



## ANALYSIS

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1989, No. 27

An Act to reconstitute the Tourist Authority and to establish a Tourism Advisory Committee as bodies within the Cook Islands

(13 December 1989)

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

1. Short Title and commencement - (1) This Act may be cited as the Tourist Authority Act 1989.

(2) This Act shall come into force on a date to be appointed by the Minister and notified in the Gazette.

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

"Appointed member" means any member of the Board appointed pursuant to section 4(3);

"Authority" means the Tourist Authority established pursuant to section 3;

"Board" means the Board of Directors of the Authority established pursuant to section 4;

"Committee" means the Tourism Advisory Committee established pursuant to section 17;

"Director" means the Director of Tourism appointed pursuant to section 12;

"Local person" means any person who is a local person for the purposes of the Development Investment Act 1977;

"Member" means a member of the Board;

"Minister" means the Minister of Tourism.

#### PART I

3. Establishment of Tourist Authority - (1) There shall continue to be an Authority to be called the Tourist Authority.

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

4. Board of Directors - (1) There shall be a Board of Directors of the Authority which shall subject to the provisions of this Act have overall control of the Authority.

(2) The Board shall consist of -

(a) The Director of Tourism; and

(b) No fewer than four, nor more than six appointed members, being persons from among those of competence and experience in -

(i) the travel industry; or,

(ii) private commercial interests

and having personal attributes or qualifications as will enable those persons to represent the general community interests.

(3) The appointed members of the Board shall be appointed by the Minister, who shall from among those appointed members appoint one as Chairman of the Board.

(4) The powers of the Board shall not be affected by any extraordinary vacancy in its membership.

5. Term of office of members of Authority - (1) Except as otherwise provided in this Act every appointed member shall hold office for a term of two years but may from time to time be re-appointed.

(2) Notwithstanding anything in this Act, every appointed member whose office is terminated by effluxion of time shall continue to hold office until his successor comes into office.

6. Extraordinary vacancies - (1) An appointed member of the Board may resign his office at any time by written notice given to the Minister.

(2) An appointed member may at any time be removed from office by the Minister for disability bankruptcy neglect of duty or misconduct proved to the satisfaction of the Minister.

(3) If an appointed member dies or resigns his office by written notice given to the Minister or is removed from office the vacancy shall be deemed to be an extraordinary vacancy.

(4) In the case of an extraordinary vacancy, the Minister may subject to the criteria for the composition of the Board set forth in section 4 (2) appoint any person to fill the vacancy.

(5) Any appointed member appointed to fill an extraordinary vacancy shall hold office only for the unexpired portion of the term of office of his predecessor, but may be re-appointed.

7. Meetings of Board - (1) The first meeting of the Board shall be held on a day to be appointed by the Chairman.

(2) Subsequent meetings shall be held at such times and places as the Board or the Chairman may from time to time appoint.

(3) The Chairman or any three members may at any time call a special meeting of the Board.

(4) At all meetings a majority of the members for the time being of the Board shall form a quorum.

(5) The Chairman shall preside at all meetings at which he is present. In the absence of the Chairman from any meeting, the members present shall appoint one of their number to be Chairman of that meeting.

(6) At any meeting the Chairman shall have a deliberative vote and in the case of an equality of votes shall also have a casting vote.

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

(8) The Minister shall have the right to attend and address any meeting of Board.

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

8. Minutes of meetings - (1) The Board shall cause minutes to be kept in a book provided for the purpose, of all resolutions and proceedings of its meetings.

(2) The minutes shall be signed by the Chairman at the next meeting subsequent to the passing thereof.

(3) A copy of the minutes of every meeting shall be furnished to every member.

9. Disclosure of conflicting interest - (1) Any member who has a direct or indirect pecuniary interest in any matter before the Board or any committee thereof (apart from any interest in common with the public or with any section of the public or with any section of the tourist industry affected by the matter in question) shall as soon as possible after the relevant facts have come to his notice, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under this section shall be recorded in the minutes of the meeting of the Board and the member shall not take part after the disclosure in any deliberation or decisions relating to the matter, but shall be counted as present for the purpose of forming a quorum of the Board for any such deliberation or decision.

10. Board may refer matters for investigation - (1) The Board may from time to time appoint one or more of its members or any other qualified person to investigate and report to the Board on such matters as are referred to him or them by the Board for the purpose of the proper exercise of its powers or functions under this Act.

(2) Every person commits an offence against this Act who having the custody or possession of any books papers accounts or documents relevant to any matter to be investigated under this section refuses or fails to allow to have access thereto any person investigating the matter under this section or who obstructs any such person in the making of the investigation.

