



## ANALYSIS

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1980, No. 16

An Act to establish the Crown Law Office

(27 November 1980)

BE IT ENACTED by the Legislative Assembly of the Cook Islands in session assembled in accordance with the provisions of Article 41(i) of the Constitution of the Cook Islands and by the authority of the same as follows:-

1. Short Title - This Act may be cited as the Crown Law Office Act 1980.

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

"Attorney-General" means that member of the Cabinet who may have been appointed Attorney-General pursuant to Article 16 of the Constitution and Section 4 of the Act, and "Attorney-General" in respect of any power, duty, authority, or function imposed upon or vested in him by virtue of his office of Attorney-General otherwise than under Sections 4, 5 and 8 of this Act, includes the Solicitor-General.

"Court" includes the High Court of the Cook Islands, the Supreme Court of New Zealand exercising the functions of Appellate Court in accordance with the provisions of the Constitution of the Cook Islands Act 1915, the Land Court, the Land Appellate Court, the Coroner's Court, the Compen-sations Court, and any other body or tribunal exercising a judicial function;

"The Office" means the Crown Law Office established by this Act.

"Qualified Officer" means a person holding a qualification entitling him to practice as a barrister or solicitor or as both, in the High Court of the Cook Islands.

3. Crown Law Office - There is hereby established a Crown Law Office.

4. Attorney-General - (1) The Premier may from time to time appoint a person who shall be:

- (a) a member of the Cabinet and
- (b) a qualified barrister or solicitor

to the office of Attorney-General.

(2) The Attorney-General shall be vested with all such duties, functions and powers as may be provided by statute and at common law.

5. Minister responsible for Crown Law Office - The Minister responsible for the Crown Law Office shall be the Attorney-General or if no such person is so appointed, then it shall be the Minister of Justice.

6. Solicitor-General - (1) There shall from time to time be appointed a Solicitor-General who shall be responsible for the administration of the Crown Law Office and who shall carry out such other functions as may be prescribed by this Act, or any other enactment.

(2) The Solicitor-General shall be appointed by the High Commissioner acting on the advice of Cabinet.

(3) The term of the appointment, salary, allowance and other entitlements of the Solicitor-General shall be determined by Cabinet. Unless his office sooner becomes vacant, every person appointed as Solicitor-General shall hold office until his successor is appointed.

(4) No persons shall be appointed to the position of Solicitor-General unless he has been in practice as a barrister or solicitor, or both, in the Cook Islands or in New Zealand, or in Australia or partly in one and partly in the other for a period of, or periods amounting in aggregate to, not less than five years.

(5) The Solicitor-General may at any time resign his office in writing addressed to the High Commissioner.

(6) The High Commissioner, acting on the advice of the Attorney-General or the Minister of Justice where no Attorney-General has been appointed, may remove or suspend from office the Solicitor-General for disability, bankruptcy, neglect of duty or misconduct.

(7) No person shall be deemed to be employed in the service of Her Majesty for the purpose of the Public Service Act 1975 by reason of his appointment as Solicitor-General.

7. Oaths to be taken by Solicitor-General - The Solicitor-General shall upon his appointment take and subscribe the oaths contained in the Schedule hereto.

8. Crown Counsel and Other employees - (1) Subject to the provisions of this section, the Attorney-General, or if no such appointment has been made, then the Minister of Justice, on the recommendation of the Solicitor-General, may appoint

- (a) such qualified officers, to be known as Crown Counsel, and
- (b) such other employees as may be necessary for the efficient carrying out of the functions of the office

(2) No persons shall be deemed to be employed in the services of Her Majesty for the purpose of the Public Service Act 1975 by reason of his appointment under this section.

(3) The number of persons who may be appointed under this section, and their salary, allowances and other entitlements shall be determined in Cabinet.

(4) Any person appointed under this section may at any time be removed or suspended from office by the Solicitor-General for disability, bankruptcy, neglect of duty or misconduct.

9. Public Servants appointed to Crown Law Office - In the case of the appointment to the Crown Law Office of an employee of the Public Service not being on special leave from the Public Service, his term of office as an Officer of the Crown Law Office shall be deemed to be continuous service in the department of the Public Service in which he was employed at the date of that appointment for the purposes of:

- (a) appointment to and appeals against any appointment or promotion to a vacant position for which he had applied
- (b) entitlement to leave of absence and sick leave, participation in any superannuation scheme to which he may be entitled to contribute in his capacity as a Public Servant.

10. Principal Functions of the Office - (1) The principal function of the office shall be to advise the Government of the Cook Islands on legal matters that may be referred to it by the High Commissioner, Cabinet, the Premier, a Minister, a head of department, or Statutory body or Corporation.

(2) The Attorney-General shall have power, exercisable in his discretion, to institute and conduct any civil or criminal proceedings and may discontinue any criminal proceedings whether instituted by him or otherwise.

11. Right of Audience in any Court or Tribunal - The Attorney-General shall have a right of audience in, and shall take precedence over any other person appearing before any Court or Tribunal.

12. Private Practice Prohibited - Neither the Solicitor-General nor any Crown Counsel appointed under Section 8 of this Act shall engage in private practice in the Cook Islands as a barrister or solicitor, or other employment, whether for any fee or reward or otherwise, during the term of his appointment.

13. Duty of Registrar in Certain Cases - Where any proceedings have been instituted in the High Court charging any person with a criminal offence punishable by a term of imprisonment exceeding one year, it shall be the duty of the Registrar of the High Court to transmit to the Solicitor-General a copy of the information.

14. Transitional provisions - (1) The person holding the office of Advocate General pursuant to the provisions of the Advocate General Act 1967 immediately before the commencement of this Act shall on the coming into force of this Act be deemed to have been appointed Solicitor-General in accordance with Section 6 of this Act.

15. Regulations - The High Commissioner may from time to time by Order in Executive Council, make all such regulations as may be deemed necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

16. Repeals and Amendments - (1) The Advocate General Act 1967 is hereby repealed.

(2) Where, in any enactment, regulations or other Statutory instrument the words "Advocate General" appear, they shall be deleted and the words "Attorney-General" substituted therefore, except in the second column of the first schedule of the New Zealand Laws Act 1966, the term "Advocate General" shall be deleted and the term "Solicitor-General" substituted.

(3) The following provisions of the Crimes Act 1969 are hereby amended:

- (a) Sections 117 and 412 by deleting the words "Minister of Justice" wherever they appear and substituting the words "Attorney-General or if no such appointment has been made, then the Minister of Justice".

- (b) Section 337 by inserting after the words "Minister of Justice" the words "or Attorney-General".
- (c) Section 422 by deleting the words "Minister in charge of the Justice Department" and substituting therefore the words "The Attorney-General".
- (4) (a) Paragraph (e) and (f) of subsection 2 of Section 350 of the Cook Islands Act 1915 are hereby repealed.
- (b) Section 350 (4) of the Cook Islands Act 1915 is hereby amended by deleting the words "such person as the High Commissioner may appoint for the conduct thereof" and substituting the words "the Attorney-General".

#### SCHEDULE

##### Oaths to be taken by Solicitor-General

- (a) An Oath of Allegiance in the following form:  
I,....., swear by Almighty God that I will be faithfull and bear true allegiance to Her (or His) Majesty (specify the name of the reigning Sovereign as thus: (Queen Elizabeth the Second) Her (or His) heirs and successors, according to law. So help me God.
- (b) An Oath of office in the following form:  
I,....., swear that I will well and truly serve Her (or His) Majesty (specify as above), Her (or His) heirs and successors, according to law, in the office of Solicitor-General. So help me God.

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This Act is administered by the Crown Law Office.