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1980-81, No. 24

An Act to amend the Constitution

(5 June 1981)

BE IT ENACTED by the Legislative Assembly 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 Constitution Amendment (No. 9) Act 1980-81 and shall be read together with and deemed part of the Constitution of the Cook Islands as set out in the Second Schedule to the Cook Islands Constitution Act 1964 of the Parliament of New Zealand, as amended by Acts of the Legislative Assembly (hereinafter referred to as the Constitution).

(2) Subject to section 17 (1) of this Act, this Act shall come into force on the date on which it is assented to by the High Commissioner.

Price \$1.60

PART I

AMENDMENTS OF THE CONSTITUTION

2. Interpretation - (1) Article 1 (1) of the Constitution is hereby amended by omitting from the definition of the term "Act" "Legislative Assembly", and substituting in each case the word "Parliament".

(2) Article 1 (1) of the Constitution is hereby further amended by inserting, after the definition of the term "The Cook Islands", the following definition:

"Court of Appeal" means the Court of Appeal of the Cook Islands established under this Constitution:".

(3) Article 1 (1) of the Constitution is hereby further amended by repealing the definitions of the terms "Land Appellate Court", "Land Court", and "Legislative Assembly" or "Assembly", and by inserting the following new definition of "Legislative Assembly" or "Assembly" after the word "Law" and its definition: -

"'Legislative Assembly' or 'Assembly' where it appears in this Constitution or any other enactment means the Parliament of the Cook Islands established under this Constitution:".

(4) Article 1 (1) of the "Constitution" is hereby further amended by repealing the definition of the term "Minister", and substituting the following definition:

"'Minister' means a Minister of the Government of the Cook Islands; and includes the Prime Minister:".

(5) Article 1 (1) of the Constitution is hereby further amended by inserting, after the definition of the term "Ordinance", the following definition:

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

(6) Article 1 (1) of the Constitution is hereby further amended by repealing the definition of the term "Premier" and substituting the following definition:

"'Prime Minister' means the Prime Minister of the Cook Islands:".

(7) Article 1 (1) of the Constitution is hereby further amended by adding the following definition:

"'To reside', in relation to the Cook Islands or to any constituency in the Cook Islands, means to have a usual place of abode in the Cook Islands, or, as the case may be, in that constituency, notwithstanding any temporary absence for the purpose of undergoing a course of education or of technical training or instruction, and notwithstanding any occasional for any other purpose and 'resident' and 'residing' have corresponding meanings:".

3. The Prime Minister - (1) Article 13 (1) of the Constitution is hereby amended by omitting the words "Premier of the Cook Islands", and substituting the words "Prime Minister of the Cook Islands".

(2) Article 13 of the Constitution is hereby further amended by omitting from subclauses (2) and (3) the word "Premier" wherever it occurs, and substituting in each case the words "Prime Minister".

(3) The provisions of the Constitution specified in the First Schedule to this Act are hereby amended by omitting the word "Premier" wherever it occurs, and substituting in each case the words "Prime Minister".

4. Secretary to the Cabinet - The Constitution is hereby further amended by repealing Article 20, and substituting the following Article:

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

5. New Part as to the Parliament of the Cook Islands substituted - The Constitution is hereby further amended by repealing Part III, with the exception of Article 41, and substituting the following:

"PART III

"THE PARLIAMENT OF THE COOK ISLANDS

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

"(2) Parliament shall consist of 24 members, to be elected by secret ballot under a system of universal suffrage by the electors of the following islands or groups of islands or areas and in the following numbers:

- "(a) The Island of Aitutaki and the Islands of Manua and Te-Au-O-Tu, 3 members, being 1 member for each of the 3 constituencies together comprising those islands, having the names and boundaries set out in Part I of the First Schedule to this Constitution:
- "(b) The Island of Atiu, 2 members, being 1 member for each of the 2 constituencies having the names and boundaries set out in Part IV of the First Schedule to this Constitution:
- "(c) The Island of Mangaia, 3 members, being 1 member for each of the 3 constituencies having the names and boundaries set out in Part III of the First Schedule to this Constitution:
- "(d) The Island of Manihiki, 1 member:
- "(e) The Island of Mauke, 1 member:
- "(f) The Island of Mitiaro, 1 member:
- "(g) The Island of Penrhyn, 1 member:
- "(h) The Island of Pukapuka and the Island of Nassau, 1 member:
- "(i) The Island of Rakahanga, 1 member:
- "(j) The Island of Rarotonga and the Island of Palmerston, 9 members, being 1 member for each of the 9 constituencies together comprising those islands, having the names and boundaries set out in Part II of the First Schedule to this Constitution:

