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Schedule 1

Amendments to Acts

Schedule 2

Amendments to regulations

An Act to—

- (a) provide for the transfer of staff and resources from the Ministry of Justice to the responsible Ministry;
- (b) facilitate the transfer of the administration of the Criminal Justice Act 1967, the Prisons Act 1967, and the regulations made under those Acts from the Ministry of Justice to the responsible Ministry;
- (c) consequentially amend other legislation;
- (d) provide for the transfer of assets and liabilities from the Ministry of Justice to the responsible Ministry, and related matters.

Price \$3.00

The Parliament of the Cook Islands enacts as follows—

(17 December 2019)

- 1 **Title**
This Act is the Ministry of Corrective Services Act 2019.
- 2 **Commencement**
This Act is deemed to come into force on 1 July 2019.

Part 1

Preliminary provisions and transfer of employees

- 3 **Interpretation**
In this Act, unless the context otherwise requires,—
contract includes a licence
designated party means any of the following:
- (a) a Minister of the Crown, in his or her capacity as the Minister responsible for the administration of the relevant Acts:
 - (b) the Secretary of Justice, in his or her capacity as a person with functions under, or connected with the administration of the relevant Acts
- designated successor** means,—
- (a) in relation to a person specified in paragraph (a) of the definition of the term designated party, the responsible Minister:
 - (b) in relation to the person specified in paragraph (b) of the definition of designated party, the head of the responsible Ministry
- head** means, subject to any enactment, the head of the responsible Ministry
premises includes land
relevant Acts means—
- (a) the Prisons Act 1967; and
 - (b) the Criminal Justice Act 1967
- responsible Ministry** means the department that is, with the authority of the Prime Minister, for the time being responsible for the administration of the relevant Acts
responsible Minister means, subject to any enactment, the Minister who is, with the authority of the Prime Minister, for the time being responsible for the administration of the relevant Acts
transferred employee means any employee of the Ministry of Justice who transfers to the responsible Ministry as a result of the creation of the responsible Ministry.
- 4 **Application of employment contracts**
- (1) This section and sections 5 and 6 apply to any transferred employee.
 - (2) Unless a transferred employee's employment contract otherwise provides and subject to subsection (3), the transferred employee's employment contract continues to apply to that employee, on and after the date the employee transfers to the responsible Ministry, on the same terms and conditions (including the period of the contract)—

- (a) as if it were a contract that had been made in respect of the responsible Ministry; and
 - (b) as if it were binding on both that employee and on the Secretary of the responsible Ministry, and on any other party to that contract.
- (3) If there is a change to an employee's duties or location arising out of his or her transfer to the responsible Ministry, the conditions of employment of that employee may be varied by agreement to reflect that change but the conditions of employment (as so varied) must be no less favourable than those that the employee was entitled to receive under the employment contract applying to the employee at the date of the transfer.
- (4) Subsections (2) and (3) continue to apply to the conditions of employment of each transferred employee to whom this section applies until such time as any of the conditions of employment that apply under the employee's employment contract at the date of the transfer are subsequently varied (otherwise than for the purpose referred to in subsection (3)).
- (5) The conditions of employment of each transferred employee are, on and after the date of any subsequent variation to which subsection (4) applies, to be determined in accordance with the employment contract applying to that employee in the responsible Ministry.
- (6) Nothing in subsection (2) or subsection (3) continues to apply to any transferred employee who receives any subsequent appointment, whether within the responsible Ministry or any other department.

5 Employment to be continuous

For the purposes of any provisions of a transferred employee's employment contract relating to continuity of service, that employee's transfer from the Ministry of Justice to the responsible Ministry is insufficient by itself to break his or her employment.

6 Transfer not sufficient to entitle employee to redundancy or severance payment

No transferred employee is entitled to receive any compensation for redundancy or any severance payment because—

- (a) the position held by that employee in the Ministry of Justice has ceased to exist; or
- (b) he or she has ceased by virtue of his or her transfer to be an employee of the Ministry of Justice.

Part 2

Transfer of obligations and functions, and other matters

7 Transfers of contracts not to give rise to claims

- (1) No person has any claim against the Crown for breach of any contract merely because the administration of the contract or the benefit or burden of the contract is transferred (in whole or in part) to the responsible Ministry, whether or not the person has agreed to the transfer.

- (2) Subsection (1) applies whether or not the transfer involves the responsible Ministry and its employees gaining access to any information, data, programme, intellectual property right, know-how, chattel, equipment, transmission device, or facility of the claimant or any other person.

8 Continuation of existing proceedings

- (1) If, before the commencement of this Act, a designated party has initiated or become a party to any proceedings (including proceedings involving the exercise by any person of a right of appeal or right of review, in respect of the Ministry of Justice under any of the relevant Acts), the proceedings may be continued, completed, and enforced by or against the designated successor.
- (2) If, before the commencement of this Act, any person was entitled, or claimed to be entitled, to issue any proceedings, apply for or exercise any right of review, or to exercise any right of appeal, referred to in subsection (1),—
- (a) that person may, after the commencement of this Act, commence the proceedings, review, or appeal as if the designated successor were the appropriate person in respect of the proceedings, review, or appeal; and
 - (b) subsection (1) applies to any such proceedings, review, or appeal commenced under paragraph (a) as if the proceedings, review, or appeal had been commenced before the commencement of this Act; and
 - (c) no such proceedings, review, or appeal may be commenced in respect of any person other than the designated successor.

