



ANALYSIS

| Title | |
|--|---|
| 1. Short Title and commencement | 6. Justices of the Peace |
| 2. Interpretation | 7. Custom |
| 3. Secretary to Cabinet | 8. Cook Islands Public Service |
| 4. Qualification of candidates | 9. Traditional |
| 5. Jurisdiction of Divisions of the High Court | 10. Consequential amendments to the Electoral Act |

1994-95, No. 36

An Act to amend the Constitution

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 Constitution Amendment (No. 17) Act 1994-95 and shall be read together with and deemed part of the Constitution of the Cook Islands (hereinafter referred to as "the Constitution").

(2) This Act shall come into force on the 1st day of July 1995.

2. Interpretation - Article 1 of the Constitution is amended by -
 (a) inserting after the expression "Court of Appeal" and its definition (as inserted by the Constitution Amendment (No. 9) Act 1980-81), the following -

"'Crown servant' includes any person who is an employee of the Crown, or a director, member or employee of any agency of the Crown or any statutory or other body or corporation substantially owned or controlled by the Crown, or a member or an Island Council, but does not include a person who holds office by virtue of his being a member of Parliament or a Minister."

Price \$1.50

- (b) inserting after the expression "High Court" and its definition, the following -

"Judicial officer" means the Chief Justice or a Judge of the Court of Appeal or of the High Court, or a Justice of the Peace who acts in a judicial capacity."

3. Secretary to the Cabinet - The Constitution is amended, by repealing Article 20 and substituting the following new Article -

"20. Secretary to the Cabinet - There shall be a Secretary to the Cabinet, who shall be appointed in such manner as shall be prescribed by Act."

4. Qualification of candidates - Article 28B of the Constitution is amended by -

- (a) adding after paragraph (d) of subclause (1), the following new paragraph -

"(e) He is a Crown servant or a judicial officer."

- (b) adding after subclause (2), the following new subclause -

"(3) Notwithstanding the definitions of "Crown servant" and "Judicial officer" in Article 1 of this Constitution, and subclauses (1) and (2) of this Article, an Act may -

- (a) add to or delete from those definitions, any class or classes of persons;
 (b) provide for further qualifications or disqualifications of candidates."

5. Jurisdiction of Divisions of the High Court - Article 48 of the Constitution is amended by repealing subclause (3), and substituting the following new subclauses -

"(3) Notwithstanding anything in this Part or in Part IVA, and in recognition of the customs and traditions of the people of those islands, the Land Division shall not exercise any jurisdiction or power in relation to land or chiefly titles in any of the islands of Mangaia, Mitiaro and Pukapuka, and such other islands as may be prescribed by Act, provided that no such Act shall be introduced to Parliament except with the consent of the Aronga Mana of the island to which it relates.

(4) Where on any island to which subclause (3) applies, jurisdiction or power in relation to land or chiefly titles is exercised in accordance with the customs and usages of that island, the exercise of that jurisdiction or power shall be final and binding on all persons affected thereby, and shall not be questioned in any Court of law."

6. Justices of the Peace - Article 62 of the Constitution is amended, by inserting after subclause (1), the following -

"(2) Every Justice of the Peace (whether appointed before or after the coming into force of this subclause) shall cease to act in a judicial capacity before becoming a candidate for election to Parliament, but such ceasing to act shall not otherwise affect that person's status as a Justice of the Peace."

7. Custom - The Constitution is amended, by inserting after Part IVA, the following new Part -

**" PART IVB
CUSTOM**

66A. Custom - (1) In addition to its power to make laws pursuant to Article 39, Parliament may make laws recognising or giving effect to custom and usage.

(2) In exercising its powers pursuant to this Article, Parliament shall have particular regard to the customs, traditions, usages and values of the indigenous people of the Cook Islands.

(3) Until such time as an Act otherwise provides, custom and usage shall have effect as part of the law of the Cook Islands, provided that this subclause shall not apply in respect of any custom, tradition, usage or value that is, and to the extent that it is, inconsistent with a provision of this Constitution or of any enactment.

(4) For the purposes of this Constitution, the opinion or decision of the Aronga Mana of the island or vaka to which a custom, tradition, usage or value relates, as to matters relating to and concerning custom, tradition, usage or the existence, extent or application of custom shall be final and conclusive and shall not be questioned in any court of law."

8. Cook Islands Public Service - The Constitution is amended by repealing Part VI, and substituting the following new Part VI -

**"PART VI
THE COOK ISLANDS PUBLIC SERVICE**

72. The Cook Islands Public Service - (1) There shall be a Cook Islands Public Service, which shall comprise such persons in the service of the Government of the Cook Islands as may from time to time be prescribed by law.