- "(k) The islands comprising New Zealand and all other areas outside the Cook Islands, 1 member (That constituency being hereinafter referred to as the Overseas Constituency).
- "(3) Subject to this Article and to Articles 28, 28A, 28B, 28C and 28D hereof, the qualifications and disqualification of electors and candidates, the mode of electing members of Parliament, and the terms and conditions of their membership shall be as prescribed by Act.
- "28. Qualifications of electors - (1) Without limiting the provisions of any law prescribing any additional qualifications not inconsistent with any provision of this Constitution, a person shall be qualified to be an elector for the election of a Member of Parliament for any constituency other than the Overseas Constituency, if, and only if, -
- "(a) He is a Commonwealth citizen, or he has the status of a permanent resident of the Cook Islands as defined by Act; and
- "(b) He has been resident in the Cook Islands throughout the period of three months immediately preceding his application for enrolment as an elector and has not subsequently qualified as an elector under subclause (2) of this Article; and
- "(c) He has at some period actually resided continuously in the Cook Islands for not less than 12 months.
- (2) Without limiting the provisions of any law prescribing any additional qualifications not inconsistent with any provision of this Constitution, a person shall be qualified to be an elector for the election of a Member of Parliament for the Overseas Constituency, if, and only if, -
- "(a) He is a Commonwealth citizen, or he has the status of a permanent resident of the Cook Islands as defined by Act; and
- "(b) He has resided outside the Cook Islands throughout the period of 3 months immediately preceding his application for enrolment as an elector; and
- "(c) At the date of his application for enrolment as an elector he has been absent from the Cook Islands for a continuous period of not more than 3 years, and has, and has had ever since he left the Cook Islands, an intention to return and reside therein indefinitely; and
- "(d) He has at some period actually resided continuously in the Cook Islands for not less than 12 months.
- (3) Where any person has ceased to be qualified to be enrolled as an elector for any constituency by reason of his residence outside the Cook Islands for a period of more than 3 years, he shall not be entitled to apply for enrolment as an elector of any constituency unless he has returned to the Cook Islands and has actually resided in the Cook Islands throughout the continuous period of not less than 3 months.
- (4) In calculating for the purposes of paragraph (c) of subclause (2) or of subclause (3) of this Article the period of which any person has been outside the Cook Islands -
- "(a) Any period for which he has been outside the Cook Islands for the purpose of undergoing a course of education or of technical training or instruction shall be disregarded; and

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

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

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

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

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

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

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

- "(a) He is not an elector duly enrolled pursuant to the provisions of an Act of Parliament; or
 - "(b) He has been adjudicated bankrupt within the meaning of the bankruptcy laws in force in the Cook Islands (whether before or after the commencement of this Article), unless he has obtained an order of discharge; or
 - "(c) He has been convicted (whether before or after the commencement of this Article) of any of the offences specified in Part I of the Second Schedule to this Constitution; or
 - "(d) He has been convicted (whether before or after the commencement of this Article) of any of the offences specified in Part II of the Second Schedule to this Constitution, unless a period of 5 years has elapsed from the date of his conviction.
- "(2) Subject to subclause (1) of this Article, -
- "(a) Every person enrolled as an elector of any constituency shall be capable of being elected as a member for that constituency or for any other constituency:

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

"28C. Election of Member for Overseas Constituency - The following provisions shall apply with respect to the member representing the overseas Constituency:

- "(a) He shall be elected by persons who are for the time being residing in New Zealand or elsewhere outside the Cook Islands who are qualified as electors under subclause (2) of Article 28 and are enrolled as electors of that constituency; and
- "(b) His election shall be by postal vote, special vote, or by vote cast at one or more polling places situated outside the Cook Islands, as prescribed by Act. The procedure for conducting any such election by postal vote, special vote, or at one or more polling places outside the Cook Islands shall be prescribed by Act.

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

"29. Meetings of Parliament - (1) Parliament shall meet at such places and at such times as the High Commissioner from time to time appoints in that behalf:

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

"(2) Notwithstanding anything contained in subclause (1) of this Article, Parliament shall not meet after the holding of a general election until all election petitions filed in the High Court in respect of that election have been finally determined.

"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 Parliament shall be permitted to sit or vote therein until he has taken and subscribed the following oath before the Speaker of Parliament, namely:

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

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

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

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

"(3) Before a person who has been elected Speaker enters upon the duties of his office, he shall, unless he has already done so in accordance with Article 30 hereof, take and subscribe before the High Commissioner 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.

"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 Parliament, and shall vacate his office -

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

"(b) If he becomes a Minister; or

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

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

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

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

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

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

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

"(c) If he becomes a Minister; or

"(d) If he is elected Speaker; or

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

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

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

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

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

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

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

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

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

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

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

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

"36. Privileges of Parliament and of its members - (1) The validity of any proceedings in Parliament or in any committee thereof shall not be questioned in any Court.

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

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

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

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

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

"37. Prorogation and dissolution of Parliament - (1) The High Commissioner may at any time, by notice published in the Cook Islands Gazette, prorogue Parliament.

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

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

"(4) Notwithstanding anything in the foregoing provisions of this Article, Parliament shall not be prorogued or dissolved before all electoral petitions filed in the High Court in respect of the last preceding general election of members have been finally determined.

"(5) The High Commissioner shall dissolve Parliament at the expiration of 5 years from the date of the last preceding general election, if it has not been sooner dissolved.

"(6) There shall be a general election of the members of Parliament at such time within 3 months after every dissolution of Parliament as the High Commissioner appoints by notice published in the Cook Islands Gazette.

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

"(2) The Clerk shall keep a record of the proceedings of Parliament and shall transmit a copy of those records to the High Commissioner as soon as practicable.

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

"(2) The powers of Parliament shall extend to the making of laws having 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 law, -

- "(a) Requires the payment within a reasonable time of adequate compensation therefor; and
- "(b) Gives to any person claiming that compensation a right of access, for the determination of his interest in the property and the amount of compensation, to the High Court; and
- "(c) Gives to any party to proceedings in the High Court relating to such a claim the same rights of appeal as are accorded generally to parties to civil proceedings in that Court sitting as a Court of original jurisdiction.

