



## ANALYSIS

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 1991, No. 5

An Act to provide for the relief of persons who have been convicted of offences and have subsequently rehabilitated themselves

(30 April 1991)

**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 - This Act may be cited as the Criminal Records Act 1991.

2. Interpretation - In this Act -

"Board" means the Parole Board;

"Commissioner" means the Commissioner of Police;

"Court" means any Court of Law having jurisdiction to hear criminal prosecutions in the Cook Islands;

"Minister" means the Minister of Corrective Services;

"Pardon" means a pardon granted by the Queen's Representative in Executive Council under subsection 4(8);

"Period of Probation" means a period during which a person convicted of an offence was directed by the court that convicted him to be released upon or comply with the conditions prescribed in a probation order, which period shall be deemed to have terminated at the time the probation order ceased to be in force.

3. Application for pardon - A person or any living next of kin of a deceased person who has been convicted of an offence under an Act of the Parliament of the Cook Islands or a regulation made thereunder may make application for a pardon in respect of that offence.

4. Procedure - (1) An application for a pardon shall be made to the Minister, who shall refer it to the Board.

(2) The Board shall cause proper inquiries to be made in order to ascertain the behaviour of the applicant since the date of his conviction, but such inquiries shall not be made -

(a) Where the applicant was convicted of an offence punishable on summary conviction in proceedings under Part II of the Criminal Procedures Act 1980-81 until, in the case of the imposition on the applicant of:

(i) a sentence of imprisonment;

(ii) a period of probation; or

(iii) a fine

two years have elapsed since the termination of the sentence of imprisonment, the termination of the period of probation or the payment of the fine, as the case may be, or in the case of the imposition on the applicant of;

(iv) a period of probation in addition to a fine; or

(v) a fine in addition to a sentence of imprisonment, two years have elapsed since the later of the termination of the sentence of imprisonment, the termination of the period of probation or the payment of the fine, as the case may be; or

(b) in any other case, until five years have elapsed since the date from which the two years period provided in paragraph (a) would have been computed, if that paragraph had been applicable to the applicant.

(3) For the purposes of this section, in calculating the period of any sentence of imprisonment imposed on an applicant there shall be included, in addition to any time spent by him in custody pursuant to that sentence, any period of statutory remission granted to him in respect thereof.

(4) The Chairman of the Parole Board shall direct a Probation Officer to undertake inquiries for the purpose of a pardon.

(5) The Probation Officer so directed shall report to the Parole Board on the character and personal history of the applicant.

(6) The Probation Officer may make recommendations to the Parole Board as to the best method of dealing with the application.

(7) Upon completion of its inquiries, the Board shall report the result thereof to the Minister with its recommendation as to whether a pardon should be granted but, if the Board proposes to recommend that a pardon should not be granted, it shall, before making such a recommendation, forthwith so notify the applicant and advise him that he is entitled to make any representations to the Board that he believes relevant; and the Board shall consider any oral or written representations made to it by or on behalf of the applicant within a reasonable time after any such notice is given and before making a report under this subsection.

(8) Upon receipt of a recommendation from the Board that a pardon should be granted, the Minister shall refer the recommendation to the Queen's Representative in Executive Council who may grant the pardon which shall be in the form set out in the schedule.

5. Effect of grant of pardon - The grant of pardon -
- (a) is evidence of the fact that the Board, after making proper inquiries, was satisfied that an applicant was of good behaviour and that the conviction in respect of which the pardon is granted should no longer reflect adversely on his character; and
  - (b) Unless the pardon is subsequently revoked, vacates the conviction in respect of which it is granted and, without restricting the generality of the foregoing, removes any disqualification to which the person so convicted is, by reason of such conviction, subject by virtue of any Act of the Parliament of the Cook Islands or a regulation made thereunder.

6. Custody of records - (1) The Minister may by order in writing addressed to any person having the custody or control of any judicial record of a conviction in respect of which a pardon has been granted, require that person to deliver such record into the custody of the Commissioner of Police.

(2) Any record of a conviction in respect of which a pardon has been granted that is in the custody of the Commissioner or of any department or agency of the Government of the Cook Islands shall be kept separate and apart from other criminal records, and no such record shall be disclosed to any person, nor shall the existence of the record or the fact of the conviction be disclosed to any person, without the prior approval of the Minister who shall, before granting such approval, satisfy himself that the disclosure is desirable in the interests of the administration of justice or for any purpose related to the safety or security of the Cook Islands or any state allied or associated with the Cook Islands.

(3) Notwithstanding subsection (2), the Court, upon a conviction for a similar or related offence, shall not refuse to consider for sentencing purposes any record of conviction in respect of which a pardon has been granted.

7. Revocation - A pardon may be revoked by the Queen's Representative in Executive Council -

- (a) if the person to whom it is granted is subsequently convicted of a further offence under an Act of the Parliament of the Cook Islands or a regulation made thereunder; or
- (b) upon evidence establishing to the satisfaction of the Queen's Representative in Executive Council:
  - (i) that the person to whom it was granted is no longer of good conduct; or
  - (ii) that such person knowingly made a false or deceptive statement in relation to his application for the pardon, or knowingly concealed some material particular in relation to such application.

8. General - No application form for or relating to:
- (a) employment in any department pursuant to the Public Service Act 1975;

- (b) employment by any Crown, Corporation or Ad Hoc Agency of the Government;
- (c) employment upon or in connection with the operation of any work, undertaking or business that is within the legislative authority of the Parliament of the Cook Islands -

shall contain any question that by its terms requires the applicant to disclose a conviction in respect of which he has been granted a pardon that has not been revoked.

9. Limitation - Nothing in this Act in any manner limits or affects the provisions of the Criminal Procedures Act, or of the letters Patent Constituting the Office of the Queen's Representative of the Cook Islands relating to pardons, except that sections 6 and 8 apply in respect of any pardon granted either before or after the commencement of this Act pursuant to any authority conferred by those provisions.

10. Offences - Any person who violates any provision of this Act is guilty of an offence punishable on summary conviction.

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This Act is administered by the Ministry of Corrective Services

SCHEDULE

HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE IN EXECUTIVE COUNCIL, on the recommendation of the Parole Board, is pleased hereby to grant to.....a pardon in respect of the offence of ..... of which he was convicted on the .....day of ..... Year .....

AND this pardon is evidence of the fact that the Parole Board, after making proper inquiries, was satisfied that the said ..... is, by reason of such conviction, subject by virtue of any Act of the Parliament of the Cook Islands or a regulation made thereunder.

GIVEN at Rarotonga, Cook Islands this..... day of ..... Year .....

BY ORDER

HIS EXCELLENCY  
THE QUEEN'S REPRESENTATIVE