



ANALYSIS

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1964, No. 69

An Act to make provision for self government by the people of the Cook Islands (other than Niue) and to provide a constitution for those islands [17 November 1964]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Cook Islands Constitution Act 1964.

(2) Subject to the provisions of Article 79 of the Constitution, this Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General, by Proclamation, being a date later than the date on which the first meeting of the Legislative Assembly of the Cook Islands is held after the first general election of the Assembly held after the passing of this Act.

2. Interpretation and application—(1) In this Act—

“The Constitution” means the Constitution of the Cook Islands, as set out in the Schedule to this Act:

“The Cook Islands” has the same meaning as in the Constitution.

(2) This Act shall be in force in the Cook Islands and, unless the context otherwise requires, shall apply to the Cook Islands only and not to New Zealand.

3. Cook Islands to be self-governing—The Cook Islands shall be self-governing.

4. Constitution of the Cook Islands—The Constitution set out in the Schedule to this Act shall be the Constitution of the Cook Islands, and shall be the supreme law of the Cook Islands.

5. External affairs and defence—Nothing in this Act or in the Constitution shall affect the responsibilities of Her Majesty the Queen in right of New Zealand for the external affairs and defence of the Cook Islands, those responsibilities to be discharged after consultation by the Prime Minister of New Zealand with the Premier of the Cook Islands.

6. British nationality and New Zealand citizenship—Nothing in this Act or in the Constitution shall affect the status of any person as a British subject or New Zealand citizen by virtue of the British Nationality and New Zealand Citizenship Act 1948.

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THE CONSTITUTION OF THE COOK ISLANDS

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

“Act” means an Act of the Legislative Assembly 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 ten miles of the coasts thereof:

“Council of State” means the Council of State of the Cook Islands:

“Enactment” means any Act of the Legislative Assembly 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:

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

“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 Commissioner” means the High Commissioner of the Cook Islands:

“High Court” means the High Court of the Cook Islands established under this Constitution:

“Land Appellate Court” means the Land Appellate Court of the Cook Islands established under this Constitution:

“Land Court” means the Land 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” means the Legislative Assembly of the Cook Islands established under this Constitution:

“Minister” means a Minister of the Government of the Cook Islands; and includes the Premier:

“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:

“Premier” means the Premier of the Cook Islands.

(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.

PART I

THE GOVERNMENT OF THE COOK ISLANDS

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

3. High Commissioner of the Cook Islands—(1) There shall be a High Commissioner of the Cook Islands, who shall be a member of the Council of State, and shall also be the representative of the Government of New Zealand in the Cook Islands.

(2) The High Commissioner shall be appointed by the Governor-General on the recommendation of the Minister of the Government of New Zealand who is responsible for matters relating to the Cook Islands, made after consultation by that Minister with the Premier of the Cook Islands.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

4. Council of State of the Cook Islands—(1) There shall be a Council of State of the Cook Islands.

(2) The Council of State shall comprise—

(a) The High Commissioner:

(b) One Ariki from the Island of Rarotonga:

(c) One Ariki from the Cook Islands other than Rarotonga.

(3) The members of the Council of State shall jointly be the representatives of Her Majesty the Queen in the Cook Islands.

(4) The Council of State shall have such functions as are conferred on it by law.

(5) The Ariki members of the Council of State shall be appointed by the Governor-General on the recommendation of the Minister of the Government of New Zealand who is responsible for matters relating to the Cook Islands, made on the nomination of the Arikis of the Cook Islands as follows:

(a) The Minister shall recommend for appointment as a member of the Council of State the Ariki from the Island of Rarotonga who is nominated for appointment by a majority of the Arikis for the time being of the Island of Rarotonga:

(b) The Minister shall recommend for appointment as a member of the Council of State the Ariki from the Cook Islands other than Rarotonga who is nominated for appointment by a majority of the Arikis for the time being of the Cook Islands other than Rarotonga.

(6) The Ariki members of the Council of State, unless they sooner vacate office pursuant to the provisions of any law for the time being in force, shall hold office for a period of four years, and shall be eligible for reappointment.

(7) No Ariki shall be eligible for appointment as a member of the Council of State unless he is eligible for election as a member of the Legislative Assembly of the Cook Islands, and no Ariki shall take part in any nomination of any Ariki for appointment as a member of the Council of State unless he is entitled to vote at an election of the Assembly.

(8) Subject to the provisions of this Article, the manner in which Arikis are to be nominated for appointment as members of the Council of State, the conditions on which they hold office, and their salaries shall be as prescribed by enactment.

(9) The salaries of the Ariki members of the Council of State shall be charged on the Cook Islands Government Account, and shall not be diminished during their term of office except as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

(10) If any vacancy occurs in the office of an Ariki member of the Council of State, 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.

5. Procedure of Council of State—(1) Any decision of the Council of State shall be taken at a meeting of the Council of State summoned by any member of the Council of State.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(2) No decision shall be taken at any meeting of the Council of State, and no act shall be done by or before the Council of State, unless the High Commissioner and at least one other member are present.

(3) The High Commissioner shall preside at all meetings of the Council of State.

(4) Decisions taken at any meeting of the Council of State shall require the affirmative vote of at least two members of the Council of State, one of whom shall be the High Commissioner, and shall be authenticated by an instrument under the hand of the High Commissioner and at least one other member of the Council of State.

(5) Subject to the provisions of this Article, the Council of State shall determine its own procedure.

6. Oath of office—The members of the Council of State, before assuming the functions of their office, shall take and subscribe before the Chief Judge 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, Her [or His] heirs and successors, according to law, and that I will uphold the dignity of the office of member of the Council of State of the Cook Islands (*Add in the case of the High Commissioner and of High Commissioner of the Cook Islands*), 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.

