



ANALYSIS

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1987, No. 25

An Act to consolidate and amend the law relating to Local Government in the Outer Islands of the Cook Islands

(18 December 1987)

BE IT ENACTED by the Parliament of the Cook Islands, in Session assembled, and by the authority of the same, as follows:

1. Short Title - This Act may be cited as the Outer Islands Local Government Act 1987.

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

"Ariki" means either -

(a) that person who has not been invested with the title rank or office of Ariki in accordance with ancient custom prevailing but has custody of such title; or,

(b) that person who has been invested with the title rank or office of Ariki in accordance with ancient custom prevailing in each of the Cook Islands and who is either a sitting or non-sitting member of the House of Ariki as defined in the House of Ariki Act 1966:

"Aronga Mana", includes those persons invested with or having custody of a title in accordance with the native custom and usage of the island upon which that person is resident and which title is recognised by such native custom and usage as entitling the holder or custodian to be a member of the Aronga Mana of that island;

"Chief Administration Officer" means the Chief Administration Officer for each island appointed by the Public Service Commissioner in accordance with a decision of Cabinet;

"Minister" means the Minister responsible for Outer Islands Affairs.

"Financial Secretary" means the Financial Secretary appointed pursuant to the Public Money and Stores Act 1987;

"Secretary" means the Secretary of Outer Islands Affairs appointed pursuant to the provisions of the Public Service Act 1975;

3. Application - This Act shall apply to all islands of the Cook Islands except Rarotonga, Pukapuka and Nassau.

PART I
ISLAND COUNCILS

4. Island Councils - The constitution, membership and functions of Island Councils shall be as prescribed by this Act.

5. Membership of Island Council - (1) Each Island Council shall consist of the following members,-

(a) The Ariki or Ui Ariki of the Island (if any).

- (b) A representative of the Aronga Mana of the Island who shall be elected in the manner provided in section 8.
- (c) The Members of Parliament of the Island.
- (d) The elected members of the constituencies for each island as provided in the First Schedule and elected in the manner provided in section 10.

(2) Only members of the Island Council holding office pursuant to paragraph (d) of subsection (1) shall be entitled to vote at any meeting of the Island Council, although those holding office pursuant to paragraphs (a), (b) and (c) of that subsection shall have the right to speak and be heard at any such meeting.

(3) The Chief Administrative Officer of the Island shall be advisor to the Island Council of that Island and shall be entitled to attend and address all meetings of the Island Council.

6. Mayor and Deputy-Mayor of the Island Council - (1) Each Island Council shall elect a Mayor and a Deputy Mayor (each to be known on each island by such title as the Island Council may designate being the equivalent in the dialect of the language of the Cook Islands as spoken on that Island and prescribed by Order in Executive Council) from its members holding office pursuant to paragraph (d) of subsection (1) of section 5.

(2) In the absence of the Mayor, the Deputy Mayor shall exercise and perform all powers and duties of the Mayor.

(3) The Mayor shall be chairman of the Island Council and shall preside at every meeting of the Island Council which he is present and shall have a deliberative vote and in the case of an equality of votes he shall also have a casting vote.

7. Functions of Island Council - The functions of each Island Council shall be,-

- (a) To carry into effect and administer, the provisions of Ordinances and By-laws that may be applicable to the Island.
- (b) To assist in the co-ordination of any activity relevant to the economic and social development of the Island.
- (c) To assist the Government of the Cook Islands in the good rule and government of the island.
- (d) Subject to the Constitution, and without limiting the jurisdiction of the High Court, to advise on or determine any matter, question or dispute referred to it by any person or organisation.

