

## Constitution of the Cook Islands

### Interpretation

1 (1) In this Constitution, unless the context otherwise requires—

"Act" means an Act of the [Parliament] of the Cook Islands;

"Cabinet" means the Cabinet of Ministers of the Cook Islands;

"Constitution" means this Constitution; and includes any amendment thereof;

"Constitution Day" means the date appointed for the commencement of this Constitution;

"The Cook Islands" means all islands in the South Pacific Ocean lying between the 8th and 23rd degrees of south latitude and the 156th and 167th degrees of longitude west of Greenwich; and each island of the Cook Islands shall be deemed to include all smaller islands lying within 10 miles of the coasts thereof;

["Court of Appeal" means the Court of Appeal of the Cook Islands established under this Constitution;]

"Enactment" means any Act of the [Parliament] of the Cook Islands, any Ordinance, any Act of Parliament of New Zealand in force in the Cook Islands, and any Proclamation, order, regulation, or rule, or any Island Council Ordinance or bylaw;

"Executive Council" means the Executive Council of the Cook Islands established under this Constitution;

"Existing law" means any law in force in the Cook Islands immediately before Constitution Day; and includes any enactment passed or made before Constitution Day and coming into force on or after Constitution Day;

"High Court" means the High Court of the Cook Islands established under this Constitution;

"Law" means any law for the time being in force in the Cook Islands; and includes this Constitution and any enactment;

"Legislative Assembly" or "Assembly" where it appears in this Constitution or any other enactment means the [Parliament] of the Cook Islands established under this Constitution;

["Minister" means a Minister of the Government of the Cook Islands; and includes the Prime Minister];

"New Zealand" means New Zealand exclusive of the Cook Islands;

"Ordinance" means an Ordinance of the Legislative Assembly of the Cook Islands made before Constitution Day and continuing in force on and after Constitution Day;

["Parliament"] means the [Parliament] of the Cook Islands established under this Constitution, and the term "Legislative Assembly" or "Assembly" where it appears in this Constitution or in any other enactment shall have the same meaning;

["Prime Minister" means the Prime Minister of the Cook Islands];

["Queen's Representative" means the representative of Her Majesty the Queen in the Cook Islands appointed under Article 3 hereof];

["To reside", in relation to the Cook Islands or to any constituency in the Cook Islands, means to have a usual place of abode in the Cook Islands, or, as the case may be, in that constituency, notwithstanding any temporary absence for the purpose of undergoing a course of education or of technical training or instruction, and notwithstanding any occasional absence, for any period not exceeding three months, for any other purpose and "resident" and "residing" have corresponding meanings].

(2) Where under the provisions of this Constitution any person is required to subscribe an oath, he shall be permitted, if he so desires, to comply with that requirement by taking and subscribing an affirmation.

(3) Where in this Constitution reference is made to the functions of any office, that reference shall, unless the context otherwise requires, be construed as a reference to the functions of that office and to any powers and authorities that may lawfully be exercised by, and any duties that may be required to be performed by, the holder of that office.

"Act": The word "Parliament" was substituted for the words "Legislative Assembly" by s 2(1) of the Constitution Amendment (No

9) Act 1980-81 (CI)

"Court of Appeal": This definition was inserted by s 2(2) of the Constitution Amendment (No 9) Act 1980-81 (CI)

"Enactment": The word "Parliament" was substituted for the words "Legislative Assembly" by s 17(4) of the Constitution Amendment (No 9) Act 1980-81 (CI)

"High Commissioner": A definition of this term was repealed by s 4(2) (a) of the Constitution Amendment (No 10) Act 1981-82 (CI)

"Land Appellate Court": A definition of this term was repealed by s 2(2) of the Constitution Amendment (No 9) Act 1980-81 (CI)

"Land Court": A definition of this term was repealed by s 2(2) of the Constitution Amendment (No 10) Act 1981-82 (CI)

"Legislative Assembly" or "Assembly": This definition was substituted by s 2(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

"Minister": This definition was inserted by s 2(5) of the Constitution Amendment (No 9) Act 1980-81 (CI)

"Prime Minister": This definition was inserted by s 2(6) of the Constitution Amendment (No 9) Act 1980-81 (CI)

"Queen's Representative": This definition was added by s 4(2) of the Constitution Amendment (No 10) Act 1981-82 (CI)

"To reside": This definition was inserted by s 2(7) of the Constitution Amendment (No 9) Act 1980-81 (CI)

## PART I THE GOVERNMENT OF THE COOK ISLANDS

### The Head of State

2 Her Majesty the Queen in right of New Zealand shall be the Head of State of the Cook Islands.

### THE QUEEN'S REPRESENTATIVE

#### The Queen's Representative in the Cook Islands

3 (1) There shall be a representative of Her Majesty the Queen in the Cook Islands, to be known as the Queen's Representative.

(2) The Queen's Representative shall be appointed by Her Majesty the Queen, and shall hold office for a period of three years, and may from time to time

be reappointed.

The heading preceding this Article was substituted for the heading "The High Commissioner of the Cook Islands" and this Article was substituted for the original Article 3 by s 2 of the Constitution Amendment (No 10) Act 1981-82 (CI)

## **Oath of Office**

4 The [Queen's Representative] shall before assuming the functions of his office, take and subscribe before the [Chief Justice] of the High Court the following oath-

I, ....., swear by Almighty God that I will be faithful and bear true allegiance to Her [or His] Majesty [Specify the name of the reigning Sovereign as thus: Queen Elizabeth the Second] as the Head of State of the Cook Islands, heirs and successors, according to law, and that I will uphold the dignity of the office of Queen's Representative, and will justly and faithfully carry out my duties in the administration of the Cook Islands in accordance with the Constitution and the law. So help me God.

The words "Queen's Representative" were substituted for the words "High Commissioner" and also for the words "High Commissioner of the Cook Islands" by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

The words "Chief Justice" were substituted for the words "Chief Judge" by s 2(a) of the Constitution Amendment (No 7) Act 1975 (CI)

## **Queen's Representative to act on advice**

5 (1) Except as otherwise provided in this Constitution, the [Queen's Representative] in the performance of his functions as the representative of Her Majesty the Queen shall act on the advice of Cabinet, the [Prime Minister], or the appropriate Minister, as the case may be.

(2) If the Cabinet, the [Prime Minister], or an appropriate Minister tenders advice to the [Queen's Representative] as to the performance of any function as the representative] of Her Majesty the Queen and if the [Queen's Representative] does not, within 14 days after the date on which the tendering

of that advice comes to his notice, accept that advice or take some other action in relation thereto which he is entitled to take under the provisions of this Constitution or any other law, the [Queen's Representative] shall be deemed to have accepted that advice; and an instrument under the hand of the Secretary of the Cabinet, acting on the instruction of the [Prime Minister], to that effect shall operate as to the performance of the function concerned in accordance with that advice.

The words "Queen's Representative" were substituted for the words "High Commissioner" in the heading to this Article, in subcl (1), and in three places in subcl (2) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (C. I.)

The words "Prime Minister" were substituted for the word "Premier" in subcl (1) and in two places in subcl (2) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

### **Information to Queen's Representative**

6 It shall be the duty of the [Prime Minister]-

(a) To arrange for the circulation to the [Queen's Representative] of the copies of the agenda and minutes of Cabinet and all other papers laid before Cabinet at the time when they are circulated to Ministers; and

(b) To furnish such information relating to the affairs of the Cook Islands and proposals for legislation as the [Queen's Representative] may call for.

The words "Queen's Representative" were substituted for the words "High Commissioner" in the heading to this Article and in paras (a) and

(b) s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

The words "Prime Minister" were substituted for the word "Premier" by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

### **[Deputy of the Queen's Representative**

7 (1) Whenever the office of Queen's Representative is vacant or the holder of that office is absent from the Cook Islands or is for any reason unable to perform any functions conferred on him by law, those functions shall be performed by the Chief Justice of the Cook Islands, or, if the Chief Justice is also for any reason unable to act, those functions shall be performed by

the Judge of the High Court authorised by Article 50 hereof to exercise the functions of the Chief Justice.

(2) Nothing in this Article shall preclude the Queen's Representative from performing at any time when he is absent from the Cook Islands any of the functions conferred on him by law.

(3) No act done by the Chief Justice of the Cook Islands, or by the Judge of the High Court exercising the functions of the Chief Justice, in the performance of any function of the Queen's Representative shall be questioned or invalidated on the ground that the occasion therefor had not arisen or had ceased.]

Article 7 was substituted by s 3 of the Constitution Amendment (No 10) Act 1981-82 (CI)

## THE HOUSE OF ARIKIS OF THE COOK ISLANDS

### The House of Arikis of the Cook Islands

8 (1) There shall be a House of Arikis of the Cook Islands (hereinafter referred to as the House of Arikis).

(2) The House of Arikis shall comprise the following members-

(a) One Ariki representing the Island of Aitutaki and the Island of Manuae;

(b) One Ariki representing the Island of Atiu;

(c) One Ariki representing the Island of Mangaia;

(d) One Ariki representing the Island of Manihiki and the Island of Rakahanga;

Provided that provision may be made by law for the appointment of one Ariki as representing the Island of Manihiki and one Ariki as representing the Island of Rakahanga;

(e) One Ariki representing the Island of Mauke;

(f) One Ariki representing the Island of Mitiaro;

(g) One Ariki representing the Island of Penrhyn;

(h) One Ariki representing the Island of Pukapuka and the Island of Nassau;

(i) Such number of Arikis representing the Island of Rarotonga and the Island of Palmerston, being not more than 6, as is prescribed by law.

(3) Subject to the provisions of this Article, the members of the House of Arikis shall be appointed by the [Queen's Representative].

(4) If there is for the time being only one Ariki for any of the islands or groups of islands specified in paragraphs (a) to (h) of subclause (2) of this Article, that Ariki shall be appointed to be a member of the House of Arikis as representing that island or group; but if there are 2 or more Arikis for any such island or group, the [Queen's Representative] shall appoint the Ariki for that island or group who is nominated for appointment in the manner prescribed by law.

(5) If there are for the time being not more than the number of Arikis prescribed by law to be appointed as representing the group of islands comprising the Islands of Rarotonga and Palmerston, those Arikis shall be appointed to be members of the House of Arikis as representing that group; but, if there are more than the number so prescribed, the [Queen's Representative] shall appoint the Arikis for that group who are nominated for appointment in the manner prescribed by law.

(6) Subject to the provisions of this Article, the qualifications of Arikis, the qualification and disqualification of members of the House of Arikis, and the terms and conditions of their membership shall be as prescribed by law.

(7) If any vacancy occurs in the office of a member of the House of Arikis, the vacancy shall be filled in the same manner as an appointment to that office, and the appointee shall hold office for the unexpired portion of the term of office of his predecessor.

The words "Queen's Representative" were substituted for the words "High Commissioner" in subclauses' (3), (4) and (5) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

## Functions of House of Arikis

9 The House of Arikis shall have the following functions-

(a) It shall consider such matters relative to the welfare of the people of the Cook Islands as may be submitted to it by [Parliament] for its consideration, and it shall express its opinion and make recommendations thereon to [Parliament]; and

(b) It shall have such other functions as may be prescribed by law.

The word "Parliament" was substituted for the words "the Legislative Assembly" in para (a) (in two places) by s 6 of the Constitution Amendment (No 9) Act 1980-81 (CI)

### **Members to take Oath of Allegiance**

10 Except for the purpose of enabling this Article to be complied with, no member of the House of Arikis shall be permitted to sit or vote therein until he has taken and subscribed the following oath before the [Queen's Representative] namely:

I,....., swear by Almighty God that I will be faithful and bear true allegiance to Her [or His] Majesty [Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second] as the Head of State of the Cook Islands Her [or His] heirs and successors, according to law, and that I will justly and faithfully carry out my duties as a member of the House of Arikis of the Cook Islands. So help me God.

The words "Queen's Representative" were substituted for the words "High Commissioner" by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

### **Attendance of [Prime Minister] and other persons at House of Arikis**

11 (1) The [Prime Minister] may, at any time, attend and address the House of Arikis.

(2) A Minister or a person appointed in that behalf by a Minister may attend the proceedings of the House of Arikis when any matter for which the Minister is responsible is under consideration by the House.



(3) The presiding member of the House of Arikis, when in his opinion any matter before the House makes it desirable, may invite any member of [Parliament] to attend meetings of the House relating to that matter.

(4) A person attending the proceedings of the House of Arikis by virtue of the provisions of subclause (2) or subclause (3) of this Article shall be entitled to take part in the proceedings of the House relating to the matter for which the Minister has responsibility or in respect of which he was invited to attend, as the case may be, as if he were a member of the House:

Provided that he shall not be entitled to vote in the House or any of its committees.

The words "Prime Minister" were substituted for the word "Premier" in the heading and in subcl (1) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

The word "Parliament" was substituted for the words "the Legislative Assembly" by s 6 of the Constitution Amendment (No 9) Act 1980-81 (CI)

## Procedure

11A (1) The House of Arikis shall be presided over by one of its members, who shall be elected by the members of the House in the manner prescribed by law and shall hold office for such period and subject to such conditions as may be prescribed by law.

(2) The House of Arikis shall meet in Rarotonga at such times as may be prescribed by law:

Provided that the House of Arikis shall meet at least once in every period of 12 months.

(3) Meetings of the House of Arikis shall be summoned by the [Queen's Representative], acting on the advice of the [Prime Minister].

(4) No business shall be transacted at any meeting of the House of Arikis if the number of members present is less than 8.