7. Council of State to act on advice—(1) Except as otherwise provided in this Constitution, the Council of State shall act on the advice of Cabinet, the Premier, or the appropriate Minister, as the case may be.

(2) If the Cabinet, the Premier, or an appropriate Minister tenders advice to the Council of State, and if the Council of State does not, within fourteen days after the date on which the tendering of that advice comes to the notice of the Council of State, accept that advice or take some other action in relation thereto which the Council of State is entitled to take under the provisions of this Constitution or of any other law, the Council of State shall be deemed to have accepted that advice; and an instrument under the hand of the Secretary to the Cabinet, acting on the instruction of the Premier, to that effect shall operate as to the performance of the function concerned in accordance with that advice.

(3) For the purposes of this Article, advice tendered to the Council of State shall be deemed to have come to the notice of the Council of State on the date on which notice in writing of that advice is given to the Secretary to the Council of State.

8. Information to Council of State—It shall be the duty of the Premier—

- (a) To arrange for the circulation to the Council of State of copies of the agenda and minutes of Cabinet and of all other papers laid before Cabinet at the time when they are circulated to Ministers; and

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (b) To furnish such information relating to the affairs of the Cook Islands and proposals for legislation as the Council of State may call for.

9. Deputy of the High Commissioner—(1) A Deputy of the High Commissioner may from time to time be appointed by the Governor-General on the recommendation of the Minister of the Government of New Zealand who is responsible for matters relating to the Cook Islands, made after consultation by that Minister with the Premier of the Cook Islands.

(2) Whenever the office of the High Commissioner 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 Deputy of the High Commissioner or, if no person is for the time being appointed as the Deputy of the High Commissioner or if the person so appointed is for any reason unable to act, those functions shall be performed by the Chief Judge of the High Court, or, if the Chief Judge is also for any reason unable to act, those functions shall be performed by such person as the High Commissioner appoints from time to time.

(3) No act done by the Deputy of the High Commissioner or by the Chief Judge of the High Court or by any person appointed as aforesaid in the performance of any function of the High Commissioner shall be questioned or invalidated on the ground that the occasion therefor had not arisen or had ceased.

10. Deputy of Ariki member of Council of State—(1) Whenever by reason of death or incapacity or absence from Rarotonga no Ariki member of the Council of State is available to act as such in Rarotonga, the High Commissioner, acting on the recommendation of a majority for the time being of the Arikis of Rarotonga, may appoint one of those Arikis to act as a member of the Council of State until an Ariki member appointed pursuant to Article 4 hereof is available to act as such in Rarotonga.

(2) No act done by any Ariki appointed under the provisions of this Article in the performance of any function as a member of the Council of State shall be questioned or invalidated on the ground that the occasion therefor had not arisen or had ceased.

11. Secretary to the Council of State—There shall be a Secretary to the Council of State.

PART II

THE EXECUTIVE GOVERNMENT OF THE COOK ISLANDS

12. Executive authority—(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 Council of State, either directly or through officers subordinate to the Council of State.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(3) Nothing in this Article shall prevent the Legislative Assembly from conferring functions on persons or authorities other than the Council of State.

Cabinet

13. Cabinet—(1) There shall be a Cabinet of Ministers, comprising the Premier of the Cook Islands (who shall preside over Cabinet) and four other Ministers, which shall have the general direction and control of the executive government of the Cook Islands, and shall be collectively responsible therefor to the Legislative Assembly.

(2) The Premier shall be appointed as follows:

(a) If the appointment is to be made while the Legislative Assembly is in session, the Council of State shall appoint as Premier a member of the Assembly who commands the confidence of a majority of the members of the Assembly:

(b) If the appointment is to be made while the Legislative Assembly is not in session, the Council of State shall appoint as Premier a member of the Assembly who in the opinion of the Council of State, acting in its discretion, is likely to command the confidence of a majority of the members of the Assembly:

(c) If the appointment is to be made after a dissolution of the Legislative Assembly and before the holding of the general election of the Assembly following that dissolution, the Council of State shall appoint as Premier a person who was a member of the Assembly immediately before that dissolution and who in the opinion of the Council of State, acting in its discretion, is likely to command the confidence of a majority of the persons who were members of the Assembly immediately before that dissolution:

Provided that where the Legislative Assembly has been dissolved pursuant to subclause (2) of Article 37 hereof, the Council of State shall appoint as Premier a person who was a member of the Assembly immediately before that dissolution and who in the opinion of the Council of State, acting in its discretion, is capable of performing the functions of the Premier.

(3) The Ministers other than the Premier shall be appointed by the Council of State on the advice of the Premier. No person shall be so appointed unless—

(a) He is a member of the Legislative Assembly; or

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

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

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

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(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.

14. Duration of office of members of Cabinet—(1) The appointment of the Premier who is in office immediately before the date of the holding of a general election of the Legislative Assembly may be terminated by the Council of State, acting in its discretion, after the date of the holding of that election and before the date of the commencement of the first session of the Assembly following that election.

(2) The appointment of the Premier who is in office at the commencement of the first session of the Legislative Assembly following a general election thereof shall be terminated by the Council of State on the seventh day of that session if the Premier has not sooner resigned.

