



## ANALYSIS

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2007, No. 27

An Act to establish a Law Commission as a central advisory body for the systematic review, reform, and development of Cook Islands law.

(12<sup>th</sup> November 2007)

**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 – This Act may be cited as the Law Commission Act 2007 and will come into effect on a date to be fixed by the Queen's Representative by an Order in Executive Council.
2. Act to bind the Crown – This Act binds the Crown.
3. Purpose – The purpose of this Act is to promote the systematic review, reform, and development of the laws of the Cook Islands.
4. Establishment – (1) For the purpose of this Act, there is hereby established a commission to be called the Law Commission.  
 (2) The Commission shall be a body corporate with perpetual succession and a common seal, and shall be capable of acquiring, holding, and disposing of real and personal property, of entering into contracts, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may do and suffer.

**Price \$3.00**

(3) The Commission's seal shall be judicially noticed in all Courts and for all purposes.

5. Functions – (1) The principal functions of the Commission are to -
- (a) take and keep under review in a systematic way the laws of the Cook Islands;
  - (b) make recommendations for the reform and development of Cook Islands law;
  - (c) advise on the review of any aspect of the Cook Islands law conducted by any Government ministry or department and on proposals made as a result of the review;
  - (d) advise the Attorney-General on ways in which Cook Islands law can be made as understandable and accessible as is practicable.
- (2) In making its recommendations, the Commission shall –
- (a) take into account Cook Islands customs; and
  - (b) have regard to the desirability of simplifying the expression and content of the law, as far as that is practicable.

6. Powers – (1) The Commission shall have all such powers as are reasonably necessary or expedient to enable it to carry out its functions.

(2) Without limiting the generality of subsection (1) of this section, the Commission shall have the power to –

- (a) initiate proposals for the review, reform, or development of any aspect of Cook Islands law and to receive and consider any such proposals made or referred to it by any person;
- (b) initiate, sponsor, and carry out such studies and research as it thinks expedient for the proper discharge of its functions;
- (c) publicise such parts of its work in such manner as it thinks expedient, to conduct public hearings, to seek comments from the public on its proposals, and to consult with any persons or groups of persons;
- (d) provide advice and assistance to, and to request information from, any Government ministry, department or agency considering the review, reform, or development of any aspect of Cook Islands law.

7. Responsibilities – (1) The Commission shall prepare and submit to the Attorney-General at least once a year, programmes for the review or development of Cook Islands law.

(2) The Attorney-General may at any time request the Commission to examine any aspect of Cook Islands law, and the Commission shall review that aspect accordingly, and report to the Attorney-General thereon with its recommendations.

(3) The Attorney-General may request the Commission to give priority to the examination of any aspect of Cook Islands law (whether or not included in a programme), and the Commission shall give that matter appropriate priority.

8. Assistance by ministries and departments – The Commission may consult with any Government ministry, department or other agency concerning any review of any aspect of Cook Islands law administered by that ministry, department, or agency.

9. Membership - (1) The Law Commission shall consist of 3 Commissioners to be appointed from time to time by the Queen's Representative on the recommendation of the Attorney-General.

(2) One of the Commissioners, who shall be appointed as chairman, must be a barrister or solicitor of the High Court of not less than 7 years' practice in the Cook Islands, appointed following consultation between the Attorney-General and the Chief Justice.

(3) Every Commissioner must be a person possessing qualifications and experience relevant to the purpose and functions of the Commission.

10. Chief Justice and Judges may attend meetings of and address the Commission – The Chief Justice and any other Judge of the High Court or Court of Appeal shall be entitled to attend and address any meeting of the Commission.

11. Term of office – (1) Except as otherwise provided in section 12, every Commissioner shall hold office for such term not exceeding 3 years as the Queen's Representative on the recommendation of the Attorney-General shall specify in the instrument appointing that Commissioner.

(2) Every Commissioner shall be eligible for re-appointment from time to time.