(5) Subject to the provisions of this Constitution and to the provisions of any law, the House of Arikis may from time to time make, amend, and repeal Standing Orders for the regulation and orderly conduct of its proceedings and the dispatch of business.

(6) Subject to the provisions of this Article and to the provisions of any law, the House of Arikis shall determine its own procedure.

(7) The House of Arikis shall not be disqualified for the transaction of any business by reason of any vacancy among its members, and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the House or otherwise took part in the proceedings.

The words "Queen's Representative" were substituted for the words "High Commissioner" by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI).

### **Privileges of House of Arikis and its members**

11B Provision may be made by law for the application to the House of Arikis, its members and officers, persons entitled to speak therein, and persons publishing by or under the authority of the House any report, paper, vote, or proceeding of any of the provisions of any law for the time being in force relating to the privileges and immunities of [Parliament], its members and officers, persons entitled to speak therein, and any persons publishing by or under the authority of [Parliament] any report, paper, vote, or proceeding.

The word "Parliament" was substituted for the words "the Legislative Assembly" and also for the words "the Assembly" by S. 6 of the Constitution Amendment (No 9) Act 1980-81 (CI).

## **PART II THE EXECUTIVE GOVERNMENT OF THE COOK ISLANDS**

### **Executive authority**

12 (1) The executive authority of the Cook Islands shall be vested in Her Majesty the Queen in right of New Zealand.

(2) Subject to the provisions of this Constitution, the executive authority of the Cook Islands may be exercised on behalf of Her Majesty by the [Queen's Representative] either directly or through officers subordinate to him.

(3) Nothing in this Article shall prevent [Parliament] from conferring functions on persons or authorities other than the [Queen's Representative].

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (2) and (3) by s 4(1) of the

Constitution Amendment (No 10) Act 1981-82 (CI)

The word "Parliament" was substituted for the words "the Legislative Assembly" in subcl (3) by s 6 of the Constitution Amendment ('No 9) Act 1980-81 (CI).

## CABINET

### Cabinet

13 [(1) There shall be a Cabinet of Ministers, comprising the [Prime Minister] of the Cook Islands (who shall preside over Cabinet) and not fewer than 6 nor more than 8 other Ministers, which shall have the general direction and control of the executive government of the Cook Islands, and shall be collectively responsible to Parliament.]

(2) The [Prime Minister] shall be appointed as follows-

(a) If the appointment is to be made while [Parliament] is in session, the [Queen's Representative] shall appoint as [Prime Minister] a member of [Parliament] who commands the confidence of a majority of the members of [Parliament].

(b) If the appointment is to be made while [Parliament] is not in session, the [Queen's Representative] shall appoint as [Prime Minister] a member of [Parliament] who in the opinion of the [Queen's Representative], acting in his discretion, is likely to command the confidence of a majority of the members of [Parliament].

(c) If the appointment is to be made after a dissolution of [Parliament] and before the holding of a general election of [Parliament] following that dissolution, the [Queen's Representative] shall appoint as [Prime Minister] a person who was a member of [Parliament] immediately before that dissolution and who in the opinion of the [Queen's Representative], acting in his discretion, is likely to command the confidence of a majority of the persons who were members of [Parliament] immediately before that dissolution:

Provided that where [Parliament] has been dissolved pursuant to subclause (2) of Article 37 hereof, the [Queen's Representative] shall appoint as [Prime Minister] a person who was a member of [Parliament] immediately before that

dissolution and who in the opinion of the [Queen's Representative] acting in his discretion, is capable of performing the functions of the [Prime Minister].

(3) The Ministers other than the [Prime Minister] shall be appointed by the [Queen's Representative] on the advice of the [Prime Minister]. No person shall be so appointed unless-

(a) He is a member of [Parliament]; or

(b) If the appointment is to be made after a dissolution of [Parliament] and before the holding of the general election of [Parliament] following that dissolution, he was a member of [Parliament] immediately before that dissolution; or

(c) If the appointment is to be made after the holding of a general election of [Parliament] and before the commencement of the first session of [Parliament] following that election, he was elected as a member of [Parliament] at that election.

(4) Appointments under the provisions of this Article shall be made by instrument under the Seal of the Cook Islands.

(5) If any employee of the Cook Islands Public Service is appointed to be a Minister, he shall forthwith be deemed to have vacated his office as an employee of that Service.

Subclause (1) was substituted by section 2 of the Constitution Amendment (No 14) Act 1991

The words "Prime Minister" were substituted for the word "Premier" in subcl (1), in subcl (2) (in six places), and in subcl (3) (in two places) by s 18(2) of the Constitution Amendment (No 9) Act 1980-81 (CI).

The word "Parliament" was substituted for the words, "the Legislative Assembly" in subcls (2) (in four places), and (3) (in three places) and also for the words "the Assembly" in subcls (2) (in eight places) and (3) (in three places) by s 6 of the Constitution Amendment (No 9) Act 1980-81 (CI)

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (2) (in seven places) and (3) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

## **Duration of office of members of Cabinet**

14 [(1) The appointment of the Prime Minister who is in office immediately

before the date of the holding of a general election of Parliament may be terminated by the Queen's Representative after the date of that election and before the date of the commencement of the first session of Parliament following that election if it appears to the Queen's Representative, acting in his discretion, that the Prime Minister is unlikely to command the confidence of a majority of the members of Parliament.]

(2) Repealed by section 2(b) of the Constitution Amendment (No 15) Act 1993.

(3) The appointment of the [Prime Minister] shall also be terminated by the [Queen's Representative]—

(a) If the [Prime Minister] ceases to be a member of [Parliament] for any reason other than the dissolution of [Parliament]; or

(b) If [Parliament] passes a motion in express words of no confidence in Cabinet or if Cabinet is defeated on any question or issue which the [Prime Minister] has declared to be a question or issue of confidence:

Provided that, if after the passing of such motion or after that defeat the [Prime Minister] so requests, the [Queen's Representative], acting in his discretion, may dissolve [Parliament] instead of terminating the appointment of the [Prime Minister]; or

(c) If the [Prime Minister] resigns his office by writing under his hand delivered to the [Queen's Representative]; or

(d) If the [Prime Minister] is absent from the Cook Islands otherwise than on official business for a period of more than 3 months without written authority given by the [Queen's Representative], acting in his discretion.

(4) The office of any other Minister shall become vacant—

(a) If the appointment of the [Prime Minister] has been terminated under the provisions of subclause (1) or subclause (2) or subclause (3) of this Article; or

(b) If the appointment of the Minister to that office is revoked by the [Queen's Representative], acting on the advice of the [Prime Minister], by instrument under the Seal of the Cook Islands; or

(c) If the Minister ceases to be a member of [Parliament] for any reason other than the dissolution of Parliament; or

(d) If the Minister resigns his office by writing under his hand delivered to the [Queen's Representative].

(5) Whenever, by reason of illness or of absence from the Cook Islands, the [Prime Minister] is temporarily prevented from performing, in the Cook Islands, the functions of his office, the [Queen's Representative] may, by instrument under the Seal of the Cook Islands, appoint another Minister to perform those functions until such time as the [Prime Minister] is capable of again performing them or has vacated his office.

(6) The power conferred on the [Queen's Representative] under the provisions of subclause (5) of this Article shall be exercised by the Queen's Representative], acting in his discretion, if in his opinion it is impracticable to obtain the advice of the [Prime Minister] by reason of the illness or absence of the [Prime Minister], and, in any other case, shall be exercised by the [Queen's Representative], acting on the advice of the [Prime Minister].

(7) The [Queen's Representative], acting on the advice of the [Prime Minister], may, by instrument under the Seal of the Cook Islands—

(a) Declare a Minister to be by reason of illness temporarily incapable of performing his functions as a Minister; or

(b) Suspend a Minister during the period of any investigation or inquiry into the conduct of that Minister.

(8) Any Minister in respect of whom action has been taken under the provisions of subclause (7) of this Article shall not perform any of the functions of his office or sit in or otherwise take part in the proceedings of Cabinet or of the Executive Council until the [Queen's Representative], acting on the advice of the [Prime Minister], has revoked the aforesaid instrument under the Seal of the Cook Islands.

Subclause (1) was substituted by section 2(a) of the Constitution Amendment (No 15) Act 1993

Subclause (2) was repealed by section 2(b) of the Constitution Amendment (No 15) Act 1993

The words "Prime Minister" were substituted for the word "Premier" in subcl (2) (in two places), (3) (in seven places), (4) (8) by s 3(3) of the Constitution Amendment (No 9) Act 1980–81 (CI)

The word "Parliament" was substituted for the words, "the

Legislative Assembly" in subcls (1), (in two places), (2), (3) (in three places) and (4) and also for the words "the Assembly" in subcls (1) (3) and (4) by s 6 of the Constitution Amendment (No 9) Act 1980-81 (CI)

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (1), (2), (3) (in four places), (4) (in two places), (5), (6) (in three places), (7), and (8) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

## **Official Oath**

15 Every Minister shall, before assuming the functions of his office, take and subscribe before the [Queen's Representative] the following oath:

I,....., being chosen and accepted as [Prime Minister] (or a Minister) and member of Cabinet, swear by Almighty God that I will to the best of my judgement, at all times when thereto required, freely give my counsel and advice to the [Queen's Representative], for the good management of the affairs of the Cook Islands and that I will not directly or indirectly reveal such matters as shall be debated in Cabinet and committee and in Executive Council and committed to my secrecy, but that I will in any such things be a true and faithful [Prime Minister] (or Minister). So help me God.

The words "Prime Minister" were substituted for the word "Premier" in subcls (1) and (2) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI).

## **Assignment of responsibilities to Ministers**

16 (1) The [Prime Minister] may, by direction in writing under his hand-

(a) Charge any Minister with the responsibility for any Department or subject; and

(b) Revoke or vary any direction given under the provisions of this subclause.

(2) The [Prime Minister] may retain in his charge any Department or subject.

The words "Prime Minister", were substituted for the word "Premier" (in two places) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81) (CI)

For the manner in which the Attorney-General is appointed, see the Crown Law Office Act 1980

## **Summoning of Cabinet**

17 Cabinet shall be summoned only by the [Prime Minister], or in his absence, by such Minister as the [Prime Minister] appoints in that behalf.

The words "Prime Minister" were substituted for the word "Premier" (in two places) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81) (CI)

## **Cabinet procedure**

18 (1) Subject to the provisions of this Constitution, Cabinet may regulate its procedure (including the fixing of a quorum) in such manner as it thinks fit.

(2) Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in the number of its members, and any proceedings of Cabinet shall be valid notwithstanding that some person who was not entitled to do so sat or voted in Cabinet or otherwise took part in the proceedings.

(3) It shall be the duty of the Prime Minister], if the [Queen's Representative], acting in his discretion, so requires, to submit for the consideration of Cabinet any matter on which a decision has been taken by a Minister (including the [Prime Minister]) but which has not been considered by Cabinet.

(4) A decision of Cabinet shall be recorded in minutes, which shall, under the hand of the Secretary of the Cabinet, be communicated to the [Queen's Representative] within 48 hours of the making of the decision or, if the decision is one to which paragraph (c) of subclause (1) of Article 19 hereof applies, within 24 hours of the making of the decision.

(5) A decision of Cabinet shall not take effect except under the provisions of Article 19 hereof.

The words "Prime Minister" were substituted for the word "Premier"



(in two places) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81) (CI)

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (3) and (4) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

### **When decision of Cabinet takes effect**

19 (1) A decision of Cabinet shall take effect-

(a) On its approval by the [Queen's Representative], acting in his discretion; or

(b) On the expiry of 4 days after the date of the decision, unless a meeting of the Executive Council is sooner held under the provisions of Article 25 hereof; or

(c) If the issue involved in the decision is, in the opinion of Cabinet, of extreme urgency, on the expiry of 2 days after the date of the decision, unless a meeting of the Executive Council is sooner held under the provisions of Article 25 hereof; or

(d) Under the provisions of Article 25 hereof.

(2) For the purposes of paragraphs (b) and (c) of subclause (1) of this Article, the date of a decision of Cabinet shall be the date on which the minutes in which the decision is recorded are communicated to the [Queen's Representative] under the provisions of subclause (4) of Article 18 hereof.

(3) An instrument under the hand of the Secretary of the Cabinet certifying that a decision of Cabinet has taken effect shall be conclusive evidence that that decision has taken effect.

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (1) and (2) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

### **Secretary to the Cabinet**

20 [There shall be a Secretary to the Cabinet, who shall be appointed under Article 74BB hereof.]

Article 20 was substituted by s 4 of the Constitution Amendment (No 9) Act 1980-81 (CI)

### **One Minister may act for another**

21 In this Constitution and in every enactment, unless the context otherwise requires, words directing or empowering any Minister to do any act or thing, or otherwise applying to him by his title of office, include any other Minister acting for, or, if the office is vacant, in the place of that first-mentioned Minister, and also his successors in that office.

### **Executive Council**

22 (1) There shall be an Executive Council of the Cook Islands, which shall consist of-

- (a) The [Queen's Representative]; and
- (b) The members of Cabinet.

(2) No business shall be transacted at any meeting of the Executive Council unless there are present the [Queen's Representative] and at least 3 members of Cabinet or, if there are for the time being only 4 members of Cabinet, unless there are present the [Queen's Representative] and at least 2 members of Cabinet.

(3) Subject to the provisions of this Constitution, the Executive Council may regulate its procedure in such manner as it thinks fit.

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls(1) and (2) (in two places) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

### **Clerk of the Executive Council**

23 The Secretary to the Cabinet shall also be the Clerk of the Executive Council.

### **Meetings of Executive Council**

24 The Executive Council shall be summoned only by the [Queen's Representative], acting in his discretion, or by the [Prime Minister].