(3) The appointment of the Premier shall also be terminated by the Council of State—

- (a) If the Premier ceases to be a member of the Legislative Assembly for any reason other than the dissolution of the Assembly; or
- (b) If the Legislative Assembly passes a motion in express words of no confidence in Cabinet or if Cabinet is defeated on any question or issue which the Premier has declared to be a question or issue of confidence:

Provided that, if after the passing of such a motion or after that defeat the Premier so requests, the Council of State, acting in its discretion, may dissolve the Legislative Assembly instead of terminating the appointment of the Premier; or

- (c) If the Premier resigns his office by writing under his hand addressed to the Council of State and delivered to the High Commissioner; or
- (d) If the Premier is absent from the Cook Islands, otherwise than on official business, for a period of more than three months without written authority given by the Council of State, acting in its discretion,

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

- (a) If the appointment of the Premier 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 Council of State, acting on the advice of the Premier, by instrument under the Seal of the Cook Islands; or
- (c) If the Minister ceases to be a member of the Legislative Assembly for any reason other than the dissolution of the Assembly; or
- (d) If the Minister resigns his office by writing under his hand addressed to the Council of State and delivered to the High Commissioner.

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

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(6) The power conferred on the Council of State under the provisions of subclause (5) of this Article shall be exercised by the Council of State, acting in its discretion, if in its opinion it is impracticable to obtain the advice of the Premier by reason of the illness or absence of the Premier, and, in any other case, shall be exercised by the Council of State, acting on the advice of the Premier.

(7) The Council of State, acting on the advice of the Premier, 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 Council of State, acting on the advice of the Premier, has revoked the aforesaid instrument under the Seal of the Cook Islands.

15. Official oath—Every Minister shall, before assuming the functions of his office, take and subscribe before the Council of State, the following oath:

I,, being chosen and accepted as Premier (*or* a Minister) and member of Cabinet, swear by Almighty God that I will to the best of my judgment, at all times when thereto required, freely give my counsel and advice to the Council of State of the Cook Islands 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 all such things be a true and faithful Premier (*or* Minister). So help me God.

16. Assignment of responsibilities to Ministers—(1) The Premier 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 Premier may retain in his charge any Department or subject.

17. Summoning of Cabinet—Cabinet shall be summoned only by the Premier or, in his absence, by such Minister as the Premier appoints in that behalf.

18. Cabinet procedure—(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.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(3) It shall be the duty of the Premier, if the Council of State, acting in its discretion, so requires, to submit for the consideration of Cabinet any matter on which a decision has been taken by a Minister (including the Premier) 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 to the Cabinet, be communicated to the Secretary to the Council of State within forty-eight 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 twenty-four hours of the making of the decision.

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

19. When decision of Cabinet takes effect—(1) A decision of Cabinet shall take effect—

(a) On its approval by the Council of State, acting in its discretion;
or

(b) On the expiry of four 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 two 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 Secretary to the Council of State under the provisions of subclause (4) of Article 18 hereof.

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

20. Secretary to the Cabinet—The person for the time being holding office as the Secretary of the Premier's Department shall also be the Secretary to the Cabinet.

21. One Minister may act for another—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.

The Executive Council

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

(a) The members of the Council of State; and

(b) The members of Cabinet.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(2) No business shall be transacted at any meeting of the Executive Council unless there are present the High Commissioner and at least one Ariki member of the Council of State and at least three 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.

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

24. Meetings of Executive Council—The Executive Council shall be summoned only by a member of the Council of State, or by the Premier.

25. Consideration of Cabinet decisions by Executive Council—(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 two members of the Council of State one of whom shall be the High Commissioner concur 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 High Commissioner or any two members of the Council of State do not concur in the decision concerned or request 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 members of the Council of State under subclause (3) of this Article, 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 that reconsideration adopts a decision which incorporates an amendment to its original decision, other than an amendment requested by members of the Council of State under subclause (3) of this Article, 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 Seal of the Cook Islands

26. Seal of the Cook Islands—(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 Council of State.

(3) The Seal may be used by the Council of State 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).

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

PART III

THE LEGISLATIVE GOVERNMENT OF THE COOK ISLANDS

The Legislative Assembly

27. Legislative Assembly of the Cook Islands—(1) There shall be a Legislative Assembly to be called the Legislative Assembly of the Cook Islands.

(2) The Legislative Assembly shall consist of twenty-two members, to be elected by secret ballot under a system of universal suffrage by the electors of the following islands or groups of islands and in the following numbers:

- (a) The Island of Aitutaki and the Island of Manuae, three members:
- (b) The Island of Atiu, two members:
- (c) The Island of Mangaia, two members:
- (d) The Island of Manihiki, one member:
- (e) The Island of Mauke, one member:
- (f) The Island of Mitiaro, one member:
- (g) The Island of Penrhyn, one member:
- (h) The Island of Pukapuka and the Island of Nassau, one member:
- (i) The Island of Rakahanga, one member:
- (j) The Island of Rarotonga and the Island of Palmerston, nine members, to be elected as follows:
 - (i) Four members, to be elected by the electors of the Teau-o-tonga Constituency, being the area comprised in the Avarua Survey District and the Island of Palmerston:
 - (ii) Three members, to be elected by the electors of the Takitumu Constituency, being the area comprised in the Takitumu, Ngatangiia, and Matavera Survey Districts:
 - (iii) Two members, to be elected by the electors of the Puaikura Constituency, being the area comprised in the Arorangi Survey District.

(3) Subject to the provisions of this Article and of Article 28 hereof, the qualifications and disqualification of electors and candidates, the mode of electing members of the Legislative Assembly, and the terms and conditions of their membership shall be as prescribed by law.

