



ANALYSIS

Title

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|---|---|
| <ol style="list-style-type: none"> 1. Short title and commencement 2. Interpretation 3. Act to bind the Crown <p><u>PART I</u> <u>COOK ISLANDS</u> <u>NATURAL HERITAGE</u> <u>TRUST</u></p> <ol style="list-style-type: none"> 4. Cook Islands National Heritage Trust 5. Objects of the Trust 6. Powers of the Trust 7. The Board 8. Extraordinary vacancies 9. Meetings of the Board 10. Proceedings not affected by certain irregularities | <ol style="list-style-type: none"> 11. Trustees not personally liable 12. Appointment of Director and other officers <p><u>PART II</u> <u>ACCOUNTS</u></p> <ol style="list-style-type: none"> 13. Funds of the Trust 14. Accounts and audit 15. Exempt importations 16. Annual report 17. Fees <p><u>PART III</u> <u>MISCELLANEOUS</u></p> <ol style="list-style-type: none"> 18. Contracts of the Trust 19. Regulations 20. Transitional |
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1999, No. 14

An Act to establish a Cook Islands Natural Heritage Trust with the necessary resources and powers to investigate, identify, research, study, classify, record, issue, preserve and arrange publications, exhibitions, displays and generally educate the public on the science of, and traditional practices and knowledge relating to, the flora and fauna of the Cook Islands.

(25 March 1999)

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

1. Short Title and commencement - (1) This Act may be cited as the Cook Islands Natural Heritage Trust Act 1999.
- (2) This Act shall come into force on the date it is assented to by the Queen's Representative.

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

"Audit Office" has the same meaning that it is given in section 2 of the Public Expenditure Review Committee and Audit Act 1995-96;

"Board" means the Cook Islands Natural Heritage Trust Board of Trustees established under section 6 of this Act;

"Chairperson" means the Chairperson of the Board;

"Director" means the Director appointed pursuant to section 12 of this Act;

"Director of the Tu'anga Taporoporo" means the Director of the Tu'anga Taporoporo appointed under section 19 of the Rarotonga Environment Act 1994-95;

"Exclusive economic zone" has the same meaning that it is given in section 2 of the Territorial Sea and Exclusive Economic Zone Act 1977;

"Financial Secretary" means the Financial Secretary appointed under section 4 of the Ministry of Finance and Economic Management Act 1995-96;

"Financial year" means a period of 12 months ending with the 30th day of June;

"Flora and fauna" means all terrestrial and marine flora and fauna, whether exotic or native, which live in, inhabit, or migrate from time to time through, any part of that area which includes the islands, the territorial sea and the exclusive economic zone of the Cook Islands and includes the natural environment, ecosystems and habitats on which those flora and fauna depend for their survival;

"Minister" means the Minister responsible for the Environment;

"Secretary of Agriculture" means the Head of the Ministry of Agriculture appointed pursuant to section 11 of the Public Service Act 1995-96;

"Secretary of Education" means the Head of the Ministry of Education appointed pursuant to section 11 of the Public Service Act 1995-96;

"Secretary of Marine Resources" means the Head of the Ministry of Marine Resources appointed pursuant to section 11 of the Public Service Act 1995-96;

"Territorial sea" has the same meaning that it is given in section 3 of the Territorial Sea and Exclusive Economic Zone Act 1977;

"Trust" means the Cook Islands Natural Heritage Trust constituted under section 4 of this Act;

"Trust Account" means the Cook Islands Natural Heritage Trust Account established pursuant to section 14 of this Act.

"Trustees" means the members or Trustees of the Board.

3. Act to bind the Crown - This Act shall bind the Crown.

PART I
COOK ISLANDS NATURAL HERITAGE TRUST

4. Cook Islands Natural Heritage Trust - (1) There is hereby established a Trust called the Cook Islands Natural Heritage Trust.

(2) Except where inconsistent with the provisions of this Act, the laws of equity relating to trusts shall apply to the Trust.

(3) The Trustee Act 1956 and the Public Service Act 1995-96 shall have no application to the Trust.

5. Objects of the Trust - (1) The objects of the Trust are to –

- (a) investigate, identify, research, analyse, study, classify, record, integrate and preserve scientific information and traditional knowledge of and practices relating to flora and fauna;
- (b) make such information as is obtained pursuant to paragraph (a) of this subsection generally available to the public;
- (c) assist Government departments and agencies upon request with the supply of information obtained pursuant to paragraph (a) of this subsection.