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcl (3) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

The words "Prime Minister" were substituted for the word "Premier" by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

### **Consideration of Cabinet decisions by Executive Council**

25 (1) A meeting of the Executive Council may be summoned to consider any decision recorded in the minutes of a Cabinet meeting.

(2) If at a meeting of the Executive Council thus summoned the [Queen's Representative], acting in his discretion, concurs in the decision concerned, that decision shall take effect as a decision of Cabinet.

(3) If at a meeting of the Executive Council thus summoned the [Queen's Representative], acting in his discretion, does not concur in the decision concerned or requests any amendment thereto, Cabinet shall thereupon be summoned under the provisions of Article 17 hereof and requested to reconsider that decision.

(4) If Cabinet after that reconsideration reaffirms its original decision or accepts the amendment requested by the [Queen's Representative], the original decision or the decision as so amended, as the case may be, shall forthwith take effect as a decision of Cabinet.

(5) If Cabinet, after the reconsideration adopts a decision which incorporates an amendment to its original decision, other than an amendment requested by the [Queen's Representative], the decision as so amended shall operate as a new decision of Cabinet to which the provisions of subclauses (4) and (5) of Article 18 hereof shall apply.

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (2), (3), (4) and (5) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

**THE SEAL OF THE COOK ISLANDS**

**Seal of the Cook Islands**

26 (1) There shall be a Public Seal of the Cook Islands (in this Constitution referred to as the Seal of the Cook Islands), to be in such form or forms as the Executive Council from time to time approves.

(2) The Seal shall be in the custody of the [Queen's Representative].

(3) The Seal may be used by the [Queen's Representative] for the authentication of any public document in relation to the government of the Cook Islands or for the execution of any document required by law to be executed under the Seal of the Cook Islands.

(4) Judicial notice shall be taken of the Seal in all Courts in the Cook Islands and in New Zealand (including Niue and the Tokelau Islands).

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (2) and (3) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

### **PART III THE PARLIAMENT OF THE COOK ISLANDS**

Part 111 was substituted for the original Part 111 (except Article 41) by s 5 of the Constitution Amendment (No 9) Act 1980-81 (CI). The original Article 41 was not repealed by that section, and continues in force.

#### **[The Parliament of the Cook Islands**

27 (1) There shall be a sovereign Parliament for the Cook Islands, to be called the Parliament of the Cook Islands.

[(2) Parliament shall consist of 25 members, to be elected by secret ballot under a system of universal suffrage by the electors of the following islands or group of islands or areas and in the following numbers-]

(a) The Island of Aitutaki and the Islands of Manuae and Te-Au-0-Tu, 3 members, being 1 member for each of the 3 constituencies together comprising those islands, having the names and boundaries set out in Part I of the First Schedule to this Constitution;

(b) The Island of Atiu, 2 members, being 1 member for each of the 2 constituencies having the names and boundaries set out in Part IV of the First Schedule to this Constitution;

(c) The Island of Mangaia, 3 members, being 1 member for each of the 3 constituencies having the names and boundaries set out in Part III of the First Schedule to this Constitution;

(d) The Island of Manihiki, 1 member;

(e) The Island of Mauke, 1 member;

(f) The Island of Mitiaro, 1 member;

(g) The Island of Penrhyn, 1 member;

(h) The Island of Pukapuka and the Island of Nassau, 1 member;

(i) The Island of Rakahanga, 1 member;

(j) [The Island of Rarotonga and the Island of Palmerston, 10 members, being 1 member for each of the 10 constituencies together comprising those islands, having the names and boundaries set out in Part II of the First Schedule to this Constitution;]

(k) The Islands comprising New Zealand and all other areas outside the Cook Islands, 1 member (that constituency being hereinafter referred to as the Overseas Constituency).

(3) Subject to this Article and Articles 28, 28A, 28B, and 28C and 28D hereof, the qualifications and disqualifications of electors and candidates, the mode of electing members of Parliament, and the terms and conditions of their membership shall be as prescribed by Act.

Subclause (2) of this Article was substituted by section 3 of the Constitution Amendment (No 14) Act 1991

Paragraph (j) of subclause (2) was substituted by section 3(2) of the Constitution Amendment (No 14) Act 1991

### [Qualification of electors

28 (1) Without limiting the provisions of any law prescribing any additional qualifications not inconsistent with any provision of this Constitution, a

person shall be qualified to be an elector for the election of a Member of Parliament for any constituency other than the Overseas Constituency, if, and only if-

(a) He is a Commonwealth citizen, or he has the status of a permanent resident of the Cook Islands as defined by Act; and

(b) He has been resident in the Cook Islands throughout the period of three months immediately preceding his application for enrolment as an elector and has not subsequently qualified as an elector under subclause (2) of this Article; and

(c) He has at some period actually resided continuously in the Cook Islands for not less than 12 months.

(2) Without limiting the provisions of any law prescribing any additional qualifications not inconsistent with any provision of this Constitution, a person shall be qualified to be an elector for the election of a Member of Parliament for the Overseas Constituency, if, and only if-

(a) He is a Commonwealth citizen, or he has the status of a permanent resident of the Cook Islands as defined by Act; and

(b) He has resided outside the Cook Islands throughout the period of 3 months immediately preceding his application for enrolment as an elector; and

(c) At the date of his application for enrolment as an elector he has been absent from the Cook Islands for a continuous period of not more than 3 years, and has, and has had ever since he left the Cook Islands, an intention to return and reside therein indefinitely; and

(d) He has at some period actually resided continuously in the Cook Islands for not less than 12 months.

(3) Where any person has ceased to be qualified to be enrolled as an elector for any constituency by reason of his residence outside the Cook Islands for a period of more than 3 years, he shall not be entitled to apply for enrolment as an elector of any constituency unless he has returned to the Cook Islands and has actually resided in the Cook Islands throughout the continuous period of not less than 3 months.

(4) In calculating for the purposes of paragraph (c) of subclause (2) or of subclause (3) of this Article the [[period for]] which any person has been

outside the Cook Islands—

(a) Any period for which he has been outside the Cook Islands for the purpose of undergoing a course of education or of technical training or instruction shall be disregarded; and

(b) His absence from the Cook Islands during any period shall be deemed to be continuous, notwithstanding any visit to the Cook Islands in that period, unless during that visit he remained in the Cook Islands for a continuous period of not less than 3 months.

In subcl (4) the words "period for" were substituted for the words "period of " by s 6 of the Constitution Amendment (No 10) Act 198182 (CI)

### [Special voting

28A (1) Any person who is enrolled as an elector of any constituency may vote as a special voter at an election of Members of Parliament, if, on polling day, he is absent from the constituency for which he is enrolled.

(2) Any person who is enrolled as an elector of a constituency other than the Overseas Constituency and who is outside the Cook Islands on polling day but has not qualified for enrolment as an elector of the Overseas Constituency may vote outside the Cook Islands, as a special voter, for the constituency for which he is enrolled.

(3) Any person who is enrolled as an elector of the Overseas Constituency and who is in the Cook Islands on polling day may vote for that constituency as a special voter, at any polling place in the Cook Islands.

(4) A special voter may vote at such place (whether a polling place or not), at such time, in such manner, and upon and subject to such conditions as may be prescribed by Act.

(5) Nothing in this Article shall effect the right of an elector of any constituency to vote by postal vote at an election of a member representing that constituency conducted by postal vote pursuant to Article 28C hereof in the case of the Overseas Constituency and Article 28D hereof in the case of any other constituency.

## [Qualification of candidates

28B (1) Notwithstanding anything in subclause (2) of this Article, a person shall not be qualified to be a candidate at an election of members of Parliament if-

(a) He is not an elector duly enrolled pursuant to the provisions of an Act of Parliament; or

(b) He has been adjudicated bankrupt within the meaning of the bankruptcy laws in force in the Cook Islands (whether before or after the commencement of this Article), unless he has obtained an order of discharge; or

(c) He has been convicted (whether before or after the commencement of this Article) of any of the offences specified in Part I of the Second Schedule to this Constitution; or

(d) He has been convicted (whether before or after the commencement of this Article) of any of the offences specified in Part II of the Second Schedule to this Constitution, unless a period of 5 years has elapsed from the date of his conviction.

(2) Subject to subclause (1) of this Article-

(a) Every person enrolled as an elector of any constituency shall be capable of being elected as a member for that constituency or for any other constituency;

(b) In the case of any by-election of any constituency, a person shall be capable of being elected as a member for that constituency if he was enrolled as an elector on the roll of any constituency at the preceding general election, and at the time of nomination still possesses the qualifications to be enrolled as an elector.

## [Election of member for Overseas Constituency

28C The following provisions shall apply with respect to the member representing the Overseas Constituency-



(a) He shall be elected by persons who are for the time being residing in New Zealand or elsewhere outside the Cook Islands who are qualified as electors under subclause (2) of Article 28 and are enrolled as electors of that constituency; and

(b) His election shall be by postal vote, special vote, or by vote cast at one or more polling places situated outside the Cook Islands, as prescribed by Act. The procedure for conducting any such election by postal vote, special vote, or at one or more polling places outside the Cook Islands shall be prescribed by Act.

This Article did not come into force until the date of the first general election of Parliament held after the commencement of the Constitution Amendment (No 9) Act 1980-81, except so far as was necessary for the purposes of that election. See s 17(1) of that Act. The first general election held after the commencement of that Act was held on the 30th March 1983

## [Postal voting for electors of Cook Islands Constituencies

28D Provision may be made by Act for any elector of a constituency other than the Overseas Constituency who is outside the Cook Islands on polling day to vote by postal vote at any election of a member representing the constituency for which the elector is enrolled.

## Meetings of Parliament

29 (1) Parliament shall meet at such places and at such times as the [[Queen's Representative] from time to time appoints in that behalf:

Provided that Parliament shall meet not later than 90 days after the holding of a general election and at least once in every year thereafter, so that a period of 12 months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session.

(2) Notwithstanding anything contained in subclause (1) of this Article, Parliament shall not meet after the holding of a general election until all election petitions filed in the High Court in respect of that election have been finally determined [[by the High Court at first instance or have been withdrawn or dismissed for want of prosecution]].

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcl (1) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI).

The words in double square brackets in subcl (2) were added by s 3 of the Constitution Amendment (No 11) Act 1 982 (CI).

### **[Members to take Oath of Allegiance**

30 Except for the purposes of enabling this Article to be complied with and for the election of a Speaker, no member of Parliament shall be permitted to sit or vote therein until he has taken and subscribed the following oath before the Speaker of Parliament namely:

I,....., swear by Almighty God that I will be faithful and bear true allegiance to Her [or His] Majesty [Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second] as the Head of State of the Cook Islands, Her [or His] heirs and successors, according to law and that I will justly and faithfully carry out my duties as a member of Parliament of the Cook Islands. So help me God.

### **[The Speaker of Parliament**

31 (1) Parliament shall, immediately when it first meets after a general election and as soon as possible after any vacancy occurs in the office of Speaker otherwise than by reason of a dissolution of Parliament, and before it proceeds to the dispatch of any other business, elect a person (not being a Minister) to be Speaker of Parliament.

(2) The Speaker may be elected in such manner as Parliament decides from time to time, either from among the members of Parliament who are not Ministers or from among persons who are not members of Parliament:

Provided that a person who is not a member of Parliament shall not be elected Speaker unless he is qualified for election as a member of Parliament.

(3) Before a person who has been elected Speaker enters upon the duties of his office, he shall, unless he has already done so in accordance with Article 30 hereof, take and subscribe before the [[Queen's Representative]] the Oath of Allegiance prescribed in that Article substituting the word "Speaker" for the words "a member" where they appear in that oath.

(4) The salary of the Speaker shall be determined by enactment, and shall be charged on the Cook Islands Government Account

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcl (3) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

### **[Tenure of office of Speaker**

32 The Speaker may at any time resign his office by writing under his hand addressed to the Clerk of Parliament, and shall vacate his office-

(a) On the dissolution of Parliament next following his election;  
or

(b) If he becomes a Minister; or

(c) If, being a member of Parliament at the time of his election, he ceases to be a member; or

(d) If, not being a member of Parliament at the time of his election, he ceases to be qualified for election as a member, or

(e) If Parliament passes a resolution supported by the votes of not less than two-thirds of all the members thereof (including vacancies) requiring his removal from office.

### **[Deputy Speaker**

33 (1) Parliament may elect a member of Parliament, not being the Speaker or a Minister, to be Deputy Speaker.

(2) The Deputy Speaker may at any time resign his office by writing under his hand addressed to the Clerk of Parliament, and shall vacate his office-

(a) On the dissolution of Parliament next following his election;  
or

(b) If he ceases to be a member of Parliament; o

(c) If he becomes a Minister; or

(d) If he is elected Speaker; or

(e) If Parliament passes a resolution supported by the votes of not less than two-thirds of all the members thereof (including vacancies) requiring his removal from office.

(3) Subject to the provisions of this Constitution and of the Standing Orders of Parliament, the functions conferred by this Constitution or those Standing Orders upon the Speaker shall, if there is no person holding the office of Speaker or if the Speaker is absent from the Cook Islands or is otherwise unable to perform those functions, be performed by the Deputy Speaker.

## [Procedure

34 (1) The Speaker, or in his absence the Deputy Speaker, shall preside over sittings of Parliament. In the absence from any sitting of both the Speaker and Deputy Speaker, the members present shall choose one of their number (not being a Minister) to preside over that sitting.

(2) Subject to the provisions of Article 41 hereof and of subclause (3) of this Article, every question before Parliament shall be decided by a majority of the votes of the members present.