PART II

ELECTIONS TO ISLAND COUNCILS

8. Election of a representative of the Aronga Mana - (1) In the month of April in the year 1989 and in the month of April in every third year thereafter on a date to be appointed by the Chief Administration Officer there shall be

held a meeting of Aronga Mana of each Island which shall be convened and chaired by the Chief Administration Officer for the purpose of electing one member of the title holders present to be the representative of the Aronga Mana on the Island Council, provided that on the Islands of Mangaia and Pukapuka such meeting shall be chaired by one of the Aronga Mana appointed by them at the commencement of that meeting for that purpose:"

(2) The following shall not be eligible for election at any such meeting,-

- (a) Any person holding the title rank of Ariki on the Island.
- (b) Any person holding office as a Member of Parliament.
- (c) Any person under the age of 18 years.
- (d) Any person who has been convicted of any offence punishable by imprisonment for a term of three months or upwards; or has been convicted of a corrupt practice unless he has received a free pardon or has undergone the sentence or punishment to which he was adjudged for the offence.
- (e) Any person who is mentally unstable.
- (f) Any person who is not ordinarily resident on the island.

(3) The following shall not have the right to vote at any such meeting,-

- (a) Any person under the age of 18 years.
- (b) Any person who has been convicted of any offence punishable by imprisonment for a term of three months or upwards; or has been convicted of a corrupt practice, unless he has received a free pardon or has undergone the sentence or punishment to which he was adjudged for the offence.
- (c) Any person who is mentally unstable.
- (d) Any person who is not ordinarily resident on the island.

9. Election of elected members - (1) In the month of April in every third year, on a date to be appointed by the Chief Administration Officer, there shall be held in each constituency on the island (as prescribed in the First Schedule to this Act) an election to elect by secret ballot the elected members of the Island Council.

(2) The following persons shall not be eligible for election,-

- (a) Any person holding the title rank of Ariki on that Island.
- (b) Any person holding office as a Member of Parliament.
- (c) Any person under the age of 18 years.
- (d) Any person who has been convicted of any offence punishable by imprisonment or has been convicted of a corrupt practice, unless he has received a free pardon or has undergone the sentence or punishment to which he was adjudged for the offence.
- (e) The Chief Administration Officer.

- (f) Any person who is mentally unstable.
 - (g) Any person who is not ordinarily resident on the island.
- (3) Any person other than the Chief Administration Officer who is eligible for election shall be entitled to vote for any person nominated for election as an elected member.

10. Conduct of elections - (1) In respect of every by-election held after the commencement of this Act, and in respect of every election held pursuant to section 9 of this Act, the Chief Administration Officer on each Islands shall -

- (a) Call for nominations from persons qualified for election under section 9.
 - (b) Compile a roll of qualified electors for each constituency as provided in the First Schedule.
 - (c) Post in a public place in each village the names of the nominees.
 - (d) Fix the date for election and ensure that such date is publicised.
 - (e) Make such arrangements as the Secretary may approve for votes to be cast in advance by voters who will be absent from the island on the date of election.
 - (f) On the day of election provide for each Constituency ballot boxes, ballot papers and pencils.
 - (g) Appoint polling clerks for each constituency.
 - (h) Count, with the assistance of the polling clerks and under the supervision of a member of the Police, the votes cast.
 - (i) Hand all ballot papers to the Police for safe keeping.
 - (j) Publicise the results and advise the Secretary in accordance with section 12.
- (2) The polling clerk in each Constituency shall,-
- (a) Supervise the casting of votes and ensure secrecy of ballot.
 - (b) As each vote is cast strike the name of the voter from the roll and ensure that each elector votes only once.
 - (c) After every voter has been given an opportunity to vote, convey the ballot box and contents to the Chief Administration Officer.
 - (d) Assist the Chief Administration Officer in the counting of votes as provided in subsection (1).
- (3) Every voter shall select the candidate or candidates as the case may be for whom he wishes to vote on a ballot paper which he shall then fold and deposit in the ballot box.
- (4) Every voter shall exercise one vote only, provided that,-
- (a) Where a constituency returns more than one member then every voter shall have as many votes as there are members representing his

constituency, but he shall vote only once for any one member.

- (b) On the Islands of Rakahanga and Mitiaro every voter on the Island may cast one vote in respect of each constituency.