(3) Where the term for which a Commissioner has been appointed expires, that Commissioner, unless sooner vacating or removed from office under section 12, shall continue to hold office, by virtue of the appointment for the term that has expired, until that Commissioner is re-appointed or until a successor to that Commissioner is appointed.

12. Vacation of office – (1) Subject to subsection (2), any Commissioner may at any time be removed from office by the Queen's Representative for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Queen's Representative.

(2) Any Commissioner may at any time resign the office of Commissioner by notice in writing addressed to the Attorney-General.

(3) The powers of the Commission shall not be affected by any vacancy in its membership.

13. Chairman and deputy – (1) The chairman of the Commission may from time to time appoint another member of the Commission as deputy.

(2) In any case in which the chairman becomes incapable of acting by reason of illness, absence, or other sufficient cause or during any vacancy in the office of chairman, the deputy shall have and may exercise all the powers, functions, and duties of the chairman.

(3) No act done by a person holding office as the deputy chairman in that person's capacity as such deputy, and no act done by the Commission while a deputy is acting as such shall, in any proceedings be questioned on the ground that the occasion for the deputy's so acting had not arisen or had ceased.

14. Procedure – Subject to the provisions of this Act, the Commission may regulate its procedure in such manner as it thinks fit.

15. Proceedings of Commission – The provisions of the Schedule to this Act shall have effect in relation to the Commission and its proceedings.

16. Reports on legal issues – (1) The Commission shall -  
(a) submit to the Attorney-General every report prepared by it on any aspect of the Cook Islands law; and  
(b) publish every report submitted to the Attorney-General pursuant to paragraph (a) of this subsection.  
(2) Where the Commission furnishes to the Attorney-General a report prepared by it on any aspect of the Cook Islands law, the Attorney-General shall lay a copy of that report before Parliament as soon as practicable after the receipt of that report by the Attorney-General.

17. Annual financial report – (1) The Commission shall, as soon as practicable after the end of each financial year ending with the 30<sup>th</sup> day of June, furnish to the Attorney-General the financial report required by clause 10 of the Schedule.

(2) The Attorney-General shall lay a copy of the financial report before Parliament as soon as practical after receipt of that report by him .

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This Act is administered by the Crown Law Office

## SCHEDULE

### PROVISIONS RELATING TO LAW COMMISSION (Section 15)

1. Remuneration, allowances, and expenses of members of Commission – (1) There shall be paid to the members of the Commission such remuneration and allowances as may from time to time be prescribed, either generally or in respect of any particular member or members of the commission, by Order in Executive Council.

(2) Any Order under subclause (1) shall take effect on such date (whether the date thereof or any earlier or later date) as may be specified therein. If no such date is specified, the decision shall take effect on the date thereof.

2. Employees of Commission – (1) Subject to the provisions of this clause, the Commission may from time to time appoint temporary or casual employees, as the Commission thinks necessary for the efficient carrying out of its functions, powers, and duties under this Act or any other enactment.

(2) Subject to the Commission's terms and conditions of employment, the Commission may, at any time terminate or suspend the employment of any of the Commission's employees.

(3) Employees appointed under subclause (1) shall be employed on such terms and conditions on employment and shall be paid such remuneration as the Commission from time to time determines..

3. Committees and consultants – (1) To assist the Commission in the exercise of its functions, the Commission may from time to time -

(a) establish committees and appoint members thereof; including, on a temporary basis, members who are not Commissioners; and

(b) engage such consultants as the Commission thinks fit.

(2) The Commission may pay persons appointed or engaged under subclause (1) for services rendered by them, fees and commissions or either at such rates as the Commission thinks fit, and may separately reimburse them for expenses actually and reasonably incurred in rendering services for the Commission.

4. Application of certain acts to members and staff of Commission – No person shall be deemed to be employed in the service of Her Majesty for the purposes of the Public Service Act 1995-96 or the Cook Islands National Superannuation Fund Act 2000 by reason alone of that person's appointment as a member of the Commission, or an officer or employee of the Commission or a person appointed by the Commission under clause 3 of this Schedule.