(3) The person presiding over any sitting of Parliament shall not have a deliberative vote, but in case of an equality of votes, he shall have a casting vote.

(4) No business shall be transacted at any sitting of Parliament if the number of members present (excluding the Speaker if he is a member) is less than 12.

(5) Subject to the provisions of this Constitution, Parliament may from time to time make, amend, and repeal Standing Orders for the regulation and orderly conduct of its proceedings and the dispatch of business.

(6) Parliament shall not be disqualified for the transaction of business by reason of any vacancy among its members including any vacancy not filled at a general election, and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in Parliament or otherwise took part in the proceedings.

## [Languages

35 (1) All debates and discussions in Parliament shall be conducted in the Maori language as spoken in Rarotonga and also in the English language.

(2) Every Bill introduced into Parliament and every Act shall be in the Maori language as spoken in Rarotonga and also in the English language:

Provided that Parliament may, by resolution, determine that any Bill or Act shall be in the English language only.

(3) The records of proceedings in Parliament, or in committees thereof shall be in the English language, and such of those records as are specified in the Standing Orders of Parliament shall also be in the Maori language as spoken in Rarotonga.

(4) Where there is any conflict between the Maori version and the English version of any Bill or Act or of any such record, the English version shall prevail.

## Privileges of Parliament and of its members

36 (1) The validity of any proceedings in Parliament or in any committee thereof shall not be questioned in any Court.

(2) No officer or member or Speaker of Parliament in whom powers are vested for the regulation of procedure or the conduct of business or the maintenance of order shall in relation to the exercise by him of any of those powers be subject to the jurisdiction of any Court.

(3) No member or Speaker of Parliament and no person entitled to speak therein shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in Parliament or in any committee thereof.

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

(5) Subject to the provisions of this Article, the privileges of Parliament and of the committees thereof, and the privileges of members and the Speaker of Parliament and of the persons entitled to speak therein may be determined by Act:

Provided that no such privilege of Parliament or of any committee thereof may extend to the imposition of a fine or to committal to prison for contempt or otherwise, unless provision is made by enactment for the trial and punishment of the person concerned by the High Court.

## **[Prorogation and dissolution of Parliament**

37 (1) The [[Queen's Representative]] may at any time, by notice published in the Cook Islands Gazette, prorogue Parliament.

(2) If at any time the office of [[Prime Minister]] is vacant, the [[Queen's Representative]] shall by notice published in the Cook Islands Gazette, dissolve Parliament as soon as he is satisfied, acting in his discretion, that a reasonable period has elapsed since that office was last vacated and that there is no member of Parliament who commands the confidence of a majority of the members.

(3) The [[Queen's Representative]] may at any time, by notice published in the Cook Islands Gazette, dissolve Parliament if he is advised by the [[Prime Minister]] to do so, but shall not be obliged to act in this respect in accordance with the advice of the [[Prime Minister]] unless the [[Queen's Representative]] is satisfied, acting in his discretion, that in tendering that advice the [[Prime Minister]] commands the confidence of a majority of the members of Parliament.

(4) Notwithstanding anything in the foregoing provisions of this Article, Parliament shall not be prorogued or dissolved before all electoral petitions filed in the High Court in respect of the last preceding general election of members have been finally determined [[by the High Court at first instance or have been withdrawn or dismissed for want of prosecution]].

(5) The [[Queen's Representative]] shall dissolve Parliament at the expiration of 5 years from the date of the last preceding general election, if it has not sooner been dissolved.

(6) There shall be a general election of the members of Parliament at such a time within 3 months after every dissolution of Parliament as the [[Queen's Representative]] appoints by notice published in the Cook Islands Gazette.

[[ (7) (a) No Bill repealing or amending or modifying or extending subclause (5) of this Article or this subclause or making any provision inconsistent with any provision of the said subclause (5) or this subclause shall be deemed to have been passed by

Parliament, unless-

(i) At both the final vote thereon and the vote preceding that final vote it receives the affirmative vote of not less than two-thirds of the total membership (including vacancies) of Parliament; and

(ii) There is an interval of not less than 90 days between the date on which that final vote was taken and the date on which the preceding vote was taken; and,

[[ (b) No such Bill shall be presented to the [Queen's Representative] for his assent, unless-

(i) It has been passed by Parliament in accordance with the foregoing provisions of this subclause; and

(ii) It has been submitted to a poll, conducted in a manner prescribed by law, of the persons who are entitled to vote as electors at a general election of members of Parliament; and

(iii) It has been supported by not less than two thirds of the valid votes cast in such a poll; and

(iv) It is accompanied by a certificate under the hand of the Speaker to that effect]].

The words "Queen's Representative " were substituted for the words "High Commissioner" in subcls (1), (2), (3) (in two places) (5), and (6) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

The words in square brackets were added to subcl (4) by s 4(a) of the Constitution Amendment (No 11) Act 1982 (CI)

Subcl (7) was added by s 4(b) of the Constitution Amendment (No 11) Act 1982 (CI)

## [Clerk of Parliament

38 (1) There shall be a Clerk of Parliament.

(2) The Clerk shall keep a record of the proceedings of Parliament and shall transmit a copy of those records to the [[Queen's Representative]] as soon as practicable.

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcl (2) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

#### [Power to make laws

39 (1) Subject to the provisions of this Constitution, Parliament may make laws (to be known as Acts) for the peace, order, and good government of the Cook Islands.

(2) The powers of Parliament shall extend to the making of laws having extraterritorial operation.

(3) Without limiting the generality of the power conferred by subclause (1) of this Article to make laws for the peace, order, and good government of the Cook Islands, that power shall, subject to the provisions of this Constitution, include the repeal or revocation or amendment or modification or extension, in relation to the Cook Islands, of any law in force in the Cook Islands.

(4) Except to the extent to which it is inconsistent with this Constitution, no Act and no provision of any Act shall be deemed to be invalid solely on the ground that it is inconsistent with any law in force in the Cook Islands.

[[ (5) For the avoidance of doubt, it is hereby declared that the power conferred on the Legislative Assembly of the Cook Islands by Article 39 of this Constitution (as originally enacted) to make laws for the peace, order, and good government of the Cook Islands always conferred on that Assembly power to make laws, notwithstanding anything in Article 46 of this Constitution (as originally enacted), declaring that any specified Act of the Parliament of New Zealand or any regulations, rules, or order under any Act of that Parliament should extend to the Cook Islands as part of the law of the Cook Islands]].

Subcl (5) was added by s 7 of the Constitution Amendment (No 10) Act 1981-82 (CI)

#### [No property to be taken compulsorily without compensation



40 (1) No property shall be taken possession of compulsorily, and no right over or interest in any property shall be acquired compulsorily, except under the law, which of itself or when read with any other law-

(a) Requires the payment within a reasonable time of adequate compensation therefor; and

(b) Gives to any person claiming that compensation, a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court; and

(c) Gives to any party to proceedings in the High Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a Court of original jurisdiction.

(2) Nothing in this Article shall be construed as affecting any general law-

(a) For the imposition or enforcement of any tax, rate or duty; or

(b) For the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence; or

(c) Relating to leases, tenancies, mortgages, charges, bills of sale, or any other rights or obligations arising out of contracts; or

(d) Relating to the vesting and administration of the property of persons adjudged bankrupt or otherwise declared insolvent, of infants or persons suffering under some physical or mental disability, of deceased persons, and of companies, other corporate bodies and unincorporated societies, in the course of being wound up; or

(e) Relating to the execution of judgments or orders of Courts; or

(f) Providing for the taking of possession of property which is in a dangerous state or is injurious to the health of human beings, plants or animals; or

(g) Relating to trusts and trustees; or

(h) Relating to the limitation of actions; or

(i) Relating to property vested in statutory corporations; or

(j) Relating to the temporary taking of possession of property for the purposes of any examination, investigation, or inquiry; or

(k) Providing for the carrying out of work on land for the purpose of soil conservation or for the protection of water catchment areas].

### **[Power of Legislative Assembly to repeal or amend this Constitution**

41 (1) Subject to the provisions of subclause (2) of this Article, no Bill repealing or amending or modifying or extending this Constitution or any provision thereof or making any provision inconsistent with any provision of this Constitution shall be deemed to have been passed by the Assembly, unless—

(a) At both the final vote thereon and the vote preceding that final vote it receives the affirmative votes of not less than two-thirds of the total membership (including vacancies) of the [Parliament]; and

(b) There is an interval of not less than 90 days between the date on which that final vote was taken and the date on which the preceding vote was taken; and no such Bill shall be presented to the [Queen's Representative] for assent unless it is accompanied by a certificate under the hand of the Speaker to that effect.

(2) No Bill repealing or amending or modifying or extending any of the provisions of sections 2 to 6 of the Cook Islands Constitution Act 1964 or Article 2 of this Constitution or this Article or making any provision inconsistent with any of those provisions shall be submitted to the [Queen's Representative] for his assent, unless—

(a) It has been passed by the [Parliament] in accordance with the provisions of subclause (1) of this Article; and

(b) It has been submitted to a poll, conducted in a manner prescribed by law, of the persons who are entitled to vote as electors at a general election of members of the [Parliament]; and

(c) It has been supported by not less than two-thirds of the valid

votes cast in such a poll; and

(d) It is accompanied by a certificate under the hand of the Speaker to that effect.

The name of the Legislative Assembly of the Cook Islands was changed to the Parliament of the Cook Islands by s 5 of the Constitution Amendment (No 9) Act 1980-81, and the functions of that Assembly are now performed by Parliament  
The functions of the High Commissioner are now performed by the Queen's Representative pursuant to sections 2 and 4 of the Constitution Amendment (No 10) Act 1981-82 (CI)

### **[Introduction of Bills, etc, into Parliament**

42 Subject to the provisions of this Constitution and of the Standing Orders of Parliament, any member of Parliament may introduce any Bill or propose any motion for debate in or present any petition to Parliament, and the same shall be considered and disposed of in accordance with the Standing Orders.

### **[Restrictions with regard to financial measures**

43 Except upon the recommendation of the [[Queen's Representative]], Parliament shall not-

(a) Proceed upon any Bill (including an amendment to a Bill) that, in the opinion of the person presiding, makes provision for any of the following purposes-

(i) For the imposition or alteration of taxation;  
or

(ii) For the imposition of any charge upon the Cook Islands Government Account or any other public fund or account or for the alteration of any such charge otherwise than by way of reduction; or

(iii) For the payment, issue, or withdrawal from the Cook Islands Government Account or from any other public fund or account of any money not

charged thereon or any increase in the amount of such a payment, issue, or withdrawal; or

(iv) For the composition or remission of any debt due to the Crown;

(b) Proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for any of those purposes;

(c) Receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

The words "Queen's Representative" were substituted for the words "High Commissioner" by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

#### [Assent to Bills by [Queen's Representative]

44 (1) No Bill shall become law until it has been passed by Parliament and has been assented to by the [[Queen's Representative]].

(2) Whenever any Bill which has been passed by Parliament is presented to the [[Queen's Representative]] for his assent, the [[Queen's Representative]] shall, acting on the advice of the [[Prime Minister]] declare that he assents to the Bill or that he refuses his assent to the Bill:

Provided that the [[Queen's Representative]], acting in his discretion, may summon a meeting of the Executive Council, to be held within 14 days after the Bill is presented to him for his assent to consider amendments to the Bill proposed by him or to consider whether he should refuse his assent to the Bill.

(3) If at a meeting of the Executive Council thus summoned the Executive Council decides that the Bill should be returned to Parliament for consideration of the amendments proposed or, as the case may be, that the [[Queen's Representative]] should refuse his assent to the Bill, the [[Queen's Representative]] shall, by Message-

(a) Return the Bill with the amendments proposed to Parliament for

reconsideration by Parliament; or as the case may be,

(b) Return the Bill to Parliament for reconsideration by Parliament.

(4) If at a meeting of the Executive Council thus summoned the Executive Council decides that the Bill should not be returned to Parliament for consideration of the amendments proposed or, as the case may be, that the [[Queen's Representative]] should not refuse his assent to the Bill, he shall declare that he assents to the Bill.

(5) Where any Bill is returned to Parliament under the provisions of paragraph (a) of subclause (3) of this Article, and the Bill is again passed by Parliament with the amendments proposed, but with no other amendments, or in the form in which it was originally presented to the [[Queen's Representative]] for his assent, then, when the Bill is again presented to the [[Queen's Representative]] for his assent, he shall declare that he assents to the Bill.

(6) Where any Bill is returned to Parliament under the provisions of paragraph (b) of subclause (3) of this Article, and the Bill is again passed by Parliament in the form in which it was originally presented to the [[Queen's Representative]] for assent, he shall declare that he assents to the Bill.

(7) Where any Bill is returned to Parliament under the provisions of this Article and the Bill is again passed by Parliament with any amendments other than amendments proposed under the provisions of this Article, then, when the Bill is again presented to the [[Queen's Representative]] for his assent, the foregoing provisions of this Article shall apply with respect to the Bill as if it had not previously been presented to the [[Queen's Representative]] for his assent.

(8) A Bill assented to by the [[Queen's Representative]] as herein provided shall be known as an Act of Parliament.

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (1), (2) (in three places), (3) (in two places), (4), (5) (in two places), (6), (7) (in two places), and (8) by s4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

## Commencement of Acts

45 Every Act shall come into operation either on the day on which the Bill is

assented to, or any other date (whether earlier or later than the date on which it is assented to) specified in that behalf in the Act, and different dates may be so specified in respect of different provisions of the Act.