11. Disputed elections - Where there is any dispute of an election held under sections 8 or 9 the following provisions shall apply,-

- (a) Notification of the dispute together with full details shall be given to the Chief Administration Officer within 14 days of the public notification of the election of the members or member.
- (b) The Chief Administration Officer shall notify in writing the member so elected of the dispute to his election and such member shall, if he wishes to reply, reply within 7 days of the notice.
- (c) The Chief Administration officer shall after the 7 days prescribed in paragraph (b) forward full details of the dispute to the Secretary.
- (d) The Secretary shall determine whether or not the dispute shall be upheld and, if upheld, shall declare void the election of the member or members affected and shall duly notify the Chief Administration officer of the same who shall cause a new election to be held within 14 days of the receipt of such notice, as far as possible in accordance with the provisions of this Part of this Act as to the conduct of elections.
- (e) The Secretary's decision shall be final in any dispute raised over any election.

12. Public notification of filling of Island Council vacancies - (1) Within one day of the holding of any election pursuant to sections 8 or 9 of this Act the Chief Administration Officer shall cause a public notice to be displayed in each constituency of the Island showing the names of every person elected at that election.

(2) Twenty-one days after publishing the aforesaid public notice the Chief Administration Officer shall send the names of each member elected and the constituency he represents to the Secretary.

(3) After the completion of all elections on each island, the Secretary shall forward to the Minister a Warrant of Appointment in respect of each elected Member for signing by the Queen's Representative on the advice of the Minister.

13. Disqualification of membership of Island Councils - (1) Every elected member, whether as a representative of the Aronga Mana or elected pursuant to section 9, shall be disqualified from sitting on an Island Council and his seat shall be declared vacant by the Clerk of the Island Council if that member,-

- (a) Becomes an Ariki on that Island; or
- (b) Becomes a Member of Parliament; or
- (c) Takes an oath of allegiance to any foreign country; or
- (d) Becomes mentally unstable; or
- (e) Is convicted of any offence punishable by imprisonment for a term of three months or upwards or is convicted of a corrupt practice; or
- (f) Dies; or
- (g) Leaves the Island where he was elected for a period of one month or more without the prior approval of the Island Council but such approval shall not be granted if the absence exceeds three months and is not due to travelling for the purposes of training or illness or official business of the Island Council; or
- (i) Resigns by notice in writing to the Clerk of the Island Council.

(2) The Clerk of the Island Council shall notify the Chief Administration Officer of any vacancy in the Island Council under subsection (1).

(3) Where any vacancy occurs under subsection (1), the following provisions shall apply,-

- (a) If the vacancy occurs within two years and 6 months from the date of the public notification under subsection (1) of section 12 of an election held in the month of April pursuant to sections 8 or 9, a by-election shall be held and the provisions of sections 8, 9 and 10 as to elections as the case may be shall apply for the purposes of that by-election with suitable modifications.
- (b) If the vacancy occurs after two years and 6 months from the date of the public notification under subsection (1) of section 12 of an election held in the month of April pursuant to sections 8 or 9, no by-election shall be held and the seat shall remain vacant until the next election.

14. Tenure of office - The members appointed pursuant to paragraphs (b) and (d) of section 5 shall hold office from the date of public notification of their successful election until the date immediately before the public notification of the successful members elected in the subsequent election.

PART III BYLAWS

15. Making of bylaws by Order in Executive Council - (1) Bylaws shall be made revoked or amended and any ordinance of any Island Council shall be revoked or amended by the Queen's Representative by Order in Executive Council on the recommendation of the Minister.

(2) Every proposed bylaw shall be first submitted to the Minister for his approval.

(3) Recommendations to the Minister for the promulgation of new bylaws or the revocation or amendment of existing bylaws and ordinances may be made by formal resolution of any Island Council.

(4) All Orders in Executive Council made under this section shall be laid before Parliament within fourteen days after the making thereof if Parliament is in Session and if not in Session shall be laid before Parliament within fourteen days after the date of commencement of the next ensuing session.

