



ANALYSIS

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1976, No. 21

An Act to re-establish Local Government in the
Outer Islands of the Cook Islands

(1st December 1976)

BE IT ENACTED by the Legislative Assembly of the Cook Islands, in session assembled, and by authority of the same, as follows:

1. Short Title - This Act may be cited as the Outer Islands Local Government Act 1976.

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

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

"Chief Administration Officer" means any Chief Administration Officer appointed pursuant to the Premier's Department Act 1973-74:

"Co-ordinating Committee" means the Co-ordinating Committee established under the provisions of the Premier's Department Act 1973-74:

"Director" means the Director of Outer Islands Affairs appointed pursuant to the Premier's Department Act 1973-74:

"Financial Secretary" means the Financial Secretary appointed pursuant to the Public Moneys Act 1969:

"Kavana" means a person who has been invested with the title rank of Kavana and who is a member of the Koutu Nui:

"Koutu Nui" means the Koutu Nui established by the House of Ariki Act 1966:

"Mataiapo" means a person who has been invested with the title rank of Mataiapo and who is a member of the Koutu Nui:

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

"Rangatira" means a person who has been invested with the title rank of rangatira and who is a member of the Koutu Nui.

3. Application - This Act shall apply to all Islands of the Cook Islands except Rarotonga.

4. Island Councils reconstituted - The constitution, membership and functions of Island Council shall be as prescribed herein.

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

- (a) The Ariki of the Island (if any).
- (b) A representative of the kavana, mataiapo and rangatira (if any) of the Island who shall be elected in the manner prescribed in Part II of this Act.
- (c) The Legislative Assembly members of the Island.
- (d) The elected members as provided in Schedule to this Act and elected in the manner prescribed in Part II of this Act.

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

6. Adviser to the Island Council - The Chief Administration Officer of the Island shall be adviser to the Island Council of that Island and shall be entitled to attend and address all meetings of the Island Council.

7. Chairman and Deputy-Chairman of the Island Council -

(1) Each Island Council shall elect a Chairman and Deputy-Chairman from its members holding office pursuant to paragraph (d) of subsection (1) of section 5 of this Act.

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

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

8. Functions of Island Councils - The functions of each Island Council shall be:

- (a) To carry into effect, administer, and enforce the provisions of Ordinances and Bylaws that may be applicable to the Island.
- (b) To assist in the co-ordination of any activity relevant to the economic and social development of the Island.
- (c) To assist the Government of the Cook Islands in the good rule and government of the Island.
- (d) To advise on or determine any matter or question referred to the Island Council by any Village Committee on the Island.
- (e) To give direction on any matter to any Village Committee on the Island.
- (f) To settle disputes or differences between Village Committees.

PART II - ELECTIONS TO ISLAND COUNCILS

9. Election of a representative of the kavana, mataiapo and rangatira - (1) In the month of April in each year there shall be held a meeting of kavana, mataiapo and rangatira of the

Island which shall be convened and chaired by the Chief Administration Officer for the purpose of electing one member of the title holders present to be the representative of the kavana, mataiapo and rangatira on the Island Council.

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

- (a) Any person holding the title rank of Ariki on the Island;
- (b) Any person holding office as a Legislative Assembly member;
- (c) Any person under the age of 18 years;
- (d) Any person who has been convicted of any offence punishable by imprisonment for a term of three months or upwards; or has been convicted of a corrupt practice, unless he has received a free pardon or has undergone the sentence or punishment to which he was adjudged for the offence;
- (e) Any person who is mentally unstable;
- (f) Any person who is a public servant or member of the staff of any agency of Government;
- (g) Any person who is not a British subject.

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

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

10. Election of elected members - (1) In the month of April in each year on a date or dates to be appointed by the Chief Administration Officer there shall be held in each constituency on the island (as prescribed in the Schedule to this Act) a meeting to be chaired by the Chief Administration Officer of all residents of that constituency who shall from among themselves elect by secret ballot the elected members of the Island Council.