5. Crown Law Office may provide services for Commission – The Crown Law Office, acting through the Solicitor-General shall from time to time, at the request of the Commission, but subject to the availability of resources, execute any work or enter into arrangements for the execution or provision for the Commission of any work or service, or for the supply to the Commission of any goods, store, or equipment, on and subject to such terms and conditions as may agreed.

6. Money to be appropriated by Parliament for purposes of this Act – All fees, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

7. Funds of Commission – The funds of the Commission shall consist of -
- (a) all money appropriated by Parliament for the purposes of the Commission and paid to the Commission for the purposes of the Commission:
  - (b) all other money lawfully received by the Commission for the purposes of the Commission:
  - (c) all accumulations of income derived from any such money.

8. The Commission account - (1) Notwithstanding section 43 of the Ministry of Finance and Economic Act 1995-96, the Commission may with the approval of the Minister and of the Financial Secretary keep such bank account or accounts as may from time to time be approved by the Commission.

(2) No money shall be withdrawn from any bank account except by cheque or other instrument signed by such person or persons in such manner as the Commission may from time to time determine.

9. Financial reporting and fiscal updates - The Commission shall deliver to the Ministry of Finance and Economic Management, financial reports and fiscal updates in accordance with Parts II and V of the Ministry of Finance and Economic Management Act 1995-96, as if the Commission was a government department as defined in that Act.

10. Annual financial report - (1) Within 3 months after the end of every financial year the Commission shall deliver to the Attorney-General a report of the finances of the Commission during that financial year.

(2) The financial report made under subsection (1) shall state the information necessary to enable an informed assessment of the financial status of the Commission.

(3) The Attorney-General shall, as soon as an annual financial report is received, table a copy in Parliament if Parliament is then in Session and if Parliament is not then in Session, shall table the report at the commencement of the next ensuing Session.

11. Application of Ministry of Finance and Economic Management Act - The Ministry of Finance and Economic Management Act 1995-96 shall apply to the Commission except to the extent that those provisions are inconsistent with this Act.

12. Office of the Public Expenditure Review Committee and Audit to be auditor - (1) The Office of the Public Expenditure Review Committee shall be the auditor of the Commission, which office will have and may exercise the functions, duties and powers it has under the Public Expenditure Review Committee and Audit Act 1995-96.

(2) Without limiting subsection (1), the Commission may with the agreement of the Office of Public Expenditure Review Committee and Audit, appoint a person or a firm to conduct audits of the Commission.

13. Bank accounts - (1) The Commission shall open at any bank or banks such accounts as are necessary for the exercise of its functions and powers.

(2) All money received by the Commission shall, as soon as practicable after it has been received, be paid into such bank accounts of the Commission as the Commission from time to time determines.

(3) The withdrawal or payment of money from any such account shall be authorised in such manner as the Commission thinks fit.

(4) The withdrawal or payment of money from any such accounts shall be by cheque signed by such person or persons as the Commission may from time to time authorise.

14. Exemption from income tax - The income of the Commission shall be exempt from income tax.

15. Proceedings privileged - (1) No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do in the course of the exercise or intended exercise of its functions, unless it is shown that it acted in bad faith.

(2) No proceedings, civil or criminal, shall lie against the Commission for anything it may do or fail to do or say in the course of the operation of the Commission, unless it is shown that the member acted in bad faith.

(3) No member of the Commission, or office or employee thereof, or person appointed or engaged under clause 3 of this Schedule, shall be required to give evidence in any court, or in any proceedings of a judicial nature, in respect of anything coming to the knowledge of the member, officer, employee, or person in the course of the operations of the Commission.

(4) Anything said or any information supplied or any document produced by any person in the course of any proceedings before the Commission shall be privileged in the same manner as if the proceedings were proceedings in a Court.

(5) For the purposes of clause 3 of Part II of the Schedule to the Defamation Act 1993, any report made by the Commission in the course of the exercise or intended exercise of its functions shall be deemed to be an official report made by a person holding an inquiry under the authority of Parliament.

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