### [New Zealand Parliament not to legislate for the Cook Islands

46 Except as provided by Act of the Parliament of the Cook Islands, no Act, and no provision of any Act, of the Parliament of New Zealand passed after the commencement of this Article shall extend or be deemed to extend to the Cook Islands as part of the law of the Cook Islands.]

As to the continuation in force of Acts of the Parliament of New Zealand that, pursuant to the original Article 46, were in force in the Cook Islands immediately before the date of the commencement of the Constitution Amendment (No 9) Act 1980-81 (CI) and of regulations made by the Governor-General in Council that, pursuant to the original Article 88, were in force immediately before that date, see s 22 of that Act, post.

## PART IV THE JUDICIARY

### THE HIGH COURT OF THE COOK ISLANDS

#### [High Court established

47 (1) There shall be a Court of record, to be called the High Court of the Cook Islands, for the administration of justice throughout those islands.

(2) Except as provided in this Constitution or by law, the High Court shall have all such jurisdiction (both civil jurisdiction, including jurisdiction in relation to land, and criminal jurisdiction) as may be necessary to administer the law in force in the Cook Islands.

(3) There shall be 3 Divisions of the High Court, namely-

(a) A Civil Division;

(b) A Criminal Division;

(c) A Land Division.

(4) A Judge of the High Court may exercise any of the jurisdiction and powers of a Judge of any Division.

(5) Nothing in this Article shall prevent a Judge of any Division from exercising any of the powers of a Judge of the High Court, whether or not in his capacity as a Judge of that Division.

(6) Subject to the foregoing provisions of this Article and to Article 48 hereof, each Judge of the High Court, or any 2 or more Judges, may, in any part of the Cook Islands and at any time or place, exercise all the powers of the High Court.]

### [Jurisdiction of Divisions of the High Court

48 (1) Each Division of the High Court shall hear and determine—

(a) Such proceedings as are, under or by virtue of any enactment, to be heard and determined by that Division;

(b) Such other proceedings as may from time to time be determined by the Chief Justice, either generally or in any particular proceedings or classes of proceedings.

(2) Subject to subclause (3) of this Article, the Land Division shall have all the jurisdiction and powers in relation to land that immediately before the commencement of this Article were conferred on the Land Court of the Cook Islands, and shall have such other jurisdiction as may be conferred on it by enactment.

(3) Notwithstanding anything in this Article, the Land Division shall not exercise any jurisdiction or power in relation to land in any of the Islands of Mangaia, Mitiaro and Pukapuka that was not, according to local custom, being exercised by the Land Court before the commencement of this Article unless—

(a) In the case of land in the Island of Mangaia, the exercise of such jurisdiction or power is requested by the Aronga Mana of Mangaia;

(b) In the case of land in the Island of Mitiaro, the exercise of such jurisdiction or power is requested by the Aronga Mana of Mitiaro; (c) In the case of land in the Island of Pukapuka, the exercise of such jurisdiction and power is requested by the Aronga

## [Judges of the High Court

49 (1) The High Court shall consist of 1 or more Judges, each of whom shall be appointed under the provisions of this Constitution.

(2) If only 1 Judge is so appointed, he shall be the Chief Justice of the Cook Islands, but if more than 1 Judge is appointed, one of them shall be appointed as the Chief Justice of the Cook Islands.

(3) A person shall not be qualified for appointment as a Judge of the High Court under this Article, unless—

(a) He holds or has held office as a Judge of the High Court of New Zealand or of the Supreme Court of New Zealand or of the Court of Appeal of New Zealand or an equivalent office in any other part of the Commonwealth or in a designated country; or

(b) He has been in practice as a barrister in New Zealand or in any other part of the Commonwealth or in a designated country, or partly in New Zealand and partly in any other part of the Commonwealth or in a designated country, for a period of, or periods amounting in the aggregate to, not less than 7 years.

(4) The [[Queen's Representative]], acting in his discretion, may declare to be a designated country for the purposes of this Article any country which in his opinion has a legal system similar to that existing in New Zealand.]

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcl 4 by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

## [Acting Chief Justice of the High Court

50 Where any vacancy exists in the office of Chief Justice of the High Court or the Chief Justice of the High Court is absent from the Cook Islands, or is, by reason of illness or any cause other than absence from the Cook Islands, unable to perform the office or exercise any function of Chief Justice of the High Court, the senior other Judge of the High Court for the time being in the Cook Islands may perform that office or exercise that function until a Chief



Justice of the High Court is appointed, or, as the case may be the Chief Justice of the High Court resumes that office or exercises that function.

### [Acting Judge of the High Court

51 (1) The [[Queen's Representative]], acting on the advice of the Chief Justice and the Minister of Justice, may appoint any person who is qualified for appointment as a Judge of the High Court to act as a Judge of the High Court, if there is no Judge of the High Court for the time being in the Cook Islands or, by reason of illness or other cause, there is no Judge of the High Court available to act.

(2) Any appointment made under this Article may be revoked at any time by the [[Queen's Representative]], acting on the advice of the Chief Justice.]

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (1) and (2) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

## APPOINTMENT, TENURE OF OFFICE AND SALARIES OF JUDGES

### [Appointment of Judges

52 The Chief Justice and other Judges of the High Court shall be appointed as follows-

(a) The Chief Justice of the High Court shall be appointed by the [[Queen's Representative]], acting on the advice of the Executive Council tendered by the Prime Minister;

(b) The other Judges of the High Court shall be appointed by the [[Queen's Representative]], acting on the advice of the Executive Council tendered by the Chief Justice of the High Court and the Minister of Justice.]

The words "Queen's Representative" were substituted for the words "High Commissioner" in paras (a) and (b) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

### [Tenure of office of Judges

53 (1) Except in the case of an appointment made under subclause (2) of this Article, no person who has attained the age of 70 years shall be appointed to or continue to hold office as the Chief Justice or other Judge of the High Court.

(2) Any person of any age who does not reside in the Cook Islands and who is qualified for appointment may be appointed to hold office as the Chief Justice or other Judge of the High Court for a term of not more than 3 years, but may be reappointed for one or more further terms, being in each case a term of not more than 3 years.

(3) Nothing done by the Chief Justice or other Judge of the High Court in the performance of his functions shall be deemed to be invalid by reason only that he has reached the age at which he is required by this Article to retire or that his term has expired, as the case may be.

(4) The Chief Justice or any other Judge of the High Court may resign his office by writing under his hand addressed to the [[Queen's Representative]].

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcl (4) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

#### [Removal of Judge from office

54 (1) The Chief Justice or any other Judge of the High Court, other than a Judge appointed under the provisions of Article 51 hereof, may be removed from office by the [[Queen's Representative]] only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or misbehaviour, and shall not be so removed unless the question of removal of the Chief Justice or other Judge from office has been referred to a tribunal appointed under subclause (2) of this Article and that tribunal has recommended that the Chief Justice or other Judge be removed from office for inability as aforesaid or misbehaviour.

(2) If the Prime Minister advises the [[Queen's Representative]] that the question of removing from office the Chief Justice or any other Judge of the High Court for inability as aforesaid or misbehaviour ought to be investigated, then-

(a) The [[Queen's Representative]] shall appoint a tribunal consisting of a chairman and 2 other members; and

(b) The tribunal shall inquire into the matter and report on the facts thereof to the [[Queen's Representative]] and recommend to the [[Queen's Representative]] whether or not the Chief Justice or other Judges should be removed from office; and

(c) If the tribunal recommends that the Chief Justice or other Judge be so removed, the [[Queen's Representative]] shall, by warrant, revoke the appointment of the Chief Justice or other Judge, as the case may be.

(3) No person shall be qualified for appointment as a member of a tribunal under this Article unless he is qualified for appointment as a Judge of the High Court under Article 49 hereof.

(4) No business shall be transacted by a tribunal appointed under this Article unless all 3 members are present, and all questions proposed for decision by the tribunal shall be decided by the votes of a majority of those members.

(5) Subject to this Article, the tribunal shall determine its own procedure.

(6) If the question of removing from office the Chief Justice or any other Judge of the High Court has been referred to a tribunal under subclause (2) of this Article-

(a) The [[Queen's Representative]], acting on the advice of the Prime Minister, may suspend the Chief Justice or other Judge from performing the functions of his office for a period of 1 month;

(b) If the decision of the tribunal has not been given before the expiration of that period, the [[Queen's Representative]], acting on the advice of the Executive Council tendered to him by the Prime Minister, may suspend the Chief Justice or other Judge from performing the functions of his office for a further period of 1 month.

(7) Any such suspension may be at any time revoked by the [[Queen's Representative]], acting on the advice of the Prime Minister in the case of a suspension under paragraph (a) of subclause (6) of this Article and on the advice of the Executive Council in the case of a suspension under paragraph (b) of that subclause, and shall in any case cease to have effect if the tribunal-

(a) Before the expiration of the total period of suspension,

recommends to the [[Queen's Representative]] that the Chief Justice or other Judge be not removed from office; or

(b) Does not, before the expiration of the total period of suspension, recommend to the [[Queen's Representative]] that the Chief Justice or other Judge be removed from office.

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (1); (2) (in five places), (6) (in two places), and (7) (in three places) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

## **[Salaries of Judges**

55 (1) The salaries of the Chief Justice and other Judges of the High Court shall be determined by Act, and shall be charged on the Cook Islands Government Account.

(2) The salaries of those Judges shall not be diminished during their period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

## **COURT OF APPEAL**

### **[Court of Appeal established**

56 (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 hereof, the Judges of the Court of Appeal shall be-

(a) A Judge of the Court of Appeal of New Zealand or a person who has held office as a Judge of that Court, or a Judge of the High Court of New Zealand, to be appointed by the [[Queen's Representative]] acting on the advice of the Executive Council tendered to him by the Prime Minister; and

(b) The Chief Justice and other Judges of the High Court; and

(c) 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 advice of the Executive Council tendered to him by the Prime Minister.

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

(4) The Judge of the Court of Appeal of New Zealand, or, as the case may be, the person who has held office as a Judge of that Court or the Judge of the High Court of New Zealand who is a member of the Court of Appeal of the Cook Islands, shall be the President of the Court of Appeal of the Cook Islands, but in his absence the Chief Justice of the High Court, if present, shall preside, but if the Chief Justice is also absent, the Judge present who is highest in seniority shall preside.

(5) 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 any Court in any place outside the Cook Islands.

(6) An appointment under paragraph (c) of subclause (2) of this Article shall be for a period of time or for the trial or hearing of one or more particular causes or matters, as may be specified in the instrument of appointment.

The words "Queen's Representative " were substituted for the words "High Commissioner" in paras (a) and (c) of subcl (2) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

### [Number of Judges

57 (1) Any 3 Judges of the Court of Appeal may exercise all the powers of the Court:

Provided that the Court may have its judgment delivered by any one of its members who is also a Judge of the High Court, and, if there is no such member, then through the Registrar of the Court of Appeal.

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

## [Judges not to sit on appeals from own decision

58 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.]

## [Determination of Court of Appeal

59 (1) Except as provided in subclause (2) of this Article, the determination of the Court of Appeal shall be final, and there shall be no appeal to the High Court of New Zealand or to the Court of Appeal of New Zealand from any judgment of the Court of Appeal of the Cook Islands.

(2) 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.]

## [Jurisdiction of Court of Appeal

60 (1) Subject to the provisions of this Constitution, the Court of Appeal shall have jurisdiction to hear and determine any appeal from a judgment of the High Court.

(2) Subject to the provisions of this Constitution, and except where under any Act a judgment of the High Court is declared to be final, an appeal shall lie to the Court of Appeal from a judgment of the High Court—

(a) As of right, if the High Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution;

(b) As of right, from any conviction by the High Court in the exercise of its criminal jurisdiction whereby the appellant has been sentenced to death or to imprisonment for life or for a term exceeding 6 months or to a fine of not less than \$200 and from any such sentence (not being a sentence fixed by law);

(c) As of right, when the matter in dispute on the appeal amounts to or is of the value of \$400 or upwards;

(d) As of right, from any judgment of the High Court involving any question as to the interpretation or application or effect of any provision of Part IVA of this Constitution.

(e) With the leave of the High Court in any other case, if in the opinion of that Court the question involved in the appeal is one which by reason of its general or public importance, or of the magnitude of the interest affected, or for any other reason, ought to be submitted to the Court of Appeal for decision.

[ (3) Notwithstanding anything in subclause (2) of this Article, and subject to such 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.]

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

Subclause (3) of Article 60 was substituted by section 2 of the Constitution Amendment (No 16) Act 1993-94

### **[Transmission of order of Court of Appeal**

61 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.

### **JUSTICES OF THE PEACE**

#### **[Justices of the Peace**

62 (1) The [[Queen's Representative]], acting on the advice of the Executive Council tendered to him by the Minister of Justice, may appoint Justices of the Peace for the Cook Islands, who shall hold office for such time as may be prescribed in their warrants of appointment and may be paid such remuneration as may be prescribed by enactment.

(2) Repealed by s 2 of the Constitution Amendment (No 12) Act 1986.

(3) An Act shall prescribe the jurisdiction and powers of Justices of the Peace appointed under this Article and for an appeal to lie to the High Court from a final judgment of a Justice of the Peace.

(4) A Justice of the Peace for the Cook Islands shall not be removed from office as such, except by the [[Queen's Representative]], acting on the advice of the Chief Justice.