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

- "(a) For the imposition or enforcement of any tax, rate, or duty; or
- "(b) For the imposition of penalties or forfeitures for breach of the law, whether under civil process or after conviction of an offence; or
- "(c) Relating to leases, tenancies, mortgages, charges, bills of sale, or any other rights or obligations arising out of contracts; or
- "(d) Relating to the vesting and administration of the property of persons adjudged bankrupt or otherwise declared insolvent, of infants or persons suffering under some physical or mental disability, of deceased persons, and of companies, other corporate bodies and unincorporated societies, in the course of being wound up; or
- "(e) Relating to the execution of judgments or orders of Courts; or
- "(f) Providing for the taking of possession of property which is in a dangerous state or is injurious to the health of human beings, plants, or animals; or
- "(g) Relating to trusts and trustees; or
- "(h) Relating to the limitation of actions; or
- "(i) Relating to property vested in statutory corporations; or
- "(j) Relating to the temporary taking of possession of property for the purposes of any examination, investigation, or inquiry; or
- "(k) Providing for the carrying out of work on land for the purpose of soil conservation or for the protection of water catchment areas.

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

" 43. Restrictions with regard to financial measures -
Except upon the recommendation of the High Commissioner, Parliament shall not -

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

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

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

"(iii) For the payment, issue, or withdrawal from the Cook Islands Government Account or from any other public fund or account of any money not charged thereon or any increase in the amount of such a payment, issue, or withdrawal; or

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

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

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

" 44. Assent to Bills by High Commissioner - (1) No Bill shall become law until it has been passed by Parliament and has been assented to by the High Commissioner.

"(2) Whenever any Bill which has been passed by Parliament is presented to the High Commissioner for his assent, the High Commissioner shall, acting on the advice of the Prime Minister, declare that he assents to the Bill or that he refuses his assent to the Bill:

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

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

"(a) Return the Bill with the amendments proposed to Parliament for consideration by Parliament; or, as the case may be,

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

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

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

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

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

"(8) A Bill assented to by the High Commissioner as herein provided shall be known as an Act of Parliament.

"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. New Zealand Parliament not to legislate for the Cook Islands - Except as provided by Act of the Parliament of the Cook Islands, no Act, and no provision of any Act, of the Parliament of New Zealand passed after the commencement of this Article shall extend or be deemed to extend to the Cook Islands as part of the law of the Cook Islands."

6. Amendments consequential on provisions of Section 5 - The provisions of the Constitution specified in the Second Schedule to this Act are hereby amended by omitting the words "Legislative Assembly" and "Assembly" wherever they occur, and substituting in each case the word "Parliament".

7. New Part 2B to the Judiciary substituted - The Constitution is hereby further amended by repealing Part IV, and substituting the following Part:

"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 jurisdiction, including jurisdiction in relation to land, and criminal jurisdiction) as may be necessary to administer the law in force in the Cook Islands.

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

"(a) A Civil Division;

"(b) A Criminal Division;

"(c) A Land Division.

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

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

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

"48. Jurisdiction of Divisions of the High Court -
(1) Each Division of the High Court shall hear and determine -

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

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

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

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

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

"(b) In the case of land in the Island of Mitiaro, the exercise of such jurisdiction or power is requested by the Aronga Mana of Mitiaro:

"(c) In the case of land in the Island of Pukapuka, the exercise of such jurisdiction or power is requested by the Aronga Mana of Pukapuka.

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

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

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

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

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

"(4) The High Commissioner, acting in his discretion, may declare to be a designated country for the purposes of this Article any country which in his opinion has a legal system similar to that existing in New Zealand.

"50. Acting Chief Justice of the High Court - (1) Where any vacancy exists in the office of Chief Justice of the High Court or the Chief Justice of the High Court is absent from the Cook Islands or is, by reason of illness or any cause other than absence from the Cook Islands, unable to perform the office or exercise any function of Chief Justice of the High Court, the senior other Judge of the High Court for the time being in the Cook Islands may perform that office or exercise that function until a Chief Justice of the High Court is appointed or, as the case may be, the Chief Justice of the High Court resumes that office or exercises that function. "

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

"(2) Any appointment made under this Article may be revoked at any time by the High Commissioner, acting on the advice of the Chief Justice:

"Appointment, Tenure of Office, and Salaries of Judges

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

- "(a) The Chief Justice of the High Court shall be appointed by the High Commissioner, acting on the advice of the Executive Council tendered by the Prime Minister;
- "(b) The other Judges of the High Court shall be appointed by the High Commissioner, acting on the advice of the Executive Council tendered by the Chief Justice of the High Court and the Minister of Justice.

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

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

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

"(4) The Chief Justice or any other Judge of the High Court may resign his office by writing under his hand addressed to the High Commissioner.

"54. Removal of Judge from office - (1) The Chief Justice or any other Judge of the High Court, other than a Judge appointed under the provisions of Article 51 hereof, may be removed from office by the High Commissioner 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 the Chief Justice or other Judge from office has been referred to a tribunal appointed under subclause (2) of this Article and that tribunal has recommended that the Chief Justice or other Judge be removed from office for inability as aforesaid or misbehaviour.