16. Bylaw making powers - (1) Subject to section 15 each Island Council shall have power to make, alter and revoke from time to time bylaws for any of the following purposes, -

- (a) The good rule and government of the island.
- (b) The carrying out of any of the objects of this Act and of any of the functions and powers conferred on Island Councils by this Act.
- (c) Regulating any subject matter of this Act.
- (d) Imposing such tolls, dues, fees, fines, payments and other charges in such amounts and for such purposes as may be approved by the Minister.
- (e) Regulating controlling or prohibiting any act, matter or thing usually the subject matter of local control or prohibition in respect of that island.
- (f) Regulating controlling or prohibiting the display of signs, posters, placards, handbills, writings, pictures, or devices for advertising of any kind anywhere on the island where the public have access.
- (g) Requiring the owner of any land not vested in Her Majesty to remove lower or trim to the satisfaction of the Council any tree, shrub or hedge overhanging or interfering in any way with traffic in or the lighting on any place to which the public have access including any roadway street or footpath.
- (h) Regulating controlling or prohibiting any of the subject matters regulated controlled or prohibited in any Ordinance of the Island Council in operation at the coming into force of this Act.
- (i) Regulating controlling or prohibiting the use of any reserve, park, beach, sportsground, recreation ground, cemetery, public building, or other public place vested in or under the control of the Island Council.
- (j) Regulating controlling or prohibiting the use of and the construction of anything upon roadways streets footpaths and land to which the public have access.
- (k) Regulating controlling or prohibiting fishing, shell fishing, pearl diving or the use of any fishing net in lagoon waters.

- (l) Providing for the inspection of any land building or premises for any of the purposes of this Act or any bylaw thereunder.
- (m) Requiring the removal of any growth or thing on any land building or premises which may constitute a danger or be a fire hazard to other property or members of the public.
- (n) Regulating controlling or prohibiting the storage of dangerous goods or materials of any kind which are of an inflammable nature or which are likely to cause or aid the spread of fire.
- (o) Regulating controlling prohibiting or licensing itinerant traders hawkers and pedlars.
- (p) Regulating and controlling the burial of animals.
- (q) Regulating controlling or prohibiting the deposit or accumulating or dispersal on any vacant land within the island or in the sea adjacent thereto or on any motu, any refuse, garbage or rubbish of any description.
- (r) Regulating controlling prohibiting or licensing the keeping of any animals reptiles birds or bees and ordering the destruction thereof.
- (s) Regulating controlling prohibiting the lighting of any fire whether on private property, or uninvestigated land.
- (t) Regulating controlling or prohibiting camping by visitors.
- (u) The imposition of fines not exceeding \$200 for the breach of any bylaws.

(2) A bylaw may apply to the whole Island or to any specified part thereof.

(3) Notwithstanding anything in any other enactment, every Island Council shall be empowered to levy and collect fees for the licencing of motor vehicles, shops, animals and such other things or activities as the Minister may from time to time approve.

17. Offences against bylaws punishable in the High Court

- (1) Every offence against any bylaw or ordinance made under this Act shall be punishable in the High Court of the Cook Islands.

(2) A Justice of the Peace shall have jurisdiction in respect of any offence under this Act or any regulation, bylaw or ordinance made thereunder.

18. Existing bylaws and ordinances - (1) All existing bylaws and ordinances shall remain in force as if made pursuant to this Act.

(2) No bylaw or ordinance (whether made before or after the coming into force of this Act) shall be lawful where such bylaw or ordinance is repugnant to the Constitution or any Act of Parliament, or any regulation intended to be in force in the island where such bylaw or ordinance purports to be in force.

19. Enforcement by Police of bylaws and ordinances - (1) It shall be the responsibility of the Police to ensure the enforcement of any bylaw or ordinance applying to the island.

(2) Every complaint made under any bylaw or ordinance shall be referred to the senior member of the Police on the Island for action by the Police, who shall investigate the complaint and if necessary prosecute any offender.

(3) The Police shall forward to the Secretary full details of any complaint referred to them.

20. Fines and Fees - All fines and fees that may be collected under any bylaw or ordinance shall become part of the funds of the Island Council and shall form part of the revenues thereof.

PART IV OFFICERS OF THE COUNCIL

21. Clerk of the Island Council - There shall be on every island a Clerk of the Island Council for that Island.

22. Minutes - The Clerk of each Island Council shall cause to be kept the minutes for every meeting of the Island Council and shall transmit a copy of all minutes to the Secretary.

23. Accounts of the Island Council - Accounts of the Island Council shall be kept by the Office of the Chief Administration Officer.