28. Nationality and residential qualifications of electors and candidates—(1) Without limiting the provisions of any law prescribing any additional qualifications, a person shall be qualified to be an elector for the election of members of the Legislative Assembly or to be a candidate at any such election, if, and only if—

- (a) He is a British subject; and
- (b) In the case of an elector, he has been ordinarily resident in the Cook Islands throughout the period of twelve months immediately preceding his application for enrolment; and
- (c) In the case of a candidate, he has been ordinarily resident in the Cook Islands throughout the period of three years immediately preceding his nomination as a candidate.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(2) For the purposes of this Article a person shall be deemed to be ordinarily resident in the Cook Islands if, and only if,—

- (a) He is actually residing in the Cook Islands; or
- (b) Having been actually resident in the Cook Islands with the intention of residing therein indefinitely, he is outside the Cook Islands but has, and has had ever since he left the Cook Islands, an intention to return and reside therein indefinitely:

Provided that any person who has been outside the Cook Islands continuously for any period of more than three years, otherwise than for the purpose of undergoing a course of education or of technical training or instruction during the whole or substantially the whole of that period, shall be deemed not to have been actually resident in the Cook Islands during that period with the intention of residing therein indefinitely.

29. Meetings of Legislative Assembly—The Legislative Assembly shall meet at such places and at such times as the Council of State from time to time appoints in that behalf:

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

30. Members to take Oath of Allegiance—Except for the purpose of enabling this Article to be complied with and for the election of a Speaker, no member of the Legislative Assembly shall be permitted to sit or vote therein until he has taken and subscribed the following oath before the Speaker of the Assembly, 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 Legislative Assembly of the Cook Islands. So help me God.

31. The Speaker of the Legislative Assembly—(1) The Legislative Assembly 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 the Assembly, and before it proceeds to the despatch of any other business, elect a person (not being a Minister) to be Speaker of the Legislative Assembly.

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

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

(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

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

with Article 30 hereof, take and prescribe before the Council of State 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:

Provided that such salary shall not be diminished during his period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

32. Tenure of office of Speaker—The Speaker may at any time resign his office by writing under his hand addressed to the Clerk of the Legislative Assembly, and shall vacate his office—

- (a) On the dissolution of the Assembly next following his election; or
- (b) If he becomes a Minister; or
- (c) If, being a member of the Assembly at the time of his election, he ceases to be a member; or
- (d) If, not being a member of the Assembly at the time of his election, he ceases to be qualified for election as a member.

33. Deputy Speaker—(1) The Legislative Assembly may elect a member of the Assembly, 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 the Legislative Assembly, and shall vacate his office—

- (a) On the dissolution of the Assembly next following his election; or
- (b) If he ceases to be a member of the Assembly; or
- (c) If he becomes a Minister; or
- (d) If he is elected Speaker.

(3) Subject to the provisions of this Constitution and of the Standing Orders of the Legislative Assembly, 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.

34. Procedure—(1) The Speaker, or in his absence the Deputy Speaker, shall preside over sittings of the Legislative Assembly. In the absence from any sitting of both the Speaker and the 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 the Legislative Assembly shall be decided by a majority of the votes of the members present.

(3) The person presiding over any sitting of the Assembly 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 the Assembly if the number of members present (excluding the Speaker if he is a member) is less than twelve.

(5) Subject to the provisions of this Constitution, the Legislative Assembly may from time to time make, amend, and repeal Standing

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

Orders for the regulation and orderly conduct of its proceedings and the despatch of business.

(6) The Legislative Assembly 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 the Assembly or otherwise took part in the proceedings.

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

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

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

(3) The records of proceedings in the Legislative Assembly or in committees thereof shall be in the English language, and such of those records as are specified in the Standing Orders of the Assembly 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.

36. Privileges of Legislative Assembly and of its members—(1) The validity of any proceedings in the Legislative Assembly or in any committee thereof shall not be questioned in any Court.

(2) No officer or member or Speaker of the Legislative Assembly 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 the Legislative Assembly 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 the Assembly 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 the Legislative Assembly of any report, paper, vote, or proceeding.

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

Provided that no such privilege of the Assembly 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.

37. Prorogation and dissolution of Legislative Assembly—(1) The Council of State may at any time, by notice published in the *Cook Islands Gazette*, prorogue the Legislative Assembly.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(2) If at any time the office of Premier is vacant, the Council of State shall, by notice published in the *Cook Islands Gazette*, dissolve the Legislative Assembly as soon as the Council of State is satisfied, acting in its discretion, that a reasonable period has elapsed since that office was last vacated and that there is no member of the Assembly who commands the confidence of a majority of the members.

(3) The Council of State may at any time, by notice published in the *Cook Islands Gazette*, dissolve the Legislative Assembly if the Council of State is advised by the Premier to do so, but shall not be obliged to act in this respect in accordance with the advice of the Premier unless the Council of State is satisfied, acting in its discretion, that in tendering that advice the Premier commands the confidence of a majority of the members of the Assembly.

(4) The Council of State shall dissolve the Legislative Assembly at the expiration of three years from the date of the last preceding general election, if it has not been sooner dissolved.

(5) There shall be a general election of the members of the Legislative Assembly at such time within three months after every dissolution of the Assembly as the Council of State appoints by notice published in the *Cook Islands Gazette*.

38. Clerk of the Legislative Assembly—(1) There shall be a Clerk of the Legislative Assembly.

(2) The Clerk shall keep a record of the proceedings of the Legislative Assembly, and shall transmit a copy of those records to the Secretary to the Council of State as soon as practicable.

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

(2) The powers of the Legislative Assembly shall extend to the making of laws having extra-territorial 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.

40. No property to be taken compulsorily without compensation—

(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 laws,—

(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

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (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.

41. Power of Legislative Assembly to repeal or amend this Constitution—(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 Legislative Assembly; and
- (b) There is an interval of not less than ninety 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 Council of State 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

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

provision inconsistent with any of those provisions shall be submitted to the Council of State for its assent, unless—

- (a) It has been passed by the Legislative Assembly 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 Legislative Assembly; 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.

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

43. Restrictions with regard to financial measures—Except upon the recommendation of the Council of State, the Legislative Assembly 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.