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

- "(a) The High Commissioner shall appoint a tribunal consisting of a chairman and 2 other members; and
- "(b) The tribunal shall inquire into the matter and report on the facts thereof to the High Commissioner and recommend to the High Commissioner whether or not the Chief Justice or other Judge should be removed from office; and
- "(c) If the tribunal recommends that the Chief Justice or other Judge be so removed, the High Commissioner shall, by warrant, revoke the appointment of the Chief Justice or other Judge, as the case may be.

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

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

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

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

"(a) The High Commissioner, acting on the advice of the Prime Minister, may suspend the Chief Justice or other Judge from performing the functions of his office for a period of 1 month;

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

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

"(a) Before the expiration of the total period of suspension, recommends to the High Commissioner that the Chief Justice or other Judge be not removed from office; or

"(b) Does not, before the expiration of the total period of suspension, recommend to the High Commissioner that the Chief Justice or other Judge be removed from office.

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

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

"56. Court of Appeal established - (1) There shall be a Court of Appeal of the Cook Islands, which shall be a superior Court of record.

"(2) Subject to Articles 57 and 58 hereof, the Judges of the Court of Appeal shall be -

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

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

"(c) Such other persons, possessing the qualifications prescribed by subclause (3) of this Article, as may from time to time be appointed by the High Commissioner acting on the advice of the Executive Council tendered to him by the Prime Minister.

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

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

"(5) Judges of the Court of Appeal shall take seniority according to the respective dates of their first appointment as Judges, whether of the High Court or of the Court of Appeal or of any Court in any place outside the Cook Islands.

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

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

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

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

"58. Judges not to sit on appeals from own decision - A Judge of the Court of Appeal shall not sit on the hearing of an appeal from any decision made by him or by a Court on which he sat as a member.

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

"(2) There shall be a right of appeal to Her Majesty the Queen in Council, with the leave of the Court of Appeal, or, if such leave is refused, with the leave of Her Majesty the Queen in Council, from judgments of the Court of Appeal in such cases and subject to such conditions as are prescribed by Act.

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

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

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

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

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

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

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

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

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

"61. Transmission of order of Court of Appeal - The determination of the Court of Appeal on any appeal from the High Court shall be transmitted to the Registrar of the High Court by the Registrar of the Court of Appeal under the seal of the Court of Appeal, and judgment shall thereupon be entered by the High Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the High Court as are required by that determination.

"Justices of the Peace

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

"(2) No person who has attained the age of 72 years shall be appointed to or continue to hold office as a Justice of the Peace for the Cook Islands.

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

"(4) A Justice of the Peace for the Cook Islands shall not be removed from office as such, except by the High Commissioner, acting on the advice of the Chief Justice.

"(5) In subclause (2) of this Article the term 'judgment' includes any judgment, decree, order, writ, declaration, conviction, sentence, or other determination.

"Oath of Allegiance and Judicial Oath

"63. Oath of Allegiance and Judicial Oath - (1) Every Judge of the Court of Appeal who is not a Judge of the Court of Appeal of New Zealand or of the High Court of New Zealand or a Judge of the High Court of the Cook Islands and every Justice of the Peace for the Cook Islands, shall, as soon as may be after his acceptance of office, take and subscribe before the High Commissioner the following oaths:

"(a) An Oath of Allegiance in the following form -

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

"(b) The Judicial Oath in the following form -

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

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

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

8. New Part as to fundamental rights inserted -
 The Constitution is hereby further amended by inserting, after Article 63 (as enacted by section 7 of this Act), the following Part:

"PART IVA

"FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

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

- "(a) The right of the individual to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with law;
- "(b) The right of the individual to equality before the law and to the protection of the law;
- "(c) The right of the individual to own property, and the right not to be deprived thereof except in accordance with law;

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

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

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

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

- "(a) Authorise or effect the arbitrary detention, imprisonment, or exile of any person; or
- "(b) Impose or authorise the imposition on any person of cruel and unusual treatment or punishment; or

- "(c) Deprive any person who is arrested or detained -
 "(i) Of the right to be informed promptly of the act or omission for which he is arrested or detained, unless it is impracticable to do so or unless the reason for the arrest or detention is obvious in the circumstances; or
 "(ii) Of the right, wherever practicable, to retain and instruct a barrister or solicitor without delay; or
 "(iii) Of the right to apply, by himself or by any other person on his behalf, for a writ of habeas corpus for the determination of the validity of his detention, and to be released if his detention is not lawful; or
- "(d) Deprive any person of the right to a fair hearing, in accordance with the principles of fundamental justice, for the determination of his rights and obligations before any tribunal or authority having a duty to act judicially; or
- "(e) Deprive any person charged with an offence of the right to be presumed innocent until he is proved guilty according to law in a fair and public hearing by an independent and impartial tribunal; or
- "(f) Deprive any person charged with an offence of the right to reasonable bail, except for just cause; or
- "(g) Authorise the conviction of any person of any offence except for the breach of a law in force at the time of the act or omission; or
- "(h) Authorise the imposition on any person convicted of any offence of a penalty heavier than that which might have been imposed under the law in force at the time of the commission of the offence.