(2) The objects of the Trust are deemed a Charitable purpose as that term is defined in section 2 of the Income Tax Act 1997.

6. Powers of the Trust - (1) In the exercise of its functions under this Act, the Trust shall be empowered to -

- (a) investigate, identify, research, analyse, study, classify, record, integrate and preserve scientific information and traditional knowledge of and practices relating to flora and fauna;
- (b) issue and arrange publications, exhibitions and displays, and generally educate the public about flora and fauna;
- (c) make information in its possession available, with or without fee, to Government departments and agencies;
- (d) take such measures as it considers necessary to ensure that adequate finance is available to carry out its objects including negotiating with overseas agencies for such finance;
- (e) erect suitable signs and notices at places of habitat or otherwise of interest in respect of flora or fauna;
- (f) acquire by purchase, lease, exchange, bailment, gift, or otherwise any interest in real or personal property;
- (g) dispose of any of its property as it thinks fit by sale, lease, exchange, or bailment;
- (h) establish museums or other places displaying flora and fauna accessible to the public at a charge for admission or otherwise;
- (i) appoint committees, whether composed of members of the Board or not;
- (j) make grants for the undertaking of studies or investigations approved by the Trust;

- (k) publish books, pamphlets, reports, recommendations, and other information relating to any object of the Trust;
- (l) make grants or advances of money on such terms and conditions as it sees fit (including advances free of interest) to further the functions of the Trust;
- (m) expend any money and generally to undertake any other powers and actions that are necessary for the exercise of or ancillary to any of its objects.

(2) Wherever this Act or any other enactment provides for the Trust to carry out any object or vests in the Trust any power, unless the context otherwise requires, that object shall be carried out and that power shall vest in the Board.

7. The Board - (1) The Board shall comprise of the following Trustees –

- (a) one person to be appointed by the Minister to be the Chairperson of the Board;
- (b) the Director of the Tu'anga Taporoporo;
- (c) one person to be appointed by the Financial Secretary;
- (d) one person to be appointed by the Secretary of Education;
- (e) one person to be appointed by the Secretary of Agriculture with the concurrence of the Secretary of Marine Resources;
- (f) one person to be appointed by any settlor on the Trust whose settlement is in monetary value equal to or greater than fifty percent of the amount of public money settled on the Trust in the financial year of the settlement or where no public money has been settled on the Trust in that financial year, greater than fifty percent of the amount of public money settled in the last financial year in which public money was settled upon the Trust.

(2) The persons appointed Trustees pursuant to subsection (1) of this section shall be appointed for a term not exceeding three years provided however such appointees may from time to time be reappointed.

(3) Any person appointed a Trustee by a settlor on the Trust in accordance with subsection (1) of this section, shall remain a Trustee for –

- (a) one year from the date of that person's appointment; or
- (b) for such time that the property or any part of the property settled upon the Trust, remains unused or unexpended –

whichever is the greater.

(4) Subject to section 8 of this Act, every Trustee shall continue in office until his or her successor comes into office.

8. Extraordinary vacancies - (1) Any Trustee shall be deemed to have vacated office if he or she is absent from three consecutive meetings of the Board without having first obtained the leave of the Board.

(2) If any Trustee –

- (a) dies; or
- (b) resigns; or
- (c) is removed from office; or
- (d) is deemed to have vacated his or her office –

the vacancy thereby occurring shall be deemed an extraordinary vacancy.

(3) Every extraordinary vacancy shall be filled in the same manner as that of the person whose office has become vacant.

(4) Every person who fills an extraordinary vacancy shall hold office for the remainder of the term for which his or her predecessor was to hold office.

(5) The powers of the Board shall not be affected by any vacancy in the membership thereof.

9. Meetings of the Board - (1) Subject to subsection (5) of this section, the quorum for a meeting of the Board shall be three Trustees including the Chairperson and notwithstanding any rule of law to the contrary, any decision made by the Trustees at any meeting shall be valid and binding as if made by all the Trustees.

(2) Meetings of the Board shall be held at such times and places as the Board determines provided however the Board shall meet not less than three times in any financial year and in any event whenever a period of five calendar months has elapsed since its last meeting, the Board shall meet forthwith.

(3) Except as is otherwise provided in this Act or by any other statute or rule of law, the Board may regulate its own procedure.