11. Delegation of Powers of Authority - (1) The Authority may from time to time appoint a Committee or Committees consisting of two or more persons being members of the Board or officers of the Authority and may from time to time delegate to any such Committee any of the powers or functions of the Authority including the power of delegation conferred by this section.

(2) The Authority may from time to time delegate any of its powers to any member of the board or officer or employee of the Authority including the power of delegation conferred by this section.

(3) Subject to any general or special directions given or conditions imposed by the Authority or Committee or person to whom any powers are delegated pursuant to this section the Committee or person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) Every Committee or person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Any delegation under this section may be made to a specified person or to persons of a specified class or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a specified class.

(6) Any delegation under this section may be revoked at any time.

(7) The delegation of any power by the Authority or by any Committee or person shall not prevent the exercise of that power by the Authority or as the case may require by that Committee or person.

12. Director and other employees - (1) The Authority shall appoint a Director of Tourism who shall be the Chief Executive Officer of the Authority.

(2) The Authority may from time to time appoint such other officers and employees including acting or temporary or casual officers and employees as it thinks necessary for the efficient exercise of its functions and powers.

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

(a) In the case of a person subject to the Public Service Act 1975 with the consent of the Public Service Commissioner; and

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

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

(5) No person by reason only of being a director or employee of the Authority shall be deemed to be employed in the Public Service, within the meaning of the Public Service Act 1975.

## PART II

### OBJECTIVES, FUNCTIONS AND POWERS OF THE AUTHORITY

13. Objectives of the Authority - The primary objective of the Authority shall be to encourage and promote the development of tourism in the Cook Islands in a manner which is appropriate to the interests of the Cook Islands as a whole and of its people at large.

14. Functions of Authority - In pursuing its primary objective the Authority shall have the following functions:

- (a) As to policy and planning;
  - (i) to recommend national and regional policy for the development, promotion, regulation and control of tourism;
  - (ii) to assist, when required by the Minister, in the implementation of national and regional tourism policy;
  - (iii) to co-ordinate policy and planning for the development and promotion of tourism;
  - (iv) to undertake such planning and research as (not being undertaken by any other agency or department of the Government of the Cook Islands) may be required to provide the Minister with advice and guidance on matters of policy and planning affecting the tourist industry;
  - (v) to undertake such planning and research as may be required to enable the Authority to discharge any other of its functions under this section.
- (b) As to marketing and promotion;
  - (i) to promote and encourage travel by the public to, within and among the Cook Islands in accordance with policies as established from time to time;
  - (ii) to promote and encourage the development of those tourism facilities, attractions and services which are consistent with policies as established from time to time;
  - (iii) to provide and co-ordinate national, destinational and other broad-spectrum marketing services as may be required to ensure orderly promotion of tourism in overseas markets;
  - (iv) to provide advisory and guidance services for travel agents, tour operators and others engaged in the business of encouraging tourists to visit the Cook Islands;
  - (v) to establish, maintain, develop and operate publicity, public relations and information services in respect of travel to within and among the Cook Islands.
- (c) As to cultural and community issues;
  - (i) to establish and promote structures and procedures to facilitate dialogue and consultation on matters affecting tourism between and among the Government, those involved in the tourism industry in the Cook Islands, and the general public of the Cook Islands;

- (ii) to identify and promote those aspects of Cook Islands culture and entertainment of interest to tourists;
  - (iii) to advise and inform the Minister as required of matters of particular community concern;
  - (iv) to regulate and control in conjunction with other departments and agencies of the Government the use and development of scenic attractions and recreational facilities in the Cook Islands.
- (d) As to education and training;
- (i) to promote and co-ordinate with other departments and agencies of the Government of the Cook Islands an ongoing programme of education and training to improve levels of participation by local persons in the tourist industry;
  - (ii) to establish and promote a continuing programme of community education as to the benefits and advantages of tourism.
- (e) As to commercial operations;
- to carry on such other commercial activities as may from time to time be approved in writing by the Minister.
- (f) As to the Outer Islands;
- to encourage the growth of tourism in the outer islands in accordance with the degree to which each island seeks to participate in the tourist industry.
- (g) As to general administration and other matters;
- (i) to hold such inquiries and gather such information as will enable it to determine the requirements of tourists and public as to the provision of services of all kinds and other amenities on premises licensed pursuant to this Act;
  - (ii) to conduct enquiries into any matters at the request of or with the approval of the Minister and to make recommendations to the Minister in respect thereof;
  - (iii) to do such other acts and things as the Authority may be required or authorised to do by this or any other Act or as may in the opinion of the Authority be necessary or desirable for the purposes of this Act.

15. Powers of the Authority - (1) The Authority shall have all the powers reasonably necessary for the effective performance of its functions.

