. Delegation of powers of Corporation - (1) The Corporation may from time to time delegate to the officers of the Corporation such of its powers as the Corporation thinks fit, including the power of delegation conferred by this subsection.

(2) Every such delegation may be revoked at any time, and no such delegation shall prevent the exercise of any power by the Corporation.

(3) Any such delegation may be made subject to such conditions and restrictions (if any) as the Corporation thinks fit, and may be made either generally or in relation to any particular matter.

(4) The fact that an officer of the Corporation exercises any power of the Corporation shall, in the absence of proof to the contrary, be sufficient evidence of his authority to do so.

PART II - FINANCIAL PROVISIONS

16. Transfer of assets and liabilities to Corporation - All assets and liabilities held and owned by the Government of the Cook Islands in connection with the broadcasting service and newspaper service carried on and operated by the Department of Internal Affairs shall, on the coming into force of this Act, without further authority than this section, be vested in the Corporation.

17. Appropriation by the Legislative Assembly - There shall be paid to the Corporation such sums of money as may be appropriated by the Legislative Assembly from time to time for the purposes of the Corporation.

18. Broadcasting and Newspaper Corporation Account - (1) For the purposes of this Act there is hereby established in the Cook Islands Government Account an account to be known as the Broadcasting and Newspaper Corporation Account.

(2) The receipts and payments of the Corporation shall be public moneys within the meaning of the Public Moneys Act 1969 which shall apply to the Corporation subject to the provisions of this Part of this Act.

(3) The Corporation shall arrange with the Financial Secretary for the Broadcasting and Newspaper Corporation Account and such subsidiary accounts as may be necessary or desirable to be maintained by the Treasury.

19. Preparation of estimates - (1) The Corporation shall prepare and submit to the Minister annual estimates of receipts and expenditure, in such form as the Minister responsible for finance directs, covering the operations of the Corporation in the exercise of its powers and functions.

(2) The estimates may provide for finance by way of loans the terms and conditions of which shall be subject to the approval of the Minister responsible for finance.

(3) The Minister shall submit the estimates, with such recommendations as he thinks fit to Cabinet for approval.

20. Authorisation of expenditure - (1) The Chairman of the Corporation may authorise expenditure in accordance with the estimates as approved by the Legislative Assembly and as between items of expenditure in the approved estimates may exercise a power of virement to an extent not exceeding twenty per cent of the item to which funds are transferred.

(2) The Minister may authorise expenditure in excess of the total provided for in the estimates to the extent that receipts of the Corporation exceed the amount estimated.

21. Annual report and accounts - (1) The Corporation shall, as soon as practicable after the end of each financial year, furnish to the Minister a report covering its activities for the year and including financial statements showing estimated and actual receipts and expenditure together with such commercial accounts as are appropriate to the nature of its financial operations.

(2) The Treasury shall furnish the statements and accounts necessary for inclusion in the annual report of the Corporation.

(3) The accounts and financial statements of the Corporation's activities shall be presented for examination in conjunction with the audit required pursuant to Article 71 of the Constitution and a copy of the annual report shall be laid before the Legislative Assembly as soon as practicable after the presentation to the Legislative Assembly of the annual report of the Audit Office.

PART III - MISCELLANEOUS

22. Contracts of Corporation - (1) Any contract which, if made between private persons, must be by deed shall, if made by the Corporation, be in writing under the common seal of the Corporation.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Corporation, be either under the common seal of the Corporation or signed on behalf of the Corporation by the Chairman of the Corporation or by any member of the Corporation authorised in that behalf by the Chairman.

(3) Any contract which, if made between private persons, may be made orally may be similarly made by or on behalf of the Corporation by any person acting under its authority, express or implied.

23. Execution of documents - (1) Every document to which the common seal of the Corporation is affixed shall be signed by the Chairman of the Corporation and shall be countersigned by another member of the Corporation.

(2) Any document which, if executed by a private person, would not require to be executed as a deed may be signed on behalf of the Corporation by the Chairman or by any member of the Corporation authorised in that behalf by the Chairman.

24. Evidence of documents - Every document purporting to be a document executed by or on behalf of the Corporation in a manner provided in section 23 of this Act shall be received in evidence and be deemed to be so executed in the absence of proof to the contrary.

25. Remuneration and travelling allowances of members - The members of the Corporation shall be paid out of the Cook Islands Government Account such remuneration and travelling allowances as shall be fixed from time to time by the High Commissioner on the recommendation of the Minister.

26. Disqualification of members - (1) A member of the Corporation shall not vote or take part in the discussion of any matter before the Corporation or before any committee thereof in which he has directly or indirectly a pecuniary interest apart from any interest in common with the public provided that nothing in this section shall apply to any contract of insurance insuring members against personal accident.

(2) Any member who knowingly offends against this section shall be guilty of misconduct and a breach of this Act.

27. Members of Corporation not personally liable - No member of the Corporation shall be personally liable for any act or default done or made by the Corporation or by any member thereof in good faith in the course of the operations of the Corporation.

28. Government Departments may provide services for Corporation - The Crown, acting through any Government Department, may from time to time, at the request of the Corporation, enter into contracts or arrangements for the execution or provision by the Department for the Corporation of any work or service, or for the supply to the Corporation of any goods, stores, or equipment, on and subject to such terms and conditions as may be agreed upon.

29. Regulations - (1) The High Commissioner may from time to time by Order in Executive Council, after consideration of any recommendations thereon made to him by the Corporation, make all such regulations as may, in his opinion, be deemed necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is then in session and, if not, shall be laid before the Legislative Assembly within twenty-eight days after the commencement of the next ensuing session.

This Act is administered in the Broadcasting and Newspaper Corporation.