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

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

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

9. Revenue and expenditure of Cook Islands Government Account - (1) Article 70 of the Constitution is hereby amended by inserting, after subclause (3), the following subclause:

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

(2) Article 70 of the Constitution is hereby further amended -

- (a) By omitting from subclause (3)(a) the words "the Appropriation Act" where they first occur, and substituting the words "an Appropriation Act";
- (b) By inserting in the proviso to subclause (3)(a), after the words "Appropriation Act", the words "or Acts";
- (c) By omitting from subclause (3)(b), the words "Appropriation Act" where they first occur, and substituting the words "last Appropriation Act";
- (d) By inserting in the proviso to subclause (3)(b), after the words "Appropriation Act", the words "or Acts".

10. Public Service Commissioner - (1) The Constitution is hereby further amended by repealing paragraph (a) of subsection (2) of Article 73 (as enacted by section 2 of the Cook Islands Constitution Amendment (No. 6) Act 1973), and substituting the following paragraph:

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

(2) The Constitution is hereby further amended by repealing Article 74B (as enacted by section 2 of the Cook Islands Constitution Amendment (No. 6) Act 1973), and substituting the following Article:

"74B. Functions of the Public Service Commissioner - (1) Subject to the provisions of Article 74BB hereof and of subclauses (2), (3), and (4) of this Article, the Public Service Commissioner shall be responsible for the appointment, promotion, transfer, termination of appointment, dismissal, and disciplinary control of employees of the Cook Islands Public Service, and shall have such other functions as may be prescribed by law.

"(2) Any promotion or appointment to the position of head of a department of the Cook Islands Public Service, other than those specified in subclause (2) of Article 74BB hereof, shall be made by the Public Service Commissioner in accordance with a decision of the Public Service Appointments Board, which shall consist of -

"(a) The Public Service Commissioner, who shall be Chairman;

"(b) One person, to be appointed by and hold office at the pleasure of the High Commissioner, acting on the advice of the Minister Responsible for the Public Service;

"(c) One person, nominated by the Cook Islands Public Service Association Incorporated, to be appointed by and hold office at the pleasure of the High Commissioner.

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

"(4) Subject to subclause (2) of this Article, an Act may provide for the appointment of persons from outside the Cook Islands to positions in the Cook Islands Public Service and the conditions on which such appointments are to be made; and the appointment of any such person shall be made with the concurrence of Cabinet.

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

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

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

"(b) The Public Service Appointments Board; and

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

shall have regard to the general policy of Cabinet relating to the Cook Islands Public Service, and shall give effect to any decision of Cabinet defining that policy conveyed to him or them, as the case may be, in writing signed by the Prime Minister."

{3} Article 74C of the Constitution (as enacted by section 2 of the Constitution Amendment (No. 6) Act 1973) is hereby consequentially amended by omitting from subclause (2) the words "subclause (2)", and substituting the words "subclause (3)".

11. Exempted positions - (1) The Constitution is hereby further amended by inserting, after Article 74B (as enacted by section 10 (2) of this Act), the following Article:

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

"(2) The exempted positions shall be -

"(a) The Secretary to the Cabinet;

"(b) The Secretary to the Prime Minister's Department;

"(c) The Chief Administration Officer in each of the islands of the Cook Islands other than Rarotonga.

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

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

"(5) Where -

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

"(b) A person whose appointment to a position designated as a special post has terminated under subclause (4) of this Article is not appointed to an exempted position, and before his appointment to that special post he was an employee of the Cook Islands Public Service, -

he shall be re-appointed to that Service with the grading held by him immediately before his appointment to the exempted position or to that special post, as the case may be.

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

12. Public Service Board of Appeal - Article 76 of the Constitution is hereby amended by inserting, after subclause (2), the following subclause:

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

13. New Part VIA inserted in Constitution - The Constitution is hereby further amended by inserting, after Article 76, the following Part:

"PART VIA

MISCELLANEOUS PROVISIONS

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

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

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

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

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

- "(3) An Act may -
- "(a) Prescribe the qualifications to be held by a person to whom subclause (2) of this Article applies who is an applicant for such a certificate, and the circumstances in which such an applicant is disqualified from being granted such a certificate; and
- "(b) Prescribe the conditions subject to which such a certificate may be granted to a person to whom subclause (2) of this Article applies; and
- "(c) Confer on a Minister a discretion to grant or refuse such a certificate to a person to whom subclause (2) of this Article applies; and
- "(d) Prescribe the circumstances in which such a certificate granted may be revoked;

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

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

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

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

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

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

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

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

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

14. Abolishing power of Governor-General to make regulations for Cook Islands - Article 88 of the Constitution is hereby repealed.

15. Repeal of spent transitional provisions - The Constitution is hereby further amended by repealing Article 78, subclauses (1), (2), and (3) of Article 80, subclause (3) of Article 83, and Article 87.

16. Schedules added, - The Constitution is hereby further amended by adding the First, Second, Third, and Fourth Schedules set out in the Third Schedule to this Act.

PART II

TRANSITIONAL PROVISIONS AND CONSEQUENTIAL REPEALS AND AMENDMENTS

17. The Parliament of the Cook Islands - (1) Notwithstanding the repeal and substitution by section 5 of this Act of Article 27 of the Constitution, and the enactment by that section of Article 28C of the Constitution, -

- (a) Subclause (2) of Article 27 (as so substituted) and the said Article 28C shall not come into force until the date of the first general election of the Parliament of the Cook Islands held after the commencement of this Act, except so far and to such extent as may be necessary to provide for that election; and.
- (b) Subclause (2) of Article 27 of the Constitution (as originally enacted) shall continue in force until that date, as if for the words "Legislative Assembly" in that subclause there were substituted the word "Parliament", except so far and to such extent as may be necessary to provide for the said election.