44. Assent to Bills by Council of State—(1) No Bill shall become law until it has been passed by the Legislative Assembly and has been assented to by the Council of State.

(2) Whenever any Bill which has been passed by the Legislative Assembly is presented to the Council of State for its assent, the Council of State shall, acting on the advice of the Premier, declare that it assents to the Bill or that it refuses its assent to the Bill:

Provided that a member of the Council of State may summon a meeting of the Executive Council, to be held within fourteen days after the

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

Bill is presented to the Council of State for its assent, to consider amendments to the Bill proposed by that member or to consider whether the Council of State should refuse its 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 the Legislative Assembly for consideration of the amendments proposed or, as the case may be, that the Council of State should refuse its assent to the Bill, the Council of State shall, by Message,—

- (a) Return the Bill with the amendments proposed to the Legislative Assembly for consideration by the Assembly; or, as the case may be,
- (b) Return the Bill to the Legislative Assembly for reconsideration by the Assembly.

(4) If at a meeting of the Executive Council thus summoned the Executive Council decides that the Bill should not be returned to the Legislative Assembly for consideration of the amendments proposed or, as the case may be, that the Council of State should not refuse its assent to the Bill, the Council of State shall declare that it assents to the Bill.

(5) Where any Bill is returned to the Legislative Assembly under the provisions of paragraph (a) of subclause (3) of this Article, and the Bill is again passed by the Assembly with the amendments proposed, but with no other amendments, or in the form in which it was originally presented to the Council of State for its assent, then, when the Bill is again presented to the Council of State for its assent, the Council of State shall declare that it assents to the Bill.

(6) Where any Bill is returned to the Legislative Assembly under the provisions of paragraph (b) of subclause (3) of this Article, and the Bill is again passed by the Assembly in the form in which it was originally presented to the Council of State for its assent, then, when the Bill is again presented to the Council of State for its assent, the Council of State shall declare that it assents to the Bill.

(7) Where any Bill is returned to the Legislative Assembly under the provisions of this Article and the Bill is again passed by the Assembly with any amendments other than amendments proposed under the provisions of this Article, then, when the Bill is again presented to the Council of State for its assent, the foregoing provisions of this Article shall apply with respect to the Bill as if it had not previously been presented to the Council of State for its assent.

(8) A Bill assented to by the Council of State as herein provided shall be known as an Act of the Legislative Assembly.

45. Commencement of Acts—Every Act shall come into operation either on the day on which the Bill is assented to, or on any 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.

46. Power of New Zealand Parliament to legislate for the Cook Islands—(1) No Act, and no provision of any Act, of the Parliament of New Zealand passed on or after Constitution Day shall extend or be deemed to extend to the Cook Islands as part of the law of the Cook Islands, unless—

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (a) The passing of that Act or the making of that provision, so far as it extends to the Cook Islands, has been requested and consented to by the Government of the Cook Islands; and
 - (b) It is expressly declared in that Act that the Government of the Cook Islands has requested and consented to the enactment of that Act or of that provision.
- (2) Every such request and consent shall be made and given by resolution of the Legislative Assembly or, if the Assembly is not sitting at the time when the request and consent are made and given, by the Council of State, acting on the advice of Cabinet.

PART IV

THE JUDICIARY

The High Court of the Cook Islands

47. High Court established—(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 and criminal) as may be necessary to administer the law in force in the Cook Islands.

48. Judges and Commissioners of the High Court—(1) The High Court shall consist of such Judges and Commissioners of that Court as are from time to time appointed under the provisions of this Constitution.

(2) If only one Judge is so appointed, he shall be deemed to be Chief Judge of the High Court, but, if more than one Judge is appointed, one shall be appointed Chief Judge of that Court.

(3) A person shall not be qualified for appointment as a Judge or Commissioner of the High Court unless he possesses such qualifications as the Council of State, acting on the advice of the Judicial Service Commission, prescribes.

49. Commissioners of the High Court—(1) A Commissioner of the High Court shall possess and may exercise such of the functions of a Judge of the High Court (whether judicial or administrative, but excluding those vested exclusively in the Chief Judge of that Court) as the Council of State, acting on the advice of the Judicial Service Commission, from time to time determines, either generally or with respect to any particular Commissioner or Commissioners of that Court, and all references in any enactment to a Judge of the High Court shall be construed as applying to a Commissioner of the High Court within the limits of the jurisdiction so conferred on him.

(2) The office of Commissioner of the High Court may, with the approval of the Secretary of the Premier's Department, be held concurrently with the office of a Registrar of that Court or with any other position in the Cook Islands Public Service, or may be held concurrently with any other position, but a Commissioner of the High Court in the exercise of his functions as such shall not be under the control of the Secretary of the Premier's Department.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(3) Provision may be made by law for appeals from a Commissioner of the High Court to a Judge of that Court.

50. Acting Chief Judge of the High Court—Where any vacancy exists in the office of Chief Judge of the High Court or the Chief Judge 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 Judge of the High Court, the Council of State, acting on the advice of the Premier, may authorise the senior other Judge of the High Court for the time being in the Cook Islands, or, if there is no other Judge of the High Court in the Cook Islands, the Chief Judge of the Land Court, to perform that office or exercise that function until a Chief Judge of the High Court is appointed or, as the case may be, the Chief Judge of the High Court resumes that office or exercises that function.

51. Acting Judge of the High Court—(1) The Council of State, acting on the advice of the Premier, may authorise any Judge of the Land Court or, acting on the advice of the Judicial Service Commission, may authorise any other person who is qualified to be appointed as a Judge of the High Court, to act as a Judge of the High Court, if—

(a) 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; or

(b) The Judge of the Land Court or that other person is present on any island of the Cook Islands where civil or criminal proceedings are pending, and—

(i) No Judge of the High Court can be present on that island within a reasonable time to act; or

(ii) Such proceedings are within the jurisdiction of a Commissioner of the High Court and there is no Judge of the High Court and no such Commissioner present on that island.