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

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (1) and (4) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

The words "subclause (3)" were substituted for the words "subclause (2)" by s 8 of the Constitution Amendment (No 10) Act 1981-82 (CI)

## OATH OF ALLEGIANCE AND JUDICIAL OATH

### [Oath of Allegiance and Judicial Oath

63 (1) Every Judge of the Court of Appeal who is not a Judge of the Court of Appeal of New Zealand or of the High Court of New Zealand or a Judge of the High Court of the Cook Islands and every Justice of the Peace for the Cook Islands, shall, as soon as may be after his acceptance of office, take and subscribe before the [[Queen's Representative]] the following oaths-

(a) An Oath of Allegiance in the following form:

I,....., swear by Almighty God that I will be faithful and bear true allegiance to Her [or His] Majesty [Specify the name of the reigning Sovereign as thus: Queen Elizabeth the Second], as the Head of State of the Cook Islands, Her [or His] heirs, and successors, in accordance with the Constitution and the law. So help me God.

(b) The Judicial Oath in the following form:



I,....., swear by Almighty God that I will well and truly serve Her [or His] Majesty [Specify as above] as the Head of State of the Cook Islands, Her [or His] heirs, and successors, in accordance with the Constitution and the law, in the office of ..... and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God.

(2) If any person mentioned in this Article declines or neglects, when the oaths required to be taken by him under this Article are duly tendered, to take those oaths, he shall if he has already entered on his office vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no person shall be compelled in respect of the same appointment to the same office to take any oath more than once:

Provided that no proceedings before any such person may be questioned in any Court solely on the ground that that person has failed to take the oaths prescribed by this Article.

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcl (1) by s 4(1) of the Constitution Amendment (No 10) Act 1981 (CI)

Part IV was substituted for the original Part IV by s 7 of the Constitution Amendment (No 9) Act 1981-82 (CI)

## PART IV FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

### [Fundamental human rights and freedoms

64 (1) It is hereby recognised and declared that in the Cook Islands there exist, and shall continue to exist, without discrimination by reason of race, national origin, colour, religion, opinion, belief, or sex, the following fundamental human rights and freedoms-

(a) The right of the individual to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with law;

(b) The right of the individual to equality before the law and to the protection of the law;

(c) The right of the individual to own property and the right not to be deprived thereof except in accordance with law:

Provided that nothing in this paragraph or in Article 40 of this Constitution shall be construed as limiting the power of Parliament to prohibit or restrict by Act the alienation of Native land (as defined in section 2(1) of the Cook Islands Act 1915 of the Parliament of New Zealand);

- (d) Freedom of thought, conscience, and religion;
- (e) Freedom of speech and expression;
- (f) Freedom of peaceful assembly and association.

(2) It is hereby recognised and declared that every person has duties to others, and accordingly is subject in the exercise of his rights and freedoms to such limitations as are imposed, by any enactment or rule of law for the time being in force, for protecting the rights and freedoms of others or in the interests of public safety, order, or morals, the general welfare, or the security of the Cook Islands.

#### [Construction of law

65 (1) Subject to subclause (2) of this Article and to subclause (2) of Article 64 hereof, every enactment shall be so construed and applied as not to abrogate, abridge, or infringe or to authorise the abrogation, abridgement, or infringement of any of the rights or freedoms recognised and declared by subclause (1) of Article 64 hereof, and in particular no enactment shall be construed or applied so as to-

- (a) Authorise or effect the arbitrary detention, imprisonment, or exile of any person; or
- (b) Impose or authorise the imposition on any person of cruel and unusual treatment or punishment; or
- (c) Deprive any person who is arrested or detained-
  - (i) Of the right to be informed promptly of the act or omission for which he is arrested or detained, unless it is impracticable to do so or unless the reason for the arrest or detention is obvious in the circumstances; or

(ii) Of the right, wherever practicable to retain and instruct a barrister or solicitor without delay; or

(iii) Of the right to apply, by himself or by any other person on his behalf, for a writ of habeas corpus for the determination of the validity of his detention, and to be released if his detention is not lawful; or

(d) Deprive any person of the right to a fair hearing, in accordance with the principles of fundamental justice, for the determination of his rights and obligations before any tribunal or authority having a duty to act judicially; or

(e) Deprive any person charged with an offence of the right to be presumed innocent until he is proved guilty according to law in a fair and public hearing by an independent and impartial tribunal; or

(f) Deprive any person charged with an offence of the right to reasonable bail, except for just cause; or

(g) Authorise the conviction of any person of any offence except for the breach of a law in force at the time of the act or omission; or

(h) Authorise the imposition on any person convicted of any offence of a penalty heavier than that which might have been imposed under the law in force at the time of the commission of the offence.

(2) Every enactment, and every provision thereof shall be deemed remedial, whether its immediate purpose is to direct the doing of anything that the enacting authority deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good, and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment [[of the object]] of the enactment or provision thereof according to its true intent, meaning and spirit.

(3) In this Article the term "enactment" includes any Act of the Parliament of England or the Parliament of Great Britain or the Parliament of the United Kingdom, being an Act in force in the Cook Islands, and any regulation, rule, order, or other instrument made thereunder.

The words "of the object" were inserted in subcl (2) by s 9 of the Constitution Amendment (No 10) Act 1981 (CI)

[Saving

66 Nothing in this Part of this Constitution shall limit or affect any right or freedom, not specified in this Part, that may exist in the Cook Islands at the commencement of this Part.]

Part IVA was inserted by s 8 of the Constitution Amendment (No 9) 1980-81 (CI)

## **PART V THE PUBLIC REVENUES OF THE COOK ISLANDS**

### **Public Funds**

67 There shall be a Cook Islands Government Account and such other public funds or accounts as may be provided by law.

### **Restriction on taxation**

68 No taxation shall be imposed except by law.

### **Public revenue**

69 All taxes and other revenues and money raised or received by the Government of the Cook Islands shall be paid into the Cook Islands Government Account unless required or permitted by law to be paid into any other public fund or account.

### **Revenue and expenditure of Cook Islands Government Account**

70 (1) Except as provided in subclause (3) of this Article, or by any specific appropriation contained in any enactment, all expenditure in any financial year from the Cook Islands Government Account or from any other public fund or account, shall be charged to votes specified in an Appropriation Act and in

accordance with the statement of proposed expenditure for that financial year as approved by [Parliament].

(2) Every Appropriation Act shall lapse at the end of the financial year to which it relates.

(3) Subject to such limits and restrictions as may from time to time be prescribed by any enactment, the Minister responsible for finance, or, where any enactment so provides, the Executive Council, may approve the expenditure of such sums as he or it considers necessary—

(a) In anticipation of provision to be made in [an Appropriation Act] for any financial year:

Provided that the total amount issued and paid under this paragraph (a) in any financial year shall not exceed the unexpended balance of the vote in the Appropriation Act [or Acts] for the preceding financial year together with an amount equal to [five-twelfths] of that vote; or

(b) Where during the period between the passing of the [last Appropriation Act] for any financial year and the end of that year it is desirable that money should be expended in excess of or without the appropriation of [Parliament]:

Provided that the total amount of all sums issued and paid under this paragraph (b) in any financial year shall not exceed one and a half percent of the total amount of all sums appropriated by the Appropriation Act [or Acts] for that year.

[(3A) The Audit Office shall, in the last Session of Parliament before the date on which a general election of Parliament is required to be held, forward to the Speaker for presentation to Parliament a separate report specifying any expenditure made in any financial year that is in excess of the limits prescribed by subclause (3) of this Article or by any other enactment and has not been reported in any report previously presented pursuant to this subclause, and Parliament may by Act validate the whole or any part of that expenditure.]

(4) A statement of the unauthorised expenditure for any financial year shall be included in the accounts for that year laid before [Parliament].

(5) Subject to the foregoing provisions of this Article, the collection,

receipt, custody, banking, issue, expenditure, care, and management of money credited or to be credited to the Cook Islands Government Account or to any other public fund or account shall be as prescribed by enactment.

The word "Parliament" was substituted for the words "the Legislative Assembly" in subcls (1), (3) (b) and (4) by s 6 of the Constitution Amendment (No 9) Act 1980-81 (CI)

The words "an Appropriation Act" were substituted for the words "the Appropriation Act" in subcl (3) (a) by s 9(2) of the Constitution Amendment (No 9) Act 1980-81 (CI)

The words "or Acts" were inserted where they appear in the proviso to subcl (3) (a) by s 9(2) (d) of the Constitution Amendment (No 9) Act 1980-81 (CI)

The words "five-twelfths" were substituted for the words "one-fourth" in the proviso to subcl (3) of the Constitution Amendment (No 2) Act 1968-69 (CI)

The words "last Appropriation Act" were substituted for the words "Appropriation Act" in subcl (3) (b) by s 9(2) (c) of the Constitution Amendment (No 9) Act 1980-81 (CI)

The words "or Acts" were inserted where they appear in the proviso to subcl (3) (b) by s 9(2) (b) of the Constitution Amendment (No 9) Act 1980-81 (CI).

Subcl (3A) was inserted by s 9(1) of the Constitution Amendment (No 9) Act 1980-81 (CI)

## Audit

71 (1) The Audit Office of [the Cook Islands] shall be the auditor of the Cook Islands Government Account and of all other public funds or accounts, and of the accounts of all Departments and offices of executive government and of such other public, statutory, or local authorities or bodies as may be provided by law.

(2) The Audit Office shall, at least once annually, forward to the Speaker of [Parliament] for presentation to [Parliament] a report containing such information as is required to be submitted by any enactment, together with such other information relating to the Cook Islands Government Account or other funds or accounts which under this Constitution or under any other enactment are required to be audited by the Audit Office as that Office considers desirable.

[(3) There shall be established by enactment a Public Expenditure Committee comprising-

(a) a Chairman who shall not be a member of Parliament; and

(b) such number of members of Parliament as shall be prescribed by enactment each of whom shall not, while a member of the Committee, be a member of Cabinet.

(4) The enactment referred to in subclause (3) of this Article shall provide to the Public Expenditure Committee sufficient powers to investigate expenditure from the Cook Islands Government Account and other public funds or accounts of executive government and such other public statutory or local authorities or bodies as may be prescribed by law, and shall have such other functions, duties, powers, and responsibilities as shall be provided by enactment.]

The words "the Cook Islands" in subclause (I ) were substituted for the words "New Zealand" by section 4(1) of the Constitution Amendment (No 14) Act 1991

The word "Parliament" was substituted for the words "the Legislative Assembly." and also for the words "the Assembly" in subcl (2) by s 6 of the Constitution Amendment (No 9) Act 1 980-81 (CI)

Subclauses (3) and (4) were added by section 4(2) of the Constitution Amendment (No 14) Act 1991

## PART V THE COOK ISLANDS PUBLIC SERVICE

### The Cook Islands Public Service

72 There shall be a Cook Islands Public Service, which shall comprise such persons in the service of the Government of the Cook Islands as may from time to time be prescribed by law.

#### [Public Service Commissioner

73 (1) There shall be a Public Service Commissioner appointed by the [[Queen's Representative]] on the advice of the [[Prime Minister]].

(2) No person shall be appointed to be or shall remain the Public Service Commissioner-

[[a) If he is not, or ceases to be, a Commonwealth citizen or a permanent resident of the Cook Islands; or]]

(b) If he is or becomes a member of [[Parliament]].

(3) The Public Service Commissioner shall not hold concurrently any other office in the Cook Islands Public Service.

(4) The actions of the Public Service Commissioner shall not be invalidated in consequence of the subsequent discovery of some defect with regard to his appointment.

(5) The Public Service Commissioner shall be paid such remuneration by way of salary and allowances as may from time to time be appropriated by [[Parliament]].

This Article was substituted for Article 73 (as substituted by s 2 of the Constitution Amendment (No 6) Act 1973 (CI) for Article 73 that had been substituted for the original Article 73 by s 4 of the Constitution Amendment (No 2) Act 1968-69 (CI))

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcl (1) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

The words "Prime Minister" were substituted for the word "Premier" in subcl (1) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

Para. (a) of subcl (2) was substituted by s 10(1) of the Constitution Amendment (No 9) Act 1980-81 (CI)

The word "Parliament" was substituted for the words "Legislative Assembly" in subcl (2) (b) and in subcl (5) by s 6 of the Constitution Amendment (No 9) Act 1980-81 (CI)

### **[Term of Office of the Public Service Commissioner**

74 (1) The Public Service Commissioner shall be appointed for a term of not more than four years but shall be eligible for re-appointment.

(2) The Public Service Commissioner may at any time resign his office by writing under his hand addressed to the [[Prime Minister]].]

This Article was substituted by s 2 of the Constitution Amendment (No 6) Act 1973 (CI) for Article 74 that had been substituted for the original Article 74 by s 4 of the Constitution Amendment (No



2) Act 1968-69 (CI)

The words "Prime Minister" were substituted for the word "Premier" in subcl (2) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

### **[Removal from office of Public Service Commissioner**

74A (1) The Public Service Commissioner may be suspended or removed from office in accordance with the following provisions of this Article and not otherwise.

(2) The [[Queen's Representative]], acting on the advice of the [[Prime Minister]], may suspend the Public Service Commissioner from office for misbehaviour or incompetence, but the Public Service Commissioner shall not be removed from office except as provided in this Article.

(3) The [[Queen's Representative]] shall cause to be laid before [[Parliament]] a full statement of the grounds of any suspension within seven days after the date of that suspension if [[Parliament]] is then in session, or if [[Parliament]] is not in session then within seven days after the date of the commencement of the next ensuing session.

(4) Unless [[Parliament]], within twenty-one days from the date on which the statement in respect of the suspension of the Public Service Commissioner under this Article has been laid before it, declares by resolution that he ought to be removed from office, the Public Service Commissioner shall be deemed to be restored to office as from the date of his suspension; and if [[Parliament]] within the said time does so declare, the Public Service Commissioner shall be removed by the [[Queen's Representative]] from the date of his suspension.]