(2) Every person holding office as a member of the Legislative Assembly immediately before the commencement of this Act shall, after the commencement of this Act, hold office as a Member of Parliament, subject to the provisions of the Constitution, and, unless he previously vacates office for any reason, shall continue to hold office as a Member of Parliament until the end of the day immediately preceding the day on which the members elected at the said election come into office.

(3) Every office of the Legislative Assembly shall, after the commencement of this Act, be an office of Parliament, and every person holding any such office immediately before the commencement of this Act shall continue to hold office after the commencement of this Act.

(4) Every reference to the Legislative Assembly or to the Assembly in any other law in force at the commencement of this Act or in any instrument or document of any kind in force at the commencement of this Act shall, after the commencement of this Act, be read as a reference to the Parliament of the Cook Islands.

18. The Prime Minister - (1) The person holding office as Premier of the Cook Islands immediately before the commencement of this Act shall, after the commencement of this Act, without further appointment, hold the office of Prime Minister of the Cook Islands, subject to the provisions of Article 14 of the Constitution.

(2) Every reference to the Premier of the Cook Islands in any other law in force at the commencement of this Act in any instrument or document of any kind whatsoever in force at the commencement of this Act shall, after the commencement of this Act, be read as a reference to the Prime Minister of the Cook Islands.

19. The Land Court - (1) Every person holding office immediately before the commencement of this Act as a Judge of the Land Court of the Cook Islands shall, on and after the commencement of this Act, without further appointment, be deemed to be a Judge of the High Court as if he had been appointed as such under Article 52 of the Constitution, with seniority from the date on which he had been appointed a Judge of the Land Court.

(2) All judgments, decrees, records, and acts of the Land Court of the Cook Islands shall continue to have full force and effect on and after the commencement of this Act as judgments, decrees, records, and acts of the High Court; and all proceedings pending in the Land Court immediately before the commencement of this Act may be continued in the High Court after the commencement of this Act.

(3) Where any final judgment of the Land Court of the Cook Islands has been given before the commencement of this Act, the right of appeal from that judgment shall be governed by the provisions of Article 60 of the Constitution as if that final judgment had been a final judgment of the High Court.

(4) Every reference to the Land Court of the Cook Islands or to a Judge of that Court in any other law in force at the commencement of this Act, or in any judgment, decree, order, record, or act of the Land Court, or in any other instrument or document whatsoever in force at the commencement of this Act shall, unless the context otherwise requires, be read after the commencement of this Act as a reference to the High Court of the Cook Islands or, as the case may be, to a Judge of that Court.

20. The Land Appellate Court - (1) All judgments, decrees, records, and acts of the Land Appellate Court of the Cook Islands shall continue in full force and effect on and after the commencement of this Act as judgments, decrees, records, and acts of the Court of Appeal of the Cook Islands; and all proceedings pending in the Land Appellate Court immediately before the commencement of this Act may be continued in the Court of Appeal after the commencement of this Act.

(2) Every reference to the Land Appellate Court of the Cook Islands or to a Judge of that Court in any other law in force at the commencement of this Act, or in any judgment, decree, order, record, or act of the Land Appellate Court, or in any other instrument or document whatsoever in force at the commencement of this Act shall, unless the context otherwise requires, be read after the commencement of this Act as a reference to the Court of Appeal of the Cook Islands or, as the case may be, to a Judge of that Court.

21. Appeals from High Court - (1) In any case in which immediately before the commencement of this Act an appeal to the High Court of New Zealand from any judgment of the High Court of the Cook Islands was pending, that appeal may be continued after the commencement of this Act, and shall otherwise be heard and disposed of under the law in force immediately before the commencement of this Act as if that law had continued in force.

(2) The determination of the High Court of New Zealand on any appeal continued pursuant to subsection (1) of this section shall be transmitted to the Registrar of the High Court of the Cook Islands by the Registrar of the High Court of New Zealand under the seal of the High Court of New Zealand, and the High Court of the Cook Islands shall act in respect thereof as if it were a determination of the High Court of New Zealand transmitted under Article 62 of the Constitution, as in force before the commencement of this Act.

(3) Every provision in any Act conferring a right of appeal from a judgment of the High Court to the High Court of New Zealand shall, after the commencement of this Act, be read as a provision conferring a right of appeal to the Court of Appeal of the Cook Islands.

22. Acts of New Zealand Parliament and regulations in force in the Cook Islands - (1) Every Act, and every provision of any Act, of the Parliament of New Zealand that, pursuant to Article 46 of the Constitution (as in force before the commencement of this Act), was in force in the Cook Islands immediately before the commencement of this Act shall continue in force in the Cook Islands after the commencement of this Act, but, subject to Article 41 of the Constitution, may be repealed, in relation to the Cook Islands, by Act of the Parliament of the Cook Islands.

(2) Regulations made by the Governor-General in Council pursuant to Article 88 of the Constitution (as in force before the commencement of this Act), and in force immediately before the commencement of this Act, shall continue in force after the commencement of this Act, but may be revoked or amended, in relation to the Cook Islands, by Act of the Parliament of the Cook Islands.