(2) Any authority granted under this Article may be revoked at any time by the Council of State, acting on the advice of the Premier or, as the case may be, the Judicial Service Commission.

The Land Court of the Cook Islands

52. Land Court established—There shall be a Court of record, to be called the Land Court of the Cook Islands, which shall have the jurisdiction and powers conferred upon it by law.

53. Judges and Commissioners of the Land Court—(1) The Land Court shall consist of such Judges and Commissioners of that Court as are from time to time appointed under the provisions of this Constitution.

(2) If only one Judge is so appointed, he shall be deemed to be the Chief Judge of the Land Court, but, if more than one Judge is so appointed, one shall be appointed Chief Judge of that Court.

(3) A person shall not be qualified for appointment as a Judge or Commissioner of the Land Court unless he possesses such qualifications as the Council of State, acting on the advice of the Judicial Service Commission, prescribes.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

54. Commissioners of the Land Court—(1) A Commissioner of the Land Court shall possess and may exercise such of the functions of a Judge of the Land Court (whether judicial or administrative, but excluding those vested exclusively in the Chief Judge of that Court) as the Council of State, acting on the advice of the Judicial Service Commission, from time to time determines, either generally or with respect to any particular Commissioner or Commissioners of that Court, and all references in any enactment to a Judge of the Land Court shall be construed as applying to a Commissioner of the Land Court within the limits of the jurisdiction conferred upon him.

(2) The office of Commissioner of the Land Court may, with the approval of the Secretary of the Premier's Department, be held concurrently with the office of a Registrar of that Court or with any other office in the Cook Islands Public Service, or may be held concurrently with any other position, but a Commissioner of the Land Court in the exercise of his functions as such shall not be under the control of the Secretary of the Premier's Department.

(3) Provision may be made by law for appeals from a Commissioner of the Land Court to a Judge of that Court.

The Land Appellate Court of the Cook Islands

55. Land Appellate Court of the Cook Islands—There shall be a Court of record, to be called the Land Appellate Court of the Cook Islands, which shall have the jurisdiction and powers conferred on it by law.

56. Judges of the Land Appellate Court—(1) The Judges of the Land Court of the Cook Islands and the Judges of the Maori Land Court of New Zealand shall be the Judges of the Land Appellate Court.

(2) Any two or more of the Judges (other than any Judge who determined the matter in dispute in the Land Court) shall have power to act as the Land Appellate Court:

Provided that two Judges at least shall concur in every decision of that Court.

(3) The Land Appellate Court may sit in two or more divisions at the same time, and each division shall have all the powers and jurisdiction of the Land Appellate Court.

(4) The Chief Judge of the Land Court of the Cook Islands shall preside at any sitting of the Land Appellate Court at which he is present. In his absence the Chief Judge of the Maori Land Court of New Zealand, if present, shall preside, and in the absence of both of those Judges the senior Judge present shall preside.

Appointment, Tenure of Office, and Salaries of Judges and Commissioners

57. Appointment of Judges and Commissioners—The Judges and Commissioners of the High Court or of the Land Court shall be appointed as follows:

(a) The Chief Judge of the High Court and the Chief Judge of the Land Court shall be appointed by the Council of State, acting on the advice of the Premier:

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(b) The Judges of the High Court or of the Land Court (other than the Chief Judge) and the Commissioners of the High Court or of the Land Court shall be appointed by the Council of State, acting on the advice of the Judicial Service Commission.

58. Tenure of office of Judges and Commissioners—(1) Except in the case of an appointment made under subclause (2) of this Article, no person who has attained the age of sixty-five years shall be appointed to or continue to hold office as a Judge of the High Court or of the Land Court.

(2) Any person of any age who is not ordinarily resident in the Cook Islands (as defined in subclause (2) of Article 28 hereof) and who is qualified for appointment may be appointed to hold office as a Judge of the High Court or of the Land Court for a term of years.

(3) Nothing done by a Judge of the High Court or of the Land 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 of office has expired, as the case may be.

(4) A Judge or Commissioner of the High Court or of the Land Court may resign his office by writing under his hand addressed to the Council of State.

(5) A Commissioner of the High Court or of the Land Court shall not be removed from office as such except by the Council of State, acting on the advice of the Judicial Service Commission.

59. Removal of Judges from office—(1) A Judge of the High Court, other than a Judge appointed under the provisions of Article 51 hereof, or a Judge of the Land Court may be removed from office by the Council of State only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed unless the question of the removal of that Judge from office has been referred to a tribunal appointed under subclause (2) of this Article and that tribunal has recommended that the Judge be removed from office for inability as aforesaid or misbehaviour.

(2) If the Premier advises the Council of State that the question of removing from office a Judge of the High Court or of the Land Court for inability as aforesaid or misbehaviour ought to be investigated, then,—

(a) The Council of State shall appoint a tribunal consisting of a chairman and two other members; and

(b) The tribunal shall inquire into the matter and report on the facts thereof to the Council of State and recommend to the Council of State whether or not that Judge should be removed from office; and

(c) If the tribunal recommends that the Judge be so removed, the Council of State shall, by warrant, revoke the appointment of that Judge.

(3) No person shall be qualified for appointment as a member of a tribunal under this Article, unless—

(a) He holds or has held office as a Judge of the Supreme Court of New Zealand or of the Court of Appeal of New Zealand or

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

an equivalent office in any other part of the Commonwealth or in an approved country; or

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

(4) For the purposes of this Article, the Council of State, acting in its discretion, may designate as an approved country any country which in its opinion has a legal system similar to that existing in New Zealand.