(2) An Act shall provide for the administration and regulation of the Cook Islands Public Service including without limitation, the appointment, terms of service, disciplinary control, termination of appointment, and dismissal of members of the Public Service, and different such provisions may be made in respect of different classes of members of the Public Service.

73. Public Service Commissioner - (1) There shall be a Public Service Commissioner appointed by the Queen's Representative on the advice of the Prime Minister.

(2) No person shall be appointed to be or remain the Public Service Commissioner if he is or becomes a member of Parliament.

(3) The Public Service Commissioner shall not hold office concurrently with any other office in the Cook Islands Public Service.

(4) The actions of the Public Service Commissioner shall not be invalidated in consequence of the subsequent discovery of some defect with regard to his appointment.

(5) The Public Service Commissioner shall be paid such remuneration by way of salary and allowances as may from time to time be determined by Cabinet.

(6) The procedure to be followed by the Public Service Commissioner in the exercise of his functions, and the delegation of his powers and functions may be prescribed by enactment.

74. Term of Office and functions of Public Service Commissioner - (1) The Public Service Commissioner shall be appointed for such term as shall be determined by Cabinet and may from time to time be reappointed.

(2) The Public Service Commissioner may at any time resign his office by writing under his hand addressed to the Prime Minister.

(3) The Queen's Representative, acting on the advice of the Prime Minister, may suspend or remove the Public Service Commissioner from office for disability, bankruptcy, neglect of duty, breach of the terms of his appointment, or misconduct.

(4) The Public Service Commissioner shall have such functions as shall be prescribed by Act.

75. Staff of Queen's Representative - (1) Except as provided in subclause (2), the appointment, terms of service, disciplinary control, termination of appointment, and dismissal of staff of the Queen's Representative shall be matters for the Queen's Representative, acting in his discretion.

(2) The Queen's Representative, if he so desires, may appoint to his staff such employees of the Cook Islands Public Service as he may select acting in his discretion, but after consultation with the Prime Minister, from a list subjected by the Public Service Commissioner; and the provisions of subclause (1) of this Article (except so far as they relate to appointment) shall apply in relation to a person so appointed in respect of his service on the staff of the Queen's Representative but not in respect of his service as an employee of the Cook Islands Public Service.

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

(a) the Chief Justice of the High Court;

(b) one person, being an employee or former employee of the Cook Islands Public Service, to be appointed by, and hold office at the pleasure of, the Queen's Representative, acting on the advice of the Prime Minister;

- (c) one person, being an employee or former employee of the Cook Islands Public Service, to be elected by the employees of that Service or nominated by an organisation of those employees, and to hold office for a period of 3 years.
- (2) The Chief Justice shall be Chairman of the Board of Appeal.
- (3) 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 Chairman of the Board of Appeal.
- (4) In the absence of the Chief Justice or other Judge nominated pursuant to subclause (3), the person for the time being holding office as Ombudsman may attend the sitting in his stead and while so acting shall be Chairman of the Board of Appeal.
- (5) An Act -
 - (a) shall prescribe whether or not the person to be appointed under the provisions of paragraph (c) of subclause (1) of this Article is to be elected or nominated and the manner of that election or nomination;
 - (b) may provide for the appointment of deputies to act for members of the Board of Appeal appointed under the provisions of paragraph (b) or paragraph (c) of subclause (1) of this Article;
 - (c) shall prescribe the jurisdiction of the Board of Appeal to hear and determine appeals;
 - (d) shall prescribe the procedure of the Board of Appeal.
- (6) Subject to the provisions of any Act, the Board of Appeal shall determine its own procedure."

9. Transitional - Notwithstanding the repeal and substitution by section 8 of this Act of Part VI of the Constitution, every person holding office as Public Service Commissioner, Secretary to the Cabinet, a member of the Public Service, an exempted employee, a member of the staff of the Queen's Representative, or as a member of the Cook Islands Public Service Board of Appeal immediately before the commencement of this Act, shall continue to hold office as Public Service Commissioner, Secretary to the Cabinet, member of the Public Service, an exempted employee, a member of the staff of the Queen's Representative or as a member of the Cook Islands Public Service Board of Appeal (as the case may be) subject to the provisions of the Constitution.

10. Consequential amendments to the Electoral Act - The Second Schedule to the Electoral Act 1966 is amended, by amending 28B(2) of the Constitution (as reproduced in that Schedule) by -

- (a) adding after paragraph (d) of subclause (1), the following new paragraph -

"(e) He is a Crown servant or a judicial officer."

- (b) adding after subclause (2), the following new subclause -

"(3) Notwithstanding the definitions of "Crown servant" and "Judicial officer in Article 1 of this Constitution, and subclauses (1) and (2) of this Article, an Act may -

- (a) add to, vary, or delete from those definitions, any class or classes of persons;
- (b) provide for further qualifications or disqualifications of candidates."
-