(2) The following shall not be eligible for election at any meeting called for the purpose of electing members:

- (a) Any person holding the title rank of Ariki on that island;
- (b) Any person holding office as a Legislative Assembly member;
- (c) Any person holding office as the representative of the kavana, mataiapo and rangatira of the Island;

- (d) Any person under the age of 18 years;
- (e) Any person who has been convicted of any offence punishable by imprisonment for a term of three months or upwards; or has been convicted of a corrupt practice, unless he has received a free pardon or has undergone the sentence or punishment to which he was adjudged for the offence;
- (f) Any person who is a public servant or member of the staff of any agency of Government;
- (g) Any person who is mentally unstable;
- (h) Any person who is not a British subject.

(3) The following shall not be eligible to vote at any meeting called for the purpose of electing members;

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

11. Disputed elections - Where there is any dispute of an election held under sections 9 or 10 of this Act the following provisions shall apply:

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

12. Public notification of filling of Island Council vacancies - (1) Within one day of the holding of any election pursuant to sections 9 or 10 of this Act the Chief Administration Officer shall cause a public notice to be displayed in each constituency of the Island showing the names of every person elected at that election.

(2) Twenty-one days after publishing the aforesaid public notice the Chief Administration Officer shall send the names of each member elected and the constituency he represents to the Director who shall after the completion of the annual elections on all Islands sign a warrant of appointment declaring the appointment of the successful members.

13. Disqualification of membership of Island Councils -

(1) Every elected member, whether as a representative of the kavana, mataiapo and rangatira or elected pursuant to section 10 of this Act, shall be disqualified from sitting on an Island Council and his seat shall be declared vacant by the Clerk of the Island Council if that member:

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

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

(3) Where any vacancy occurs under subsection (1) of this section the following provisions shall apply:

- (a) If the vacancy occurs within eight months from the date of the public notification under subsection (2) of section 12 of this Act a by-election shall be held and the provisions of sections 9 or 10 as to elections as the case may be shall apply for the purposes of the by-election with suitable modifications;
- (b) If the vacancy occurs after eight months from the date of the public notification under subsection (2) of section 12 of this Act no by-election shall be held

and the seat shall remain vacant until the next general elections.

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

PART III - BYLAWS

15. Making of Bylaws for any Island to be by Order in Executive Council - (1) The High Commissioner, by Order in Executive Council, on the recommendation of the Minister may:

- (a) Revoke or alter any bylaw or ordinance of any Island Council; and
- (b) Issue any bylaw for any Island for such purposes as may be deemed necessary and to give effect to any function of an Island Council.

(2) Any Order in Executive Council made under this section may prescribe for offences against that Order punishable by imprisonment of a term not exceeding three months or a fine not exceeding \$200 or both.

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

16. Recommendations to the Minister for the making of bylaws etc. - Recommendations to the Minister for the promulgation of new bylaws, or the revocation or alteration of existing bylaws and ordinances may be made by formal resolution of any Island Council.

17. Offences against bylaws punishable in the High Court - Every offence against any bylaw or ordinance made under this Act shall be punishable in the High Court of the Cook Islands.

18. Existing bylaws and ordinances - All existing bylaws and ordinances shall remain in force as if made pursuant to this Act but shall not be lawful where they are repugnant to the laws of the Cook Islands.

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

(2) Where a complaint has been laid under any bylaw or ordinance to the Clerk or Chairman of the Island Council and is not acted upon within a reasonable time, the complainant may refer the complaint to the Chief Administration Officer who, if he feels the complaint is warranted, shall refer the complaint to the senior member of the Police Department on the Island for action by the Police, who shall investigate the complaint as if it were a complaint made under any Act of the Legislative Assembly of the Cook Islands.

(3) The Chief Administration Officer shall forward to the Director full details of any complaint referred by him to the Police Department.

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

PART IV - OFFICERS OF THE COUNCIL

21. Clerk of the Island Council - There shall be a Clerk of each Island Council who shall be appointed by the Chief Administration Officer for that Island except on the Islands of Mitiaro and Rakahanga where the Chief Administration Officer shall act as the Clerk.

22. Minutes - The Clerk of each Island Council shall cause to be kept the minutes for every meeting of the Island Council and shall transmit two copies of each minutes to the Director.