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

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

(7) If the question of removing from office a Judge of the High Court or of the Land Court has been referred to a tribunal under subclause (2) of this Article, the Council of State, acting on the advice of the Premier, may suspend the Judge from performing the functions of his office, and any such suspension may at any time be revoked by the Council of State, acting on the advice of the Premier, and shall in any case cease to have effect if the tribunal does not recommend to the Council of State that the Judge be removed from office.

60. Salaries of Judges—(1) The salaries of the Judges of the High Court or of the Land Court shall be determined by enactment, 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.

*Appeals from High Court***61. Appeal from High Court to Supreme Court of New Zealand—**

(1) Subject to the provisions of this Constitution, an appeal shall lie to the Supreme Court of New Zealand from a final 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 a term exceeding six months or to a fine of not less than one hundred pounds, 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 two hundred pounds or upwards;
- (d) 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

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

of the magnitude of the interests affected, or for any other reason, ought to be submitted to the Supreme Court of New Zealand for decision.

(2) Notwithstanding anything in subclause (1) of this Article, the Supreme Court of New Zealand may, in any case in which it thinks fit and at any time, grant special leave to appeal to that Court from any final judgment of the High Court, subject to such conditions as to security for costs and otherwise as the Supreme Court thinks fit.

62. Transmission of order of Supreme Court on appeal—The determination of the Supreme Court of New Zealand on any appeal from the High Court under Article 61 hereof shall be transmitted to the Registrar of the High Court by the Registrar of the Supreme Court under the seal of the Supreme Court, 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.

63. No appeal to Court of Appeal—There shall be no appeal to the Court of Appeal of New Zealand from any decision of the Supreme Court of New Zealand on an appeal from the High Court under Article 61 hereof.

Justices of the Peace

64. Justices of the Peace—(1) The Council of State, acting on the advice of the Judicial Service Commission, 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) Any two or more Justices of the Peace for the Cook Islands acting together may exercise in the Cook Islands the jurisdiction of a Commissioner of the High Court, and Article 49 hereof, with the necessary modifications, shall apply as if references therein to a Commissioner of the High Court were references to two or more Justices of the Peace for the Cook Islands.

(3) A Justice of the Peace for the Cook Islands shall not be removed from office as such, except by the Council of State, acting on the advice of the Judicial Service Commission.

Oath of Allegiance and Judicial Oath

65. Oath of Allegiance and Judicial Oath—(1) Every Judge or Commissioner of the High Court or of the Land Court, every Judge of the Land Appellate Court who is not also a Judge of the Land Court, and every Justice of the Peace for the Cook Islands (being persons appointed to those offices on or after Constitution Day) shall, as soon as may be after his acceptance of office, take and subscribe before the Council of State 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

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

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 Judicial Service Commission

66. The Judicial Service Commission—(1) There shall be a Judicial Service Commission, which shall consist of—

- (a) The Chief Judge of the High Court, as president;
- (b) A person nominated from time to time by the Minister in Charge of the Justice Department of the Cook Islands;
- (c) A person, not being an employee of the Cook Islands Public Service or a member of the Legislative Assembly, nominated from time to time, with the concurrence of the Chief Judge of the High Court, by the Minister in Charge of the Justice Department of the Cook Islands.

(2) No business shall be transacted by the Judicial Service Commission unless all three members are present, and all questions proposed for decision by the Commission shall be decided by a majority of the votes of those members.

(3) Subject to this Article, the Judicial Service Commission shall determine its own procedure.

PART V

THE PUBLIC REVENUES OF THE COOK ISLANDS

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

68. Restriction on taxation—No taxation shall be imposed except by law.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

69. Public revenue—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.

70. Revenue and expenditure of Cook Islands Government Account—

(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 the Legislative Assembly.

(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 the 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 for the preceding financial year together with an amount equal to one-fourth of that vote; or

(b) Where during the period between the passing of the 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 the Legislative Assembly:

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 per cent of the total amount of all sums appropriated by the Appropriation Act for that year.

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

(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.

71. Audit—(1) The Audit Office of New Zealand 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 the Legislative Assembly for presentation to the Assembly a report containing such information as is required to be submitted by any enactment, together with such other information relating to the Cook

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

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.

PART VI

THE COOK ISLANDS PUBLIC SERVICE

72. The Cook Islands Public Service—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.

73. Secretary of the Premier's Department—(1) There shall be a Secretary of the Premier's Department, who shall be the permanent head of that Department and the principal administrative officer of the Government of the Cook Islands.

(2) The Secretary of the Premier's Department shall be appointed by the Council of State, acting on the advice of Cabinet.

(3) The Secretary of the Premier's Department shall be deemed not to be an employee of the Cook Islands Public Service:

Provided that the provisions of any law for the time being in force relating to the tenure of office of employees of that Service, the grounds on which such employees may be dismissed or suspended, and the rights of such employees to appeal against dismissal or suspension shall apply with respect to the Secretary of the Premier's Department as if he were an employee of that Service.

(4) The salary of the Secretary of the Premier's Department shall be determined by enactment, and shall be charged on the Cook Islands Government Account:

Provided that such salary shall not be diminished during his period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

74. Cook Islands Public Service to be under the control of Secretary of the Premier's Department—(1) The Secretary of the Premier's Department shall be responsible for the appointment, promotion, transfer, termination of appointment, dismissal, and disciplinary control of the Cook Islands Public Service, and shall have such other functions as may be prescribed by law.

(2) In the performance of his functions under this Article, the Secretary of the Premier's Department 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 in writing by the Premier.