This Article was substituted by s 2 of the Constitution Amendment (No 6) Act 1973 (CI) for Article 74A that had been inserted by s 4 of the Constitution Amendment (No 2) Act 1968-69 (CI)

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (2), (3) and (4) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

The words "Prime Minister" were substituted for the word "Premier" in subcl (2) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

The word "Parliament" was substituted for the words "the Legislative Assembly" in subcls (2) (in two places) and (4) (in two places) by s 6 of the Constitution Amendment (No 9) Act 1980-

## [Functions of the Public Service Commissioner

74B (1) Subject to the provisions of Article 74BB hereof and of subclauses (3) and (4) of this Article and except as may otherwise be provided by enactment, the Public Service Commissioner shall be responsible for the appointment, promotion, transfer, termination of appointment, dismissal, and disciplinary control of employees of the Cook Islands Public Service, and shall have such other functions as may be prescribed by law.]

(2) Repealed by section 2(2)(a) of the Constitution Amendment (No 13) Act 1992.

(3) An Act shall make provision for the grading of positions in the Cook Islands Public Service and, except as provided in Article 74BB hereof and in [subclause (4)] of this Article, any promotion or appointment to such graded positions shall be made by the Public Service Commissioner and 2 heads of departments of the Cook Islands Public Service. The appointment of those heads of departments for the purpose of this subclause shall be as prescribed by Act.

(4) An Act may provide for the appointment of persons from outside the Cook Islands to positions in the Cook Islands Public Service and the conditions on which such appointments are to be made, and the appointment of any such person shall be made with the concurrence of Cabinet.

(5) A decision of Cabinet under subclause (4) of this Article shall be deemed to be a decision to which Article 25 hereof (which relates to reconsideration of Cabinet decisions by the Executive Council) applies.

(6) In the performance of their functions under this Article-

(a) The Public Service Commissioner when acting alone; and

(b) Repealed by section 2(2)(d) of the Constitution Amendment (No 13) Act 1992;

(c) The Public Service Commissioner and the heads of Departments when acting together-

shall have regard to the general policy of Cabinet relating to the Cook Islands Public Service, and shall give effect to any decision of Cabinet

defining that policy conveyed to him or them, as the case may be, in writing signed by the [Prime Minister].

Subclause (1) was substituted by section 2 of the Constitution Amendment (No 13) Act 1992

The words in square brackets in subclause (3) were substituted by section 2(3) of the Constitution Amendment (No 13) Act 1992

The opening words of subclause (4) were deleted by section (4) of the Constitution Amendment (No 13) Act 1992

This Article was substituted for Article 74B (as substituted by s 2 of the Constitution Amendment (No 6) Act 1973 (CI) for Article 74B that had been inserted by s 4 of the Constitution Amendment (No 2) Act 196869 (CI) by s 10(2) of the Constitution Amendment (No 9) Act 1980-81 (CI))

The words "Queen's Representative" were substituted for the words "High Commissioner" in paras (b) and (c) of subcl (2) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

### [Exempted positions

74BB (1) The positions specified in subclause (2) of this Article are hereby designated as exempted positions.

(2) The exempted positions shall be-

(a) The Secretary to the Cabinet;

(b) [[All Heads of Departments, regardless of their titles or designations;]]

(c) The [[Government Representative]] in each of the islands of the Cook Islands other than Rarotonga.

(3) Appointments to the exempted positions and the removal of any person from an exempted position shall be made by the Public Service Commissioner in accordance with a decision of Cabinet.

(4) The positions designated as special posts pursuant to subclause (3) of Article 74B hereof (as enacted by section 2 of the Constitution Amendment (No 6) Act 1973) shall cease to be designated as such and are hereby declared to have been vacated at the commencement of this Article.

(5) Where-

(a) Any person who before his appointment to an exempted position was an employee of the Cook Islands Public Service is removed from that position by the Public Service Commissioner in accordance with a decision of Cabinet; or

(b) A person whose appointment to a position designated as a special post has terminated under subclause (4) of this Article is not appointed to an exempted position, and before his appointment to that special post he was an employee of the Cook Islands Public Service he shall be re-appointed to that Service with the grading held by him immediately before his appointment to the exempted position or to that special post, as the case may be.

(6) Every decision of Cabinet under subclause (3) or subclause (5) (a) of this Article or to remove any person from an exempted position shall be deemed to be a decision to which Article 25 hereof (which relates to the reconsideration of Cabinet decisions by the Executive Council) applies.

This Article was inserted by s 11 of the Constitution Amendment (No 9) Act 1980-81 (CI)

The words in square brackets in paragraph (b) of subclause (2) were substituted by section 3 of the Constitution Amendment (No 13) Act 1992

The words in square brackets in paragraph (c) of subclause (2) were substituted by section 3 of the Constitution Amendment (No 13) Act 1992

### **[Procedure of Public Service Commissioner**

74C (1) Subject to the provisions of this Constitution and of any law, the Public Service Commissioner may-

(a) Exercise his functions in such manner as he sees fit; and

(b) Delegate any of his functions to any person or persons.

(2) When acting with the heads of departments for the purposes of making promotions or appointments to or in graded positions pursuant to [[subclause (3)] of Article 74B of this Constitution, the Public Service Commissioner and the heads of departments shall regulate their own procedure and exercise their functions in such manner as they think fit.]

This Article was substituted for Article 74C by s 2 of the Constitution Amendment (No 6) Act 1973 (CI) for Article 74C that had been inserted by s 4 of the Constitution Amendment (No 2) Act 1968-69 (CI)

The words "subclause (3) " were substituted for the words "subclause (2) " in subcl (2) by s 10(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

## Staff of Queen's Representative

75 (1) Except as provided in subclause (2) of this Article, the appointment, terms of service, disciplinary control, termination of appointment, and dismissal of staff of the [Queen's Representative] shall be matters for the [Queen's Representative], acting in his discretion.

(2) The [Queen's Representative], if he so desires, may appoint to his staff such employees of the Cook Islands Public Service as he may select, acting in his discretion but after consultation with the [Prime Minister], from a list submitted by the [Public Service Commissioner]; and the provisions of subclause (1) of this Article (except so far as they relate to appointment) shall apply in relation to a person so appointed in respect of his service on the staff of the [Queen's Representative] but not in respect of his service as an employee of the Cook Islands Public Service.

The words "Queen's Representative" were substituted for the words "High Commissioner" in subcls (1) (in two places) and (2) (in two places) by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)

The word "Prime Minister" were substituted for the word "Premier" in subcl (2) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

The words "Public Service Commissioner" were substituted for the words "Public Service Commission" in subcl (2) by s 7(1) of the Constitution Amendment (No 11) Act 1982 (CI), those words having previously been substituted for the words "Secretary to the Premier's Department" by s 5 of the Constitution Amendment (No 2) Act 1968-69 (CI)

## Board of Appeal

76 (1) There shall be a Cook Islands Public Service Board of Appeal, which shall consist of-

(a) The [Chief Justice] of the High Court;

(b) One person, being an employee or former employee of the Cook Islands Public Service, to be appointed by, and hold office at the pleasure of, the [Queen's Representative], acting on the advice of the [Prime Minister];

(c) One person, being an employee or former employee of the Cook Islands Public Service, to be elected by the employees of that Service or nominated by an organisation of those employees, and to hold office for a period of 3 years.

(2) The [Chief Justice] shall be Chairman of the Board of Appeal.

[ (2A) In the absence of the Chief Justice from any sitting of the Board of Appeal, any other Judge of the High Court nominated by him, either generally or in any particular case, may attend the sitting in his stead, and while so attending shall be the Chairman of the Board of Appeal].

(3) An Act-

(a) Shall prescribe whether or not the person to be appointed under the provisions of paragraph (c) of subclause (1) of this Article is to be elected or nominated and the manner of that election or nomination;

(b) May provide for the appointment of deputies to act for members of the Board of Appeal appointed under the provisions of paragraph (b) or paragraph (c) of subclause (1) of this Article;

(c) Shall prescribe the jurisdiction of the Board of Appeal to hear and determine appeals from the decisions of the [Public Service Commissioner (whether acting alone or together with two heads of departments)] [or in accordance with a decision of the Public Service Appointments Board]) in relation to the Cook Islands Public Service;

(d) Shall prescribe the procedure of the Board of Appeal.

(4) Subject to the provisions of any Act, the Board of Appeal shall determine

its own procedure.

(5) In this Article the term "employee" does not include a temporary or probationary employee.

The words "Chief Justice" were substituted for the words "Chief Judge" in subcls (1) (a), and (2) by s 2(a) of the Constitution Amendment (No 7) Act 1975 (CI)

The words "Prime Minister" were substituted for the word "Premier" in subcl (1) (a) by s 3(3) of the Constitution Amendment (No 9) Act 1980-81 (CI)

Subcl (2A) was inserted by s 12 of the Constitution Amendment (No 9) Act 1980-81 (CI)

The words in the first set of square brackets in subcl (3) (c) were substituted for the words "Public Service Commission" by s 10(1) of the Constitution Amendment (No 10) Act 1981-82 (CI), and the words in the second set of square brackets in subcl (3) (c) were inserted by s 5 of the Constitution Amendment (No 11) Act 1982 (CI)

## PART VIA [MISCELLANEOUS PROVISIONS]

### Persons entitled to permanent residence

76A (1) A person shall have the status of a permanent resident of the Cook Islands if he was born in the Cook Islands, and-

(a) Either or both of his parents had the status of a permanent resident of the Cook Islands at the date of his birth; or

(b) In the case of a child who was born after the death of his father to a mother who did not have that status at the date of birth of the child, his father had that status at the date of his death; or

(c) He was adopted by a person who at the date of adoption had that status.

(2) Any person may apply, pursuant to the provisions of an Act of Parliament, for a certificate granting to him the status of a permanent resident of the Cook Islands.

(3) An Act may-

(a) Prescribe the qualifications to be held by a person to whom subclauses (2) of this Article applies who is an applicant for such a certificate, and the circumstances in which such an applicant is disqualified from being granted such a certificate; and

(b) Prescribe the conditions subject to which such a certificate may be granted to a person to whom subclause (2) of this Article applies; and

(c) Confer on a Minister a discretion to grant or refuse such a certificate to a person to whom subclause (2) of this Article applies; and

(d) Prescribe the circumstances in which such a certificate granted may be revoked:

Provided that any certificate granted may only be revoked by a Judge of the High Court.

(4) Notwithstanding any of the provisions of this Article, the Minister responsible for immigration may cancel any certificate granted if the person to whom the certificate relates is absent from the Cook Islands continuously for a period exceeding three years in circumstances indicating that the person has ceased to make his home in the Cook Islands.

(5) Nothing in this Article shall affect the status as a permanent resident of the Cook Islands of any person holding that status pursuant to the Entry, Residence, and Departure Act 1971-72, immediately before the commencement of this Article.

### **The Prerogative of Mercy and Pardon**

76B The Prerogative of Mercy and Pardon shall be exercised by the [[Queen's Representative]], acting pursuant to a resolution of Parliament, provided that any such resolution must receive the support of not less than two-thirds of the total membership (including vacancies) of Parliament.

The words "Queen's Representative" were substituted for the words "High Commissioner" by s 4(1) of the Constitution Amendment (No 10) Act 1981-82 (CI)



## The Cook Islands Ensign

76C (1) The Cook Islands Ensign shall be the flag described in the Third Schedule to this Constitution.

(2) The Cook Islands Ensign is hereby declared to be the recognised flag of the Cook Islands.

(3) Provision may be made by enactment prescribing the circumstances in which and the conditions subject to which the Cook Islands Ensign may be flown, and prohibiting the defacing of the ensign by placing any sign, representation or letter thereon.

## [National anthem of the Cook Islands

76D (1) The anthem entitled "Te Atua Mou E" shall be the national anthem of the Cook Islands.

(2) The words of the national anthem shall be as set out in the Fourth Schedule to this Constitution.]

This Part VIA was inserted by s 13 of the Constitution Amendment (No 9) Act 1980–81 (CI)

## PART VIITRANSITIONAL PROVISIONS

### Existing law to continue

77 Subject to the provisions of this Constitution—

(a) The existing law shall, until repealed, and subject to any amendment thereof, continue in force on and after Constitution Day;

(b) All rights, obligations, and liabilities arising under the existing law shall continue to exist on and after Constitution Day, and shall be recognised, exercised, and enforced accordingly.

78 *Repealed by s 15 of the Constitution Amendment (No 9) Act 1980–81 (CI).*

79 Repealed by s 2(1) of the Cook Islands Constitution Amendment Act 1965 (NZ).

## Legislative Assembly of the Cook Islands

80 (1)–(3) Repealed by s 15 of the Constitution Amendment (No 9) Act 1980–81 (CI).

(4) Subject to the provisions of this Constitution, the Standing Orders of the Legislative Assembly in force immediately before Constitution Day shall continue to be the Standing Orders of [Parliament], and they may be amended, repealed, or added to under the provisions of Article 34 hereof.

The word "Parliament" was substituted for the words "Legislative Assembly" in subcl (4) by s 17(4) of the Constitution Amendment (No 9) Act 1980–81 (CI)

## Ordinances of Former Legislative Council or Legislative Assembly

81 (1) Every Ordinance made by the Legislative Council of the Cook Islands under section 2 of the Cook Islands Amendment Act 1946, and in force immediately before Constitution Day, shall be deemed to be an Ordinance of the Legislative Assembly of the Cook Islands made before Constitution Day and shall continue in force as if it were such an Ordinance on and after Constitution Day.