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

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

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

PART V - FINANCIAL PROVISIONS

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

26. Remuneration of Island Council members - Members of each Island Council elected pursuant to sections 9 and 10 of this Act shall receive such sitting fees and other allowances as may be determined from time to time by Order in Executive Council and such fees and allowances shall be paid out of the funds of the Island Councils.

27. Islands Council Fund - (1) There shall be a fund for each Island Council which shall consist of the following moneys:

- (a) Such subsidies as may be paid under section 25 of this Act;
- (b) All revenues of the Island Council from fees, service charges, fines, contributions, subscriptions, rents and other monies;
- (c) Such other monies as may be appropriated by the Legislative Assembly for any capital purchase by the Island Council.

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

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

28. Accounting for Island Council Fund - (1) All monies forming part of the Island Council Fund and any buildings, machinery and other equipment belonging to the Island Council shall be deemed to be public moneys and stores within the meaning of the Public Moneys Act 1969 and shall be accounted for in such way as the Financial Secretary determines.

(2) The accounts shall be subject to audit by the Government of the Cook Islands' auditors.

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

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

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

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

PART VI - MISCELLANEOUS PROVISIONS

31. Disability of members of Island Council having interests in matters under consideration - (1) No member of any Island Council shall vote or take part in the discussion of any matter before a meeting of a Island Council in which the member has directly or indirectly any pecuniary interest apart from an interest in common with the public.

(2) Any member who knowingly and wilfully fails to comply with the provisions of subsection (1) of this section commits an offence and is liable to a fine not exceeding \$500 or to imprisonment for a term of imprisonment not exceeding six months.

(3) The office of any member of an Island Council held pursuant to the provisions of this Act shall forthwith be vacated upon conviction of the member of an offence under subsection (2) of this section.

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

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

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

34. Income Tax Every Island Council shall be exempt from income tax.

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

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

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

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

(2) Notwithstanding anything to the contrary herein contained or contained in the Local Government Act 1966 or the Local Government Electoral Regulations 1968, the last duly appointed Island Council of any Island to which this Act applies shall continue in existence as if appointed under this Act until the time appointed for the next general election of members to the Island Council pursuant to Part II of this Act, and shall have all the functions, powers and authorities imposed on Island Councils pursuant to this Act.

SCHEDULE

Sec. 5 CONSTITUENCIES AND NUMBER OF ELECTED MEMBERS
Sec. 10

<u>First Column</u>	<u>Second Column</u>	<u>Third Column</u>
<u>Name of Island</u>	<u>Constituencies</u>	<u>Number of Elected Members</u>
Mangaia	(1) The Village of Ivirua	1
	(2) The Village of Tamarua	1
	(3) The Village of Karanga	1
	(4) The Village of Tavaenga	1
	(5) The Village of Veitatei	1
	(6) The Village of Keia	1
	Total for the Island	<u>6</u>
Aitutaki	(1) The Village of Amuri	1
	(2) The Village of Ureia	1
	(3) The Village of Arutanga	1
	(4) The Village of Reureu	1
	(5) The Village of Nikaupara	1
	(6) The Village of Vaipae	1
	(7) The Village of Taupu	1
	Total for the Island	<u>7</u>
Atiu	(1) The Village of Ngatiarua	1
	(2) The Village of Tengtanga	1
	(3) The Village of Napumai	1
	(4) The Village of Aroora	1
	(5) The Village of Teemui	1
	Total for the Island	<u>5</u>
Mauke	(1) The Village of Aveverou	1
	(2) The Village of Parai	1
	(3) The Village of Makatea	1
	(4) The Village of Aroora	1
	(5) The Village of Ngatiarua	1
	Total for the Island	<u>5</u>
Mitiaro	The Island as one constituency	<u>5</u>
Penrhyn	(1) The Village of Omoka	3
	(2) The Village of Tetautua	2
	Total for the Island	<u>5</u>
Manihiki	(1) The Village of Taubunu	3
	(2) The Village of Tuxoo	2
	Total for the Island	<u>5</u>
Rakahanga	The Island as one constituency	<u>5</u>
Pukapuka	(1) The Village of Yato	2
	(2) The Village of Poto	2
	(3) The Village of Ngako	2
	Total for the Island	<u>6</u>

This Act shall be administered by the Outer Islands Division, Premier's Department.