- (2) Without limiting the generality of subsection (1), the Authority may -
- (a) Conduct, maintain, and improve all property controlled or administered by it or established or acquired by it under this Act;
  - (b) With the prior approval of Cabinet acquire by purchase lease sublease or otherwise any land or interest in land other than the fee simple in such land, with or without any building;
  - (c) With the prior approval of Cabinet dispose of any commercial undertaking, land, interest in land other than the fee simple in such land by sale lease sublease or otherwise;
  - (d) With the prior approval of Cabinet arrange or contract for the erection of provision of hotel or accommodation premises on any land acquired by the Authority and to sell or lease such land other than the fee simple in such land either with or subject to the erection or provision of such hotel or accommodation premises;
  - (e) With the prior approval of Cabinet subscribe for acquire and hold and dispose of or otherwise deal with rights shares stock debentures or loan capital in any company wherever incorporated carrying on or intending to carry on any business or activity -
    - (i) promoting tourism in the Cook Islands;
    - (ii) providing accommodation for tourists and the travelling public whether by means of hotels accommodation premises or in any other manner howsoever; and
    - (iii) concerned directly or indirectly with the needs entertainment or recreation of tourists in any way whatsoever.
  - (f) Subject to the provisions of any enactment applicable to the Authority, fix regulate or make such charges as it determines from time to time for the use of any accommodation, service, works, buildings, recreation grounds, equipment, apparatus, attractions, amenities, or facilities, provided maintained controlled or operated by the Authority or any other person or persons whether corporate or unincorporated;
  - (g) Contract for the execution or provision by any person of any work or services authorised by this or any other Act to be executed or provided by the Authority in such manner and on and subject to such terms and conditions as the Authority thinks fit.

- (h) For the purpose of promoting and encouraging tourist traffic in and to the Cook Islands, act in combination or association with any person or body of persons whether incorporated or not and whether in the Cook Islands or elsewhere or any Government department or agency-that may be engaged concerned or interested in the promotion of tourist traffic from overseas and within the Cook Islands and contribute to the expenses involved in any such combination or association;
- (i) To make recommendations to the Minister or interested persons on standards to be complied with by hotels, accommodation premises, restaurants, scenic attractions and recreational facilities together with services and amenities, in connection therein.

16. Authority to give effect to directions of Government

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

PART III

TOURISM ADVISORY COMMITTEE

17. Tourism Advisory Committee - (1) There is hereby established a committee to be known as the Tourism Advisory Committee which shall be responsible to the Authority.

(2) The Committee shall consist of twelve appointed members being:

- (i) one person from and to represent those involved in the transportation of tourists;
- (ii) one person from and to represent those involved in the airline industry;
- (iii) one person from and to represent those engaged in the ownership or operation of accommodation premises;
- (iv) one person from and to represent those engaged in the operation of tour and excursion operations;
- (v) one person from and to represent those engaged in the ownership or operation of restaurants bars nightclubs and other similar establishments;
- (vi) one person from and to represent those involved in the tourist industry in the outer islands;

- (vii) one person from and to represent the growers of the Cook Islands;
- (viii) one person from and to represent the Religious Advisory Council;
- (ix) one person from and to represent the Conservation Council established by the Conservation Act 1986-87;
- (x) one person from and to represent those engaged in training and education for the tourist industry;
- (xi) one person from and to represent the Koutu Nui;
- (xii) the Director of Tourism or his nominee, (which nominee shall in any event be a senior employee of the Authority) as an ex-officio member of the Committee.

one of whom the Minister shall appoint as Chairman of the Committee and one of whom the Minister shall appoint as Deputy Chairman.

(3) The members of the Committee shall be appointed by the Minister who in making each appointment shall consult with, and so far as is reasonably practical give effect in each case to the recommendations of the Authority.

(4) The members of the Committee may regulate their procedure in such manner as they think fit provided however that the Minister shall have the right to attend any meeting of the Committee and shall be notified of all meetings accordingly.

(5) The powers of the Committee shall not be affected by the fact that at any time there may be less than twelve members in office.

18. Term of office of members of Committee - (1) Except as otherwise provided in this Act every member of the Committee shall hold office for a term of one year but may from time to time be re-appointed.

(2) Notwithstanding anything in this Act every appointed member whose office is terminated by effluxion of time shall continue to hold office until his successor comes into office.

19. Extraordinary vacancies - (1) Any member of the Committee may resign his office at any time by written notice given to the Minister.

(2) Any appointed member may at any time be removed from office by the Minister, for disability bankruptcy neglect of duty or misconduct proved to the satisfaction of the Minister or if in the opinion of the Minister that member has ceased to be representative of those whose interests that member was appointed to represent.

(3) If any appointed member dies or resigns his office by written notice given to the Minister or is removed from office the vacancy shall be deemed to be an extraordinary vacancy.