9 References to functions being transferred to responsible Ministry

- (1) Unless the context otherwise requires, in any regulation, rule, order, agreement, deed, instrument, application, notice, direction, contract, or other document in force at the commencement of this Act, the references specified in subsections (2) to (3) must be read in the manner indicated in those subsections.
- (2) Every reference to the Secretary of Justice, when used in relation to his or her functions, duties, or powers under the relevant Acts, is a reference to the Secretary of the responsible Ministry.
- (3) Unless the context otherwise requires, every reference to the Department of Justice or the Ministry of Justice, when used in relation to the relevant Acts, is a reference to the responsible Ministry.

10 Transfer of contracts

- (1) The Secretary of Justice may transfer to the Secretary of the responsible Ministry specified responsibilities for the administration of a contract or any specified benefit, or specified burden, of a contract if—
- (a) the Secretary of Justice, or the Crown acting by or through the Secretary or the Ministry of Justice, is a party to the contract; and
 - (b) the contract is in force at the commencement of this Act; and
 - (c) the contract relates—
 - (i) to the functions of a unit of the Ministry of Justice that previously administered the relevant Acts; and
 - (ii) to the functions of any other unit of the Ministry of Justice, or to the functions of another Ministry, or to both.
- (2) A transfer may be made under subsection (1) only if—
- (a) the head of the Ministry of Justice agrees to the transfer; and

- (b) a notice in writing of the transfer is delivered to the head of the responsible Ministry, and to every other party to the contract.

- 11 Existing rights of ownership or management of Crown land not affected**
 - (1) Nothing in this Act affects the rights or obligations of the Cook Islands Government Property Corporation or the Cook Islands Investment Corporation under any contract or lease relating to land or other real property owned by the Crown.
- 12 Amendments to other Acts**

The Acts specified in Schedule 1 are amended in the manner indicated in that schedule.
- 13 Amendments to regulations**

The regulations specified in Schedule 2 are amended in the manner indicated in that schedule.

Schedule 1 Amendments to Acts

Prisons Act 1967

In section 2, insert in their appropriate alphabetical order:

“responsible Ministry means the department that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

“Secretary means the head of the responsible Ministry”.

In section 2, replace the definition of **Minister** with:

“Minister means the Minister who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”.

In section 3(1), replace “Secretary of Justice” with “Secretary”.

In section 3(3), replace “Department of Justice” in each place with “the responsible Ministry”.

In section 3(2) and (3), replace “Secretary of Justice” in each place with “Secretary”.

In section 6(1), replace “Secretary of Justice” in each place with “Secretary”.

In section 8(2), replace “the Minister” with “the Minister of Justice”.

In section 8(3)(e), replace “Secretary of Justice” with “Secretary of Justice or the Secretary of the responsible Ministry”.

In section 8(3)(g), replace “Secretary of Justice” in each place with “Secretary of Justice or the Secretary of the responsible Ministry”.

In section 13(2), replace “Secretary of Justice or be a resident Agent” with “Secretary”.

In section 18(1), replace “Secretary of Justice” in each place with “Secretary”.

In section 18(2), replace “Secretary of Justice” with “Secretary”.

In section 19(1), replace “Secretary of Justice” with “Secretary”.

In section 19(2), replace “Secretary of Justice” with “Secretary”.

In section 19(4), replace “Secretary of Justice’s” with “Secretary’s”.

In section 20, replace “Secretary of Justice” with “Secretary”.

In section 30(4), insert “or the Secretary of the responsible Ministry” after “Secretary of Justice”.

Criminal Justice Act 1967

In section 2(1), replace the definition of **Minister** with:

“Minister means the Minister who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act”.

In section 2(1), insert in their appropriate alphabetical order:

“**responsible department** means the department that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

“**Secretary** means the head of the responsible Ministry”.

In section 6(5), replace “Secretary of Justice” with “Secretary”.

In section 6(6), replace “Secretary of Justice” with “Secretary”. In

section 10(3), replace “Secretary of Justice” with “Secretary”. In

section 14(2), replace “Secretary of Justice” with “Secretary”. In

section 14(6), replace “Secretary of Justice” with “Secretary”. In

section 22(4), replace “Secretary of Justice” with “Secretary”. In

section 22(11), replace “Secretary of Justice” with “Secretary”.

In section 14(1), replace paragraph (b) with:

“(b) the Secretary.”.

Schedule 2
Amendments to regulations

Prisons Regulations 1968

In regulation 2(1), replace the definition of **Director** with:

“Director means the head of the responsible department”.

In regulation 2(1), insert in its appropriate alphabetical order:

“responsible department means the department that, with the authority of the Prime Minister, is for the time being responsible for the administration of the Prisons Act 1967.”

In regulations 8(1) and (3), replace “Corrective Services” with “responsible department”.

In regulation 9(1), replace “Corrective Services” with “responsible department”.

This Act is administered by the Ministry of Corrective Services.
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