23. Consequential repeals and amendments - (1) The following enactments are hereby repealed:

- (a) The Constitution Amendment Act 1968-69;
- (b) Sections 2 and 4 of the Constitution Amendment (No. 2) Act 1968-69;
- (c) The Constitution Amendment (No. 3) Act 1969;
- (d) The Constitution Amendment (No. 4) Act 1970;
- (e) Paragraphs (b) and (c) of section 2 of the Constitution Amendment (No. 7) Act 1975 and so much of the Schedule to that Act as relates to Articles 48, 49, and 66 of the Constitution;
- (f) The Constitution Amendment (No. 8) Act 1978-79;
- (g) Section 6 of the Electoral Act 1966 and the Second Schedule to that Act (as enacted by sections 2 and 3 of the Electoral Amendment Act 1979);
- (h) The Electoral Amendment Act 1979;
- (i) The Cook Islands Ensign Act 1973;
- (j) The Cook Islands Ensign Amendment Act 1978-79.

(2) The following provisions of the Cook Islands Act 1915 of the Parliament of New Zealand shall cease to have effect as part of the law of the Cook Islands:

- (a) Section 107 (relating to the powers of Judges of the High Court);
- (b) Section 114 (relating to the jurisdiction of the High Court);
- (c) Subsection (2) of section 115 (relating to injunction, certiorari, mandamus, and prohibition against the Land Court or the Land Appellate Court);
- (d) Section 156 (relating to the stating of cases to the High Court of New Zealand);
- (e) Sections 158 to 161 and 163 to 168 (relating to appeals to the High Court of New Zealand);
- (f) Sections 371 to 385, 387 to 390, 392, and 400 to 408 (relating to the constitution and procedure of the Land Court of the Cook Islands).

(3) Part II of the Cook Islands Amendment Act 1946 of the Parliament of New Zealand (except section 26) and sections 43, 44, 45, 46, and 48 of that Act shall cease to have effect as part of the law of the Cook Islands.

(4) The Cook Islands Act 1915 of the Parliament of New Zealand shall have effect, in relation to the Cook Islands, as if it had been amended as follows:

- (a) By repealing the definitions of the terms "Land Appellate Court" and "Land Court" in section 2 (1);
- (b) By omitting from paragraph (b) of section 126 (1) the words "or of the Land Court";
- (c) By omitting from section 171 the words "save by way of appeal in accordance with the provisions of the Constitution or of this Act in that behalf";
- (d) By omitting from section 278 the words "Judge of the Land Court or of the Land Appellate Court" and also the words "or of the Land Court";
- (e) By repealing section 314B;
- (f) By omitting from section 475 (2) the words "the Land Court or" and also the words "or by a Judge of the Land Appellate Court";
- (g) By omitting from section 510 (b) the words "or of the Land Court or any Judge of the Land Appellate Court";
- (h) By omitting from section 653 (1) the words "or of the Land Court or any Judge of the Land Appellate Court".

SCHEDULES

Section 3(3)

FIRST SCHEDULE

PROVISIONS OF CONSTITUTION WHERE REFERENCES
TO PRIME MINISTER OF COOK ISLANDS SUBSTITUTED
FOR REFERENCES TO PREMIER OF COOK ISLANDS

Subclause (2) of Article 3

Subclauses (1) and (2) of Article 5

Article 6

Subclause (1) of Article 7

Subclause (1) of Article 11

Subclause (3) of Article 11A (as enacted by section 2 (1)
of the Cook Islands Constitution Amendment Act 1965 of
the Parliament of New Zealand)

Article 14

Article 15

Article 16

Article 17

Subclause (3) of Article 18

Subclause (2) of Article 44

Subclause (1) of Article 73 (as enacted by section 2 of
the Constitution Amendment (No. 6) Act 1973)Subclause (2) of Article 74 (as enacted by the
last-mentioned section 2)Subclause (2) of Article 74A (as enacted by the
last-mentioned section 2)

Paragraph (b) of subclause (1) of Article 76

Section 6

SECOND SCHEDULE

PROVISIONS OF CONSTITUTION WHERE
REFERENCES TO PARLIAMENT SUBSTITUTED FOR
REFERENCES TO LEGISLATIVE ASSEMBLY OR
ASSEMBLY

Paragraph (a) of Article 9

Subclause (3) of Article 11

Article 11B (as enacted by section 2 of the
Cook Islands Constitution Amendment Act
1965 of the Parliament of New Zealand)

Subclause (3) of Article 12

Subclauses (1), (2), and (3) of Article 13

Subclauses (1), (2), (3), and (4) of Article 14

Subclause (1), paragraph (b) of subclause (2),
and subclause (4) of Article 70

Subclause (2) of Article 71

Subclause (5) of Article 73 (as enacted by
section 2 of the Constitution Amendment (No. 6)
Act 1973)

Subclause (3) of Article 74A (as enacted by
section 2 of the Constitution Amendment (No. 6)
Act 1973)

Section 16

THIRD SCHEDULE

FIRST, SECOND, THIRD, AND FOURTH SCHEDULES TO THE
CONSTITUTION

ARTICLE 27

"FIRST SCHEDULE

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

"PART I

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

VAIPAE-TAUTU CONSTITUENCY

All that area in the Island of Aitutaki comprising the Taakarere, Vaitupa, Vaipaka, Avanui, Oako, Vaipae, Mataotana, and Tautu Tapere, as delineated on plan S.O.1008 deposited in the office of the Chief Surveyor at Rarotonga.