24. Other employees - (1) Each Island Council may appoint such other employees as are deemed necessary for the efficient performance of the Council's functions.

(2) All employees appointed under this section shall be paid such wages or salaries from the Island Council funds as are agreed to by the Island Council.

PART V FINANCIAL PROVISIONS

25. Subsidy payable to Island Councils - There shall be payable to each Island Council in respect of each financial year by way of subsidy such sum as may be appropriated by Parliament.

26. Remuneration of Island Council members - (1) Members of each Island Council elected pursuant to sections 8 and 9 and the Ariki of the island shall receive such remuneration as may be determined from time to time by Order in Executive Council and such remuneration shall be paid out of the funds of the Island Council.

(2) Remuneration paid to elected members and the Ariki of the Island, shall notwithstanding any regulations made pursuant to subsection (1), be increased from time to time in accordance with any general increase in salary granted to members of the public service.

27. Island Council Funds - (1) There shall be a fund for each Island Council which shall consist of the following monies,-

- (a) Such subsidies as may be paid under section 25 of this Act.
- (b) All revenues of the Island Council from fees, services, charges, fines, contributions, subscriptions, rents, and other monies paid pursuant to any bylaw.
- (c) Such other monies as may be appropriated by Parliament.

(2) All monies forming part of the Island Council Fund shall be deposited in the Post Office Savings Bank and shall be kept in an account to be known as "(Name of Island) Island Council Account".

(3) No monies shall be withdrawn from the Island Council Account save pursuant to a resolution of that Island Council duly certified as correct on each withdrawal authority from the Post office Savings Bank Account by either the Mayor and Chief Administration Officer or by one other elected member of the Island Council, the Clerk of the Island Council and the Chief Administration Officer.

28. Accounting for Island Council Funds - (1) All monies forming part of the Island Council Fund and any buildings, machinery and other equipment or stores belonging to the Island Council shall, except as provided in subsection (2), be deemed not to be public money and stores as the case may be, within the meaning of the Public Money and Stores Act 1987, but shall be subject to audit by an auditor approved by the Minister.

(2) All money forming part of the Island Council funds pursuant to paragraphs (a) and (c) of subsection (1) of section 27 shall be subject to such accounting requirements as the Financial Secretary may from time to time in writing direct.

29. Estimates - Each Island Council shall in January each year submit to the Secretary estimates of all receipts and expenditure by the Island Council for the forthcoming financial year.

30. Restriction on expenditure - (1) Where the Chief Administration Officer considers any expenditure by the Island Council to be outside the Island Council's authority or unnecessary or unwarranted he may withhold the expenditure of such funds.

(2) Where any Chief Administration Officer exercises the power to withhold expenditure of funds conferred upon him by subsection (1) of this section he shall send full details of the matter to the Minister.

(3) Where any Island Council has had any expenditure withheld under subsection (1) of this section the Island Council may by resolution appeal to the Minister whose decision shall be final.

PART VI.
MISCELLANEOUS PROVISIONS

31. Disability of member of Island Council having interest in matter under consideration - No member of any Island Council shall vote or take part in the discussion of any matter before a meeting of an Island Council in which the member has directly or indirectly any pecuniary interest apart from an interest in common with the public.

32. Liability of members of Island Councils - No member of any Island Council shall be personally liable for any act or default of the Island Council done or omitted to be done in good faith in exercise of the Council's powers and authorities.

33. Privileges of members of Island Councils - (1) No member of an Island Council or any other person entitled to speak at any meeting or proceedings of the Council shall be liable to any proceedings in any Court in respect of anything said or any vote given by him at such meeting or proceeding of the Council.

(2) No person shall be liable to any proceedings in any Court in respect of the publication by or under the authority of an Island Council of any report, paper, vote or proceeding.

34. Taxation - The income of every Island Council shall be exempt from income tax and turnover tax.

35. Power to borrow - Every Island Council may borrow such monies on such terms and conditions as the Minister may approve and in no other manner.