(4) In the case of an extraordinary vacancy, the Minister may subject to the criteria for the composition of the Committee set forth in section 17(2), appoint any person to fill the vacancy.

(5) Any person appointed to fill an extraordinary vacancy shall hold office only for the unexpired portion of the term of office of his predecessor, but may be re-appointed.

20. Functions and powers of Committee - (1) The functions of the Committee shall be to consider and debate -
- (a) Matters referred to it by the Authority; and
  - (b) Tourism-related issues affecting commercial, community and governmental interests in a manner whereby conflicting sectional interests may be identified and resolved thereby enabling the Committee to provide the Authority with broad spectrum advice and recommendations and with general consultative capacity.
- (2) The Committee shall have all the powers reasonably necessary for the effective performance of its functions.
- (3) The Authority shall provide the Committee with such secretarial and other facilities as may reasonably be required to enable the Committee to perform effectively its functions.

21. Authority to have regard to representations of Committee - In the exercise of its statutory and prerogative functions the Authority shall have regard to any representations that may be made by the Committee in respect of any matters touching or concerning tourism, and the Authority shall consult with the committee on a regular basis and shall keep the Committee informed of any matter arising out of its own functions or business which may affect the interests of the Committee or of any of the interests represented by its members.

#### PART IV

#### FINANCIAL

22. Remuneration and allowances of members of the Board - The members of the Board shall be paid out of the Cook Islands Government Account such remuneration and allowances as shall be fixed from time to time by the Queen's Representative by Order in Executive Council.

23. Application of fees - All fees and other moneys paid under this Act shall be paid into the Cook Islands Government Account and all expenses incurred in respect of the administration of this Act and regulations thereunder shall be paid out of such moneys as may from time to time be appropriated by Parliament.

24. Tourist Authority Account - (1) The Authority shall keep such bank account or accounts as may from time to time be approved by the Minister responsible for Finance.

(2) No money shall be withdrawn from any bank account except by cheque or other instrument (not being a promissory note or bill) signed by such person or persons in such manner as the Minister responsible for finance may from time to time determine.

25. Preparation of estimates - (1) The Authority shall prepare and submit annual estimates of revenue and expenditure, as the Minister responsible for Finance directs, covering the operations of the Authority in the exercise of its powers and functions.

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

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

(4) A copy of the estimates as approved by Cabinet shall be attached to the estimates prepared pursuant to section 28 of the Public Money and Stores Act 1987 as an appendix thereto.

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

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

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

(2) The financial statements required to be furnished to the Minister in accordance with subsection (1) shall be in such form as may from time to time be directed by the Minister responsible for finance and shall be completed and available no later than four months after the end of the financial year to which they relate.

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

28. Breach of Act or regulations - Every person who commits or attempts to commit or is concerned in committing or attempting to commit a breach or violation of the provisions of this Act or of any regulations made under this Act for which no special penalty is provided is liable for every offence to a fine not exceeding one thousand dollars and if the breach or violation is a continuing one to a further fine not exceeding one hundred dollars for every day or part of a day during which the offence continues.

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

(2) All such regulations shall be laid before Parliament within fourteen days after the date of making thereof if Parliament is then in session, and, if not shall be laid before Parliament within fourteen days after the date of the commencement of the next ensuing session.

30. Transitional - (1) Upon the date of coming into force of this Act, -

- (a) All assets and liabilities of the former Authority shall be transferred to and vest in the Authority without further assurance than this section and the Authority shall have all powers necessary to take possession of recover and deal with such assets and discharge such liabilities;
- (b) Every agreement, whether in writing or not and every deed, bond or other instrument to which the former Authority was a party or which affected the former Authority and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Authority were a party thereto or affected thereby instead of the former Authority as if for every reference (however worded and whether express or implied) therein to the former Authority there were substituted in respect of anything to be done on or after such date of coming into operation a reference to the Authority.
- (c) All officers and employees of the former Authority shall become the corresponding officers and employees of the Authority and shall continue in office for the period for which they were appointed or employed as officers or employees of the former Authority.

(2) Every person who is a member of the former Authority prior to the coming into force of this Act shall, continue to be a member of the Board until either -

- (a) A person is appointed in his stead by the Minister acting pursuant to section 3; or
- (b) He receives written notice from the Minister that his appointment has been determined.

(3) In this section, "the former Authority" means the Tourist Authority established by section 3 of the Tourist Authority Act 1968.

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

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This Act is administered by the Tourist Authority.

SCHEDULE

Section 31

Enactments Repealed

Acts -

Tourist Authority Act 1968  
Tourist Authority Amendment Act 1976

Regulations -

Tourist Authority Regulations 1970

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