75. Staff of Council of State—(1) Except as provided in sub-clause (2) of this Article, the appointment, terms of service, disciplinary control, termination of appointment, and dismissal of the staff of the Council of State shall be matters for the Council of State, acting in its discretion.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(2) The Council of State, if it so desires, may appoint to its staff such employees of the Cook Islands Public Service as it may select, acting in its discretion but after consultation with the Premier, from a list submitted by the Secretary of the Premier's Department; 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 Council of State but not in respect of his service as an employee of the Cook Islands Public Service.

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

- (a) The Chief Judge 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 Council of State, acting on the advice of the Premier:
- (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 three years.

(2) The Chief Judge shall be 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 Secretary of the Premier's Department 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.

PART VII

TRANSITIONAL PROVISIONS

77. Existing law to continue—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.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

78. High Commissioner of the Cook Islands—The person holding office immediately before Constitution Day as the Resident Commissioner of the Cook Islands shall, without further appointment, hold the office of High Commissioner of the Cook Islands until an appointment has been made under the provisions of Article 3 hereof, which appointment shall be made within six months after Constitution Day.

79. Appointment of first Ariki members of Council of State—(1) The Ariki members of the Council of State may be appointed to the Council of State at any time before Constitution Day, but they shall not come into office until Constitution Day.

(2) For the purposes of subclause (8) of Article 4 hereof, the Legislative Assembly of the Cook Islands established under the Cook Islands Amendment Act 1957 may prescribe by Ordinance the manner in which Arikis are to be nominated for appointment as members of the Council of State, the conditions on which they hold office, and their salaries.

80. Legislative Assembly of the Cook Islands—(1) The Legislative Assembly of the Cook Islands shall continue in being on and after Constitution Day, and the members of the Assembly immediately before Constitution Day shall be deemed to have been duly elected under the provisions of this Constitution.

(2) The Speaker and Deputy Speaker of the Legislative Assembly who are in office immediately before Constitution Day shall be deemed to have been duly elected as Speaker and Deputy Speaker, respectively, under the provisions of this Constitution.

(3) For the purposes of subclause (4) of Article 37 hereof, the date of the general election at which the Legislative Assembly was elected shall be the date of the last preceding general election in respect of the Assembly in being on and after Constitution Day.

(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 the Assembly, and they may be amended, repealed, or added to under the provisions of Article 34 hereof.

81. Ordinances of former Legislative Council or Legislative Assembly—(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.

82. The High Court—(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.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(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.

83. The Land Court—(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) The Judges and Commissioners of the Native Land Court of the Cook Islands in office immediately before Constitution Day shall hold office on and after Constitution Day as Judges or Commissioners, as the case may be, of the Land Court of the Cook Islands 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.

(4) All judgments, decrees, records, and acts of the Native Land Court of the Cook Islands shall continue in full force and effect on and after Constitution Day as judgments, decrees, records, and acts of the Land Court of the Cook Islands; and all proceedings pending in the Native Land Court of the Cook Islands immediately before Constitution Day may be continued in the Land Court of the Cook Islands on and after Constitution Day.

84. The Land Appellate Court—(1) The Land Appellate Court of the Cook Islands established by Article 55 hereof is hereby declared to be the same Court as the Native Appellate Court of the Cook Islands established by section 19 of the Cook Islands Amendment Act 1946.

(2) All judgments, decrees, records, and acts of the Native Appellate Court of the Cook Islands shall continue in full force and effect on and after Constitution Day as judgments, decrees, records, and acts of the Land Appellate Court of the Cook Islands; and all proceedings pending in the Native Appellate Court of the Cook Islands immediately before Constitution Day may be continued in the Land Appellate Court of the Cook Islands on and after Constitution Day.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

85. Justices of the Peace—(1) Every person holding office immediately before Constitution Day as a Justice of the Peace for the Cook Islands other than Niue shall continue in office as a Justice of the Peace for the Cook Islands, as if he had been appointed to that office pursuant to Article 64 hereof.

(2) Subject to the provisions of subclause (3) of Article 64 hereof, every such person shall continue to hold office during the pleasure of the Council of State.

86. Cook Islands Government Account—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.

87. Secretary of the Premier's Department—The person holding office immediately before Constitution Day as the Secretary to the Government of the Cook Islands shall, without further appointment, hold the office of Secretary of the Premier's Department until an appointment has been made under the provisions of subclause (2) of Article 73 hereof, which appointment shall be made within six months after Constitution Day.

88. Power of Governor-General to make regulations—(1) The Governor-General may from time to time, by Order in Council made at the request and with the consent of the Government of the Cook Islands, make regulations, not inconsistent with any provision of this Constitution, for the peace, order, and good government of the Cook Islands.

(2) Every such request and consent by the Government of the Cook Islands shall be made and given by resolution of the Legislative Assembly or, if the Assembly is not sitting at the time when the request and consent are made and given, by the Council of State, acting on the advice of Cabinet.

(3) Regulations made pursuant to this section shall expressly declare that the Government of the Cook Islands has requested and consented to the making thereof.

(4) The maximum penalty which may be prescribed for the breach of any regulation made under the provisions of this Article shall not exceed—

(a) In the case of an individual, imprisonment for a term not exceeding one year or a fine not exceeding one hundred pounds and, where the offence is a continuing one, a further fine not exceeding twenty pounds for every day or part of a day during which the offence has continued:

(b) In the case of a body corporate, a fine not exceeding five hundred pounds and, where the offence is a continuing one, a further fine not exceeding twenty pounds for every day or part of a day during which the offence has continued.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(5) Regulations made under the provisions of this Article may be made applicable either to all of the islands of the Cook Islands or to one or more thereof exclusively.

This Act is administered in the Department of Island Territories.