(4) The Chairperson shall preside at all meetings of the Board at which he or she is present.

(5) In the absence of the Chairperson from any meeting, the Trustees present shall appoint one of their number as Chairperson of that meeting.

(6) At least seven days notice of any meeting of the Board shall be given to all Trustees.

(7) A resolution of the Trustees at any meeting held by the Board, shall be valid and binding on all the Trustees.

10. Proceedings not affected by certain irregularities - No act or proceeding of the Board or of any person acting as a Trustee shall be invalidated by reason of a vacancy in the membership of the Board at the time of the act or proceeding, or because of the subsequent discovery that there was some defect in the appointment of any person so acting, or that such person was incapable of being a Trustee or had ceased to become a Trustee.

11. Trustees not personally liable - (1) No Trustee shall be personally liable for any act or default by any Trustee or the Board where that act was done or that default made in good faith and with reasonable care and diligence provided however nothing herein contained shall affect the liability or obligations of the Board or any Trustee under any agreement or deed, or pursuant to the Ministry of Finance and Economic Management Act 1995-96.

12. Appointment of Director and other officers - (1) There shall be appointed by the Board, a Director to assist the Board in the carrying out of the objects of the Trust.

(2) No person shall be appointed as Director, other than a person considered by the Board to be suitably qualified for the position.

(3) The Director may, with the approval of the Board, appoint such other officers, employees and consultants as may from time to time be required to carry out the objects of the Trust.

(4) Every officer, employee and consultant engaged pursuant to this section shall in the performance of their duties be responsible to the Director.

PART II
ACCOUNTS

13. **Funds of the Trust** - (1) The funds of the Trust shall consist of –
- (a) all money received by the Trust out of money appropriated by Parliament for the purposes of the Trust;
 - (b) all money lawfully contributed or donated or bequeathed to the Trust or otherwise lawfully payable to the Trust;
 - (c) all money received by the Trust by way of fees, rent, charges for services and publications, or otherwise in respect of any real or personal property vested in or controlled by the Trust;
 - (d) all money received by the Trust from the sale or other disposal of any real or personal property of the Trust;
 - (e) all accumulations of money belonging to the Trust.

(2) No monies shall be withdrawn from any account of the Trust save pursuant to a resolution passed by the Trustees at a meeting of the Board.

14. **Accounts and audit** - (1) Any funds of the Trust, as defined in section 13 of this Act, shall be deemed to be Public Money as that term is defined in the Ministry of Finance and Economic Management Act 1995-96 notwithstanding its settlement upon the Trust and the Trust shall in any Financial year it receives Public Money be deemed a Crown Agency.

(2) All funds settled upon the Trust shall be paid into such Trust Account or accounts as shall be authorised from time to time by the Financial Secretary.

15. **Exempt importations** - For the purposes of the Value Added Tax Act 1997, notwithstanding any law to the contrary, the Trust is by this Act deemed –

- (a) an “approved aid project” pursuant to paragraph 4(a); and
 - (b) an “approved project” pursuant to paragraphs 4(b) and (c) –
- of the Second Schedule of the Value Added Tax Act 1997.

16. **Annual report** - (1) The Trust shall as soon as practicable after the end of each financial year, furnish to the Minister a report of the proceedings and operations of the Trust for that financial year, together with a copy of its accounts for that financial year certified by the Audit Office.

(2) A copy of the report (including the accounts so certified attached thereto) shall be laid before Parliament as soon as practicable after it has been received by the Minister.

17. **Fees** - There may be paid to the Trustees an annual allowance in such sum as may be prescribed from time to time.

PART III
MISCELLANEOUS

18. **Contracts of the Trust** - Any contract made in writing or any document executed as a deed shall be validly made if executed by any two Trustees pursuant to a resolution of the Board.

19. Regulations - The Queen's Representative may from time to time, by Order in Executive Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

20. Transitional - (1) Every person employed in the Cook Islands Government's Natural Heritage Project shall continue to be so appointed on the same terms and conditions before the coming into force of this Act as if such appointments were made under section 12 of this Act.

(2) Any property in the possession of or being used by such persons referred to in subsection (1) of this section that -

(a) is being used for the purposes of the Cook Islands Government Natural Heritage Project; and

(b) has been identified by these persons as being the property of the Cook Islands Government Property Corporation or the Crown -

is hereby settled on the Trust.

This Act is administered by the Cook Islands Natural Heritage Trust