(2) All Ordinances made by the Legislative Assembly of the Cook Islands under section 38 of the Cook Islands Amendment Act 1957, and in force immediately before Constitution Day, shall continue in force on and after Constitution Day.

## The High Court

82 (1) The High Court of the Cook Islands established by Article 47 hereof is hereby declared to be the same Court as the High Court of the Cook Islands established by the Cook Islands Act 1915.

(2) The Judges and Commissioners of that Court in office immediately before Constitution Day shall continue to hold office on and after Constitution Day as if they had been appointed under the provisions of this Constitution, and

those Judges shall receive the salary to which they were entitled immediately before Constitution Day as if that salary had been fixed by enactment.

(3) All judgments, decrees, records, and acts of the High Court of the Cook Islands shall continue to have full force and effect on and after Constitution Day as judgments, decrees, records and acts of the High Court established under this Constitution; and all proceedings, civil or criminal, pending in the High Court immediately before Constitution Day, and all appeals pending immediately before Constitution Day from decisions of the High Court, may be continued on and after Constitution Day.

## The Land Court

83 (1) The Land Court of the Cook Islands established by Article 52 hereof is hereby declared to be the same Court as the Native Land Court of the Cook Islands established by the Cook Islands Act 1915.

(2) The Land Court of the Cook Islands shall also be deemed for all purposes to be the same Court as that which existed at the commencement of the Cook Islands Act 1915 under the name of the Cook Islands Land Titles Court, and all orders theretofore made by the last-mentioned Court shall have effect accordingly.

(3) *Repealed by s 15 of the Constitution Amendment (No 9) Act 1980-81 (CI).*

Articles 84 and 85 were repealed by s 6 of the Constitution Amendment (No 11) Act 1982 (CI)

## Cook Islands Government Account

86 The Cook Islands Government Account established by Article 67 hereof is hereby declared to be the same account as the Cook Islands Assembly Account established by section 15 of the Cook Islands Amendment Act 1957; and all money in the last-mentioned account immediately before Constitution Day shall on and after Constitution Day be deemed to form part of the Cook Islands Government Account.

Articles 87 and 88 were repealed by ss 15 and 14 of the Constitution Amendment (No 9) Act 1980-81.

## FIRST SCHEDULE (Article 27)

NAMES AND BOUNDARIES OF CONSTITUENCIES  
TOGETHER COMPRISING THE ISLANDS OF  
AITUTAKI, MANUAE, AND TE-AU-O-TU,  
AND THE ISLANDS OF RAROTONGA AND PALMERSTON,  
AND THE ISLAND OF MANGAIA, AND THE ISLAND OF ATIU

[[PART I

CONSTITUENCIES COMPRISING THE ISLANDS  
OF AITUTAKI, MANUAE AND  
TE-AU-O-TU

VAIPAE-TAUTU CONSTITUENCY

All that area in the Island of Aitutaki delineated and edged in red on the plan S0 1008 deposited in the office of the Chief Surveyor at Rarotonga, comprising-

- (i) The Avanui Tapere being part of the Avanui District; and
- (ii) The Oako Tapere and Vaipae Tapere of the Vaipae District, and
- (iii) The Mataotane Tapere and Tautu Tapere of the Tautu District; and
- (iv) The motus known as-

Angarei  
Niura  
Mangere  
Papau  
Tavairuaiti  
Tavairuanui  
Akaiami  
Muritapua  
Rapota  
Moturakau  
Tekopua  
Tapuaetai  
Motukitui

AMIIRI-UREIA CONSTITUENCY

All that area in the Island of Aitutaki delineated and edged blue on plan S0 1008 deposited in the office of the Chief Surveyor at Rarotonga, comprising-

- (i) The Ureia Tapere being part of the Arutanga District; and
- (ii) The Amuri Tapere and Punganui Tapere of the Amuri District; and
- (iii) The Anaunga Tapere and Punoa Tapere of the Anaunga District; and
- (iv) The Taakarere Tapere and Vaitupa Tapere of the Vaitupa District; and
- (v) The Vaipeka Tapere, being part of the Avanui District; and
- (vi) The motu known as Akitua.

#### **ARUTANGA-REUREU-NIKAUPARA CONSTITUENCY**

All the area in the Island of Aitutaki delineated and edged green in the plan S0 1008 deposited in the office of the Chief Surveyor at Rarotonga, comprising-

- (i) The Arutanga Tapere, the Reureu Tapere and Nukunoni Tapere being part of the Arutanga District; and
- (ii) The Vaiorea Tapere, the Vaiau Tapere and Taravao Tapere of the Taravao District; and
- (iii) The Islands of Manuae and Te-Au-O-Tu; and
- (iv) The motu known as Maina.]]

#### **[PART II CONSTITUENCIES COMPRISING THE ISLANDS OF RAROTONGA AND PALMERSTON**

#### **NIKAO-PANAMA CONSTITUENCY**

All that area in the Avarua Survey District in the Island of Rarotonga comprising the Tapere of Pokoinu, Nikao, Puapuautu, Areatu, and Kaikaveka, as

delineated on plan S0 1002D, deposited in the office of the Chief Surveyor at Rarotonga.

#### **AVATIU-RUATONGA CONSTITUENCY**

All that area in the Avarua Survey District in the Island of Rarotonga comprising the Tapere of Atupa, Avatiu and Ruatonga, as delineated on plan S0 1002C, deposited in the office of the Chief Surveyor at Rarotonga together with the Island of Palmerston.

#### **TAKUVAINA-TUTAKIMOVA CONSTITUENCY**

All that area in the Avarua Survey District in the Island of Rarotonga, comprising the Tapere of Tutakimova, Tauae, and Takuvaine, as delineated on plan S0 1002, deposited in the office of the Chief Surveyor at Rarotonga.

#### **TUPAPA-MARAERENGA CONSTITUENCY**

All that area in the Avarua Survey District in the Island of Rarotonga comprising the Tapere of Ngatipa, Vaikai, Tapae-I-Uta, Pue, Punamaia, Kiikii and Tupapa as delineated on the said plan S0 1002.

#### **MATAVERA CONSTITUENCY**

All that area comprising the Matavera Survey District in the Island of Rarotonga, as delineated on the said plan S0 1002.

#### **NGATANGIIA CONSTITUENCY**

All that area comprising the Ngatangiia Survey District in the Island of Rarotonga, as delineated on the said plan S0 1002.

#### **TITIKAVEKA CONSTITUENCY**

All that area comprising the Takitumu Survey District in the Island of Rarotonga, as delineated on the said plan S0 1002

#### **MURIENUA CONSTITUENCY**

[All that area of the Arorangi Survey District in the Island of Rarotonga, comprising the Tapere of Kavera, the Tapere of Aroa, and the Tapere of Rutaki, as delineated on the said plan S0 1002.]

#### **[AKAOA CONSTITUENCY**

All that area of the Arorangi Survey District in the Island of Rarotonga, comprising the Tapere of Akaoa, and the Tapere of Vaiakura, as delineated on the said plan S0 1002.

#### **RUAAU CONSTITUENCY**

All that area in the Arorangi Survey District in the Island of Rarotonga, comprising the Tapere of Pokoinu-i-Raro, Tokerau, Inave, and Arerenga, as delineated on the said plan S0 1002.]

### **PART III CONSTITUENCIES COMPRISING THE ISLAND OF MANGAIA**

#### **ONEROA CONSTITUENCY**

All that area in the Island of Mangaia comprising the Tapere of Tava'enga, Keia, and Veitatei, as delineated on plan S0 1014 deposited in the Office of the Chief Surveyor at Rarotonga.

#### **IVIRUA CONSTITUENCY**

All that area in the Island of Mangaia comprising the Tapere of Karanga and Ivirua, as delineated on the said plan S0 1014.

#### **TAMARUA CONSTITUENCY**

All that area in the Island of Mangaia comprising the Tapere of Tamarua, as delineated on the said plan S0 1014

### **PART IV CONSTITUENCIES COMPRISING THE ISLAND OF ATIU**

#### **TENGATANGI- AREORA -NGATIARUA CONSTITUENCY**

All that area in the Island of Atiu bounded by a line commencing at Trig station CB I and proceeding due west along a right line to the sea-coast; thence generally southerly, easterly, and northerly along the sea-coast to its intersection with a right line bearing of 45 degrees from CBI; thence south-westerly along that right line to the point of commencement, to include the villages of Areora, Tengatangi, and Ngatiarua, as delineated on Plan S0 1015 deposited in the office of the Chief Surveyor at Rarotonga.

### TEENUI-MAPUMAI CONSTITUENCY

All that area in the Island of Atiu bounded by a line commencing at Trig station CBI and proceeding due west along a right line to the sea-coast; thence generally northerly, and south-easterly, along the sea-coast to its inter-section with a right line bearing of 45 degrees from CBI; thence south-westerly along that right line to the point of commencement, to include the villages of Teenui and Mapumai, as delineated on the said S0 Plan 1015.]

The First Schedule was added by s 16 of the Constitution Amendment (No 9) Act 1980-81 (CI)

Part I was substituted by s 8 of the Constitution Amendment (No 11) Act 1982 (CI)

Part 11 was substituted by s 3 of the Constitution Amendment (No 12) Act 1986

The description of the Murienua constituency was amended, and the Akaoa constituency added, by sections 3(3) and 3(4) respectively of the Constitution Amendment (No 14) Act 1991

### SECOND SCHEDULE (Article 28)

#### CRIMES DISQUALIFYING FOR ELECTION TO PARLIAMENT

##### PART I

CRIMES AGAINST THE STATE, AND MURDER,  
SLAVERY, PIRACY, AND KIDNAPPING

Crimes against the following sections of the [Crimes Act 1969](#):

Section 75 (treason)

Section 78 (inciting to mutiny)

Section 80 (communicating secrets)



Section 81 (sabotage)  
Section 84 (seditious conspiracy) Section 85 (seditious statements)  
Section 86 (publication of seditious documents)  
Section 87 (use of apparatus for making seditious documents or statements)  
Section 103 and 104 (piracy)  
Section 109 (dealing in persons)  
Section 192 (murder)  
Section 231(1) (c) (kidnapping)

## PART II CRIMES AFFECTING THE ADMINISTRATION OF LAW AND JUSTICE

Crimes against the following provisions of the [Crimes Act 1969](#):

Section 111 (judicial corruption)  
Section 112) (bribery of judicial officer)  
Section 113 (bribery and corruption of Minister of the Crown)  
Section 114) (corruption and bribery of Member of Parliament)  
Section 115) (corruption and bribery of law enforcement officer)  
Section 116 (corruption and bribery of official)  
Section 120 (perjury)  
Section 121 (false oaths)  
Section 124 (fabricating evidence)  
Section 126 (conspiring to bring false accusation)  
Section 127 (conspiring to defeat justice)  
Section 128 (corrupting juries and witnesses)

## CRIMES INVOLVING DISHONESTY

Crimes against the following sections of the [Crimes Act 1969](#):

Section 249 (a) and (b) (theft)  
Section 250 (conversion)  
Section 252 (criminal breach of trust)  
Section 256 (robbery)  
Section 257 (aggravated robbery)  
Section 258 (compelling execution of documents by force)  
Section 259 (assault with intent to rob)  
Section 260 (extortion)  
Section 261 (demanding with menaces)  
Section 263 (burglary)

Section 264 (entering with intent)  
Section 265 (being armed with intent to break and enter)  
Section 269 (1) and (2) (a) (false pretences)  
Section 271 (personation)  
Section 272 (acknowledging instrument in false name)  
Section 273 (false statement by promoter)  
Section 274 (falsifying accounts relating to public funds)  
Section 275 (false accounting by officer or member of body corporate)  
Section 276 (false accounting by employee)  
Section 278 (issuing false dividend warrants)  
Section 279 (concealing deeds and encumbrances)  
Section 280 (conspiracy to defraud)  
Section 281(a) (receiving)  
Section 288 to 309, 314 and 315 (forgery, uttering and counterfeiting offences)]

The Second Schedule was added by s 16 of the Constitution Amendment (No 9) Act 1980-81 (CI)

### THIRD SCHEDULE (Article 76C)

#### THE COOK ISLANDS ENSIGN

The Cook Islands Ensign shall be described as follows:

The Cook Islands Ensign shall be a Royal blue ensign. The Union Jack shall occupy the upper staff quarter, having on the fly 15 stars in a symmetrical ring, all of equal size and equal spacing, and the colour of the stars shall be white. The flag proportion of length to breadth shall be two to one.

And it shall mean-

**Blue** - is the colour most expressive of our Nation, it is representative of the vast area of the Pacific Ocean in which the islands of the Cook Islands are scattered. Blue also depicts the peaceful nature of the inhabitants of our islands.

**Union Jack** - indicates our historical association with and membership of the British Commonwealth

**The 15 white stars** - represent the 15 islands of the group.

FOURTH SCHEDULE  
(Article 76D)

THE NATIONAL ANTHEM OF THE COOK ISLANDS

The words of the National Anthem of the Cook Islands, ("Te Atua Mou E"), shall be as follows:

TE ATUA MOU E

TE ATUA MOU E  
KO KOE RAI TE PU  
OTE PA ENUA E  
AKARONGO MAI  
I TO MATOU NEI REO  
TE KAPIKI ATU NEI  
PARURU MAI  
IA MATOU NEI  
OMAI TE KORONA MOU  
KIA NGATEITEI  
KIA VAI RAI TE AROA  
O TE PA ENUA E.

*The Fourth Schedule was added by s 16 of the Constitution Amendment (No 9) Act 1980-81 (CI).*