36. Regulations - (1) The Queen's Representative may by Order in Executive Council make all such regulations as may be deemed necessary for giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the generality of subsection (1), the Queen's Representative may by Order in Executive Council amend the First Schedule by adding thereto in respect of any island, a constituency or constituencies.

(3) Every Order made pursuant to subsection (2) shall come into force on a date to be specified therein and if on a date within 2 years and 6 months from the date of the last elections held in accordance with the provisions of section 9 for all constituencies, there shall be a by-election for the constituency in respect of which the Order applies but otherwise there shall be an election in the month of April next ensuing.

(4) Regulations made under this section may prescribe offences against the regulations and may be punishable by imprisonment for a term not exceeding three months or a fine not exceeding \$200 or both.

(5) All regulations made under this section shall be laid before Parliament within fourteen days after the making

thereof if Parliament is in Session and, if not in Session, shall be laid before Parliament within fourteen days after the date of commencement of the next ensuing Session.

37. Application and savings - (1) Parts I and IV of the Local Government Act 1966 and sections 51 and 52 of the Cook Islands Amendment Act 1957 shall not apply to any of the Islands of the Cook Islands except Rarotonga.

(2) Notwithstanding the repeal by this Act of the enactments specified in the Second Schedule, the last duly appointed Island Council of any Island to which this Act applies shall continue in existence as if appointed under this Act until the time appointed under this Act for the next election of members to the Island Council and shall have all the functions, powers and authorities imposed on Island Councils pursuant to this Act.

38. Repeals - The enactments specified in the Second Schedule are hereby repealed.

This Act shall be administered in the
Department of Outer Islands Affairs.

FIRST SCHEDULEec.5 CONSTITUENCIES AND NUMBER OF ELECTED MEMBERSec.9

<u>First Column</u>	<u>Second Column</u>	<u>Third Column</u>
<u>Name of Island</u>	<u>Constituencies</u>	<u>Number of Elected Members</u>
Angaia	(1) The Village of Ivirua	1
	(2) The Village of Tamarua	1
	(3) The Village of Karanga	1
	(4) The Village of Tavaenga	1
	(5) The Village of Veitatei	1
	(6) The Village of Keia	1
	Total for the Island	<u>6</u>
Titutaki	(1) The Village of Amuri	1
	(2) The Village of Ureia	1
	(3) The Village of Arutanga	1
	(4) The Village of Reureu	1
	(5) The Village of Nikaupara	1
	(6) The Village of Vaipae	1
	(7) The Village of Tautu	1
Total for the Island	<u>7</u>	
Tiu	(1) The Village of Ngatiarua	1
	(2) The Village of Tengatangi	1
	(3) The Village of Mapumai	1
	(4) The Village of Areora	1
	(5) The Village of Teenui	1
Total for the Island	<u>5</u>	
Tauke	(1) The Village of Avaavaroa	1
	(2) The Village of Parai	1
	(3) The Village of Makatea	1
	(4) The Village of Areora	1
	(5) The Village of Ngatiarua	1
Total for the Island	<u>5</u>	
Titiaro	(1) The Village of Atai	1
	(2) The Village of Takaue	1
	(3) The Village of Mangarei	1
	(4) The Village of Auta	1
Total for the Island	<u>4</u>	
Trenrhyn	(1) The Villae of Omoka	3
	(2) The Village of Tetautua	2
Total for the Island	<u>5</u>	
Tanihiki	(1) The Village of Tauhunu	3
	(2) The Village of Tukao	2
Total for the Island	<u>5</u>	

Rakahanga	(1)	The Village of Purapoto	1
	(2)	The Village of Niteiri	1
	(3)	The Village of Numahanga	1
	(4)	The Village of Teruakiore	1
	(5)	The Village of Matara	<u>1</u>
		Total for the Island	<u>5</u>
Palmerston	(1)	The Te Matauia Line	1
	(2)	The Te Pou Line (Tinioi)	1
	(3)	The Te Tata Line (Sela)	<u>1</u>
			<u>3</u>

SECOND SCHEDULE

Section 38 - Enactments repealed

Outer Islands Local Government Act 1976
 Outer Islands Local Government Amendment Act 1980
 Outer Islands Local Government Amendment Act 1984