AMURI-UREIA CONSTITUENCY

All that area in the island of Aitutaki comprising the Puncoua, Anaunga, Puiganui, Ureia, and Amuri Tapere, as delineated on the said plan S.O.1008.

ARUTANGA-REUREU NIKAU PARA CONSTITUENCY

All that area in the Island of Aitutaki comprising the Arutanga, Reureu, Nukunoni, Vairore, Vaiau, and Taravao Tapere; as delineated on the said plan S.O.1008 and the Islands of Te-Au-O-Tu and Manuae.

"PART II

CONSTITUENCIES COMPRISING THE ISLANDS OF
RAROTONGA AND PALMERSTON

NIKAO-PANAMA CONSTITUENCY

All that area in the Avarua Survey District in the Island of Rarotonga comprising the Tapere of Pokolnu, Nikao, Puapuautu, Areamu, Kaikaveka, and Atupa, as delineated on plan S.O.1002, deposited in the office of the Chief Surveyor at Rarotonga.

AVATIU-RUATONGA CONSTITUENCY

All that area in the Avarua Survey District in the Island of Rarotonga comprising the Tapere of Avatiu and Ruatonga, as delineated on the said plan S.O. 1002, together with the Island of Palmerston.

TAKUVAINA-TUTAKIMO A CONSTITUENCY

All that area in the Avarua Survey District in the Island of Rarotonga, comprising the Tapere of Tutakimoa, Tauae, and Takuvaine, as delineated on the said plan S.O.1002.

TUPAPA-MARAERENGA CONSTITUENCY

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

MATAVERA CONSTITUENCY

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

NGATANGIIA CONSTITUENCY

All that area comprising the Ngatangia Survey District in the Island of Rarotonga, as delineated on the said plan S.O. 1002.

TITIKAVEKA CONSTITUENCY

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

MURIENUA CONSTITUENCY

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

RUAAU CONSTITUENCY

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

"PART III

CONSTITUENCIES COMPRISING THE ISLAND OF MANGAIA

ONEROA CONSTITUENCY

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

IVIRUA CONSTITUENCY

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

TAMARUA CONSTITUENCY

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

"PART IV

CONSTITUENCIES COMPRISING THE ISLAND OF ATIU

TENGATANGI-AREORA-NGATIARUA CONSTITUENCY

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

TEENUI-MAPUMAI CONSTITUENCY

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

ARTICLE 28A

"SECOND SCHEDULE

CRIMES DISQUALIFYING FOR ELECTION TO PARLIAMENT

PART I

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

Crimes against the following sections of the Crimes Act 1969:

Section 75 (treason)

Section 78 (inciting to mutiny)

Section 80 (communicating secrets)

Section 81 (sabotage)

Section 84 (seditious conspiracy)

Section 85 (seditious statements)

Section 86 (publication of seditious documents)

Section 87 (use of apparatus for making seditious documents or statements)

Sections 103 and 104 (piracy)

Section 109 (dealing in persons)

Section 192 (murder)

Section 231 (1) (c) (kidnapping)

PART II

CRIMES AFFECTING THE ADMINISTRATION OF LAW
AND JUSTICE

Crimes against the following provisions of the Crimes Act 1969:

Section 111 (judicial corruption)

Section 112 (bribery of judicial officer)

Section 113 (bribery and corruption of Minister of the Crown)

Section 114 (corruption and bribery of member of Parliament)

Section 115 (corruption and bribery of law enforcement officer)

Section 116 (corruption and bribery of official)

Section 120 (perjury).

- Section 121 (false oaths)
- Section 124 (fabricating evidence)
- Section 126 (conspiring to bring false accusations)
- Section 127 (conspiring to defeat justice)
- Section 128 (corrupting juries and witnesses)

CRIMES INVOLVING DISHONESTY

Crimes against the following sections of the Crimes Act 1969:

- Section 249 (a) and (b) (theft)
- Section 250 (conversion)
- Section 252 (criminal breach of trust)
- Section 256 (robbery)
- Section 257 (aggravated robbery)
- Section 258 (compelling execution of documents by force)
- Section 259 (assault with intent to rob)
- Section 260 (extortion)
- Section 261 (demanding with menaces)
- Section 263 (burglary)
- Section 264 (entering with intent)
- Section 265 (being armed with intent to break and enter)
- Section 269 (1) and (2) (a) (false pretences)
- Section 271 (personation)
- Section 272 (acknowledging instrument in false name)
- Section 273 (false statement by promoter)
- Section 274 (falsifying accounts relating to public funds)
- Section 275 (false accounting by officer or member of body corporate)
- Section 276 (false accounting by employee)
- Section 278 (issuing false dividend warrants)
- Section 279 (concealing deeds and encumbrances)
- Section 280 (conspiracy to defraud)
- Section 281 (a) (receiving)
- Sections 288 to 309, 314, and 315 (forgery, uttering, and counterfeiting offences)

ARTICLE 76C

"THIRD SCHEDULE

THE COOK ISLANDS ENSIGN

The Cook Islands Ensign shall be described as follows:

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

And it shall mean -

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

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

The 15 white stars represent the 15 islands of the group."

ARTICLE 76D

"FOURTH SCHEDULE

THE NATIONAL ANTHEM OF THE COOK ISLANDS

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

TE ATUA MOU E

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