



ANALYSIS

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1972, No. 8

An Act to affirm and promote racial equality in the Cook Islands and to implement the International Convention on the Elimination of All Forms of Racial Discrimination

(24 October 1972)

BE IT ENACTED by the Legislative Assembly 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 Race Relations Act 1972.

Price

2. Act to bind the Crown - This Act shall bind the Crown.

UNLAWFUL DISCRIMINATION

3. Access by the public to places, vehicles and facilities - (1) It shall be unlawful for any person -
- (a) To refuse to allow any other person access to or use of any place or vehicle which members of the public are entitled or allowed to enter or use; or
 - (b) To refuse any other person the use of any facilities in that place or vehicle which are available to members of the public; or
 - (c) To require any other person to leave or to cease to use that place or vehicle or those facilities -
- by reason of the colour, race, or ethnic or national origins of that person or of any relative or associate of that person. -
- (2) For the purposes of this Act, the term "relative", in relation to any person, means any person who -
- (a) Is related to him by blood, marriage, affinity, or adoption; or
 - (b) Is wholly or mainly dependent on him; or
 - (c) Is a member of his household.
- (3) In this section the term "vehicle" includes a vessel, an aircraft, or a hovercraft.
4. Provision of goods and services - (1) It shall be unlawful for any person who supplies goods, facilities, or services to the public or to any section of the public -
- (a) To refuse or fail on demand to provide any other person with those goods, facilities, or services; or
 - (b) To provide any other person with those goods, facilities, or services on less favourable terms or conditions than those upon or subject to which he would otherwise make them available -
- by reason of the colour, race, or ethnic or national origins of that person or of any relative of that person as defined in section 3 of this Act or of any associate of that person.
- (2) For the purposes of subsection (1) of this section, but without limiting the meaning of the terms "goods, facilities, and services in that subsection, the term "facilities" includes facilities by way of banking or insurance or for grants, loans, credit, or finance.
- (3) Notwithstanding the foregoing provisions of this section membership of a club may be limited to persons of a particular race or ethnic or national origin and nothing in this section shall apply in respect of goods, facilities and services provided by any such club to its members or their guests.
5. Employment - (1) It shall be unlawful for any employer, or any person acting or purporting to act on behalf of any employer -
- (a) To refuse or omit to employ any person on work of any description which is available and for which that person is qualified; or
 - (b) To refuse or omit to offer or afford any person the same terms of employment, conditions of work, and opportunities

for training and promotion and are made available for persons of the same qualifications employed in the same circumstances on work of that description; or

- (b) To dismiss any person in circumstances in which other persons employed by that employer on work of that description are not or would not be dismissed -

by reason of the colour, race, or ethnic or national origins of that person or of any relative of that person as defined in section 3 of this Act or of any associate of that person.

(2) It shall be unlawful for any person concerned with procuring employment for other persons or procuring employees for any employer to treat any person seeking employment differently from other persons in the same circumstances by reason of the colour, race or ethnic or national origins of that person or of any relative of that person as defined in section 3 of this Act or of any associate of that person.

(3) Nothing in this section shall apply in respect of the employment of any person for any purpose for which persons of a particular ethnic or national origin have or are commonly found to have a particular qualification or aptitude.

(4) Nothing in this section shall apply to the employment or an application for employment of a person on a ship or aircraft if the person employed or seeking employment was engaged or applied for it outside the Cook Islands.

(5) For the purposes of this section "employment" includes the employment of an independent contractor; and "employer" has a corresponding meaning.

6. Land, housing and other accommodation - (1) It shall be unlawful for any person, on his own behalf or on behalf or purported behalf of any principal, -

- (a) To refuse or fail to dispose of any estate or interest in land or any residential or business accommodation to any other person; or
- (b) To dispose of such an estate or interest or such accommodation to any person on less favourable terms and conditions than are or would be offered to other persons; or
- (c) To treat any person who is seeking to acquire or has acquired such an estate or interest or such accommodation differently from other persons in the same circumstances; or
- (d) To deny any person, directly or indirectly, the right to occupy any land or any residential or business accommodation; or
- (e) To terminate any estate or interest in land or the right of any person to occupy any land or any residential or business accommodation -

by reason of the colour, race, or ethnic or national origins of that person or of any relative of that person as defined in section 3 of this Act or of any associate of that person.

(2) It shall be unlawful for any person, on his own behalf or on behalf or purported behalf of any principal, to impose or seek to impose on any other person any term or

condition which limits, by reference to colour, race, or ethnic or national origins, the persons or class of persons who may be the licensees or invitees of the occupier of any land or any residential or business accommodation.

(3) For the purposes of this section -
 "Dispose" includes sell, assign, lease, let, sublease, sublet, license, or mortgage, and agree to dispose;
 "Residential accommodation" includes accommodation in a dwellinghouse, flat, hotel, motel, boarding house, or camping ground.

7. Advertisements - It shall be unlawful for any person to publish or display, or to cause or allow to be published or displayed, any advertisement or notice which indicates, or could reasonably be understood as indicating, an intention to commit a breach of any of the provisions of sections 3 to 6 of this Act.

8. Liability of principals and employers - Anything which is done or omitted in contravention of any of the provisions of sections 3 to 7 of this Act by a person as the agent or employee of another person shall be treated for the purposes of sections 3 to 7 of this Act as done or omitted by that other person as well as by him, unless it is done or omitted without that other person's express or implied authority, precedent or subsequent.

9. Measures to ensure equality - Anything done or omitted which would otherwise constitute a breach of any of the provisions of sections 4 to 7 of this Act shall not constitute such a breach if -

- (a) It is done or omitted in good faith for the purpose of assisting or advancing particular persons or groups of persons or persons of a particular colour, race, or ethnic or national origin; and
- (b) Those groups or persons need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community.

CIVIL PROCEEDINGS

10. Civil Proceedings - Any person who considers of himself aggrieved by a breach of any of the provisions of sections 3 to 7 of this Act (hereinafter referred to as the aggrieved person) may bring civil proceedings in the High Court against any person alleged to have committed the breach, and in those proceedings the aggrieved person may seek such of the remedies described in section 15 of this Act as he thinks fit.

INVESTIGATION AND CONCILIATION

11. Investigation and conciliation where proceedings commenced - (1) Where proceedings are commenced under section 10 of this Act, the Court shall refer the case to a conciliator appointed by the Court and shall adjourn the proceedings accordingly.

(2) It shall be the duty of the conciliator appointed under subsection (1) of this section to investigate the case referred to him and to carry out the functions described in section 14 of this Act.

12. Proceedings of the conciliator - (1) Every investigation by a conciliator appointed under section 11 of this Act shall be conducted in private.

(2) The conciliator may hear or obtain information from such persons as he thinks fit.

(3) Subject to the provisions of this Act, the conciliator may regulate his procedure in such a manner as he thinks fit.

13. Evidence - (1) The conciliator appointed under section 11 of this Act may from time to time require any person who in his opinion is able to give any information relating to the matter which is being investigated by the conciliator to furnish to him any such information and to produce any documents or papers or things which in the conciliator's opinion relate to any such matter as aforesaid and which may be in the possession or under the control of that person.

(2) The conciliator may summon before him and examine on oath any person who in the conciliator's opinion is able to give any such information as aforesaid and for that purpose may administer an oath. Every such investigation by the conciliator shall be deemed to be a judicial proceeding within the meaning of section 119 of the Crimes Act 1969 (which relates to perjury).

(3) Every such person shall be obliged to answer any questions put to him by the conciliator but shall have the same privilege in relation to the production of documents and papers and things as witnesses have in any Court.

(4) Except on the trial of any person for perjury within the meaning of the Crimes Act 1969 in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of the inquiry by or any proceedings before the conciliator shall be admissible in evidence against any person in any Court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the conciliator shall be given against any person.

(5) No person shall be liable to prosecution for an offence against the Official Secrets Act 1951 or any enactment, other than this Act, by reason of his compliance with any requirement of the conciliator under this section.

(6) Where any person is required by the conciliator to attend before him for the purposes of this section, the person shall be entitled to the same fees, allowances, and expenses as if he were a witness in civil proceedings in the High Court and the amounts payable shall be fixed by the High Court and paid out of the Cook Islands Government Account.

(7) Every person appointed a conciliator under section 11 of this Act who, except insofar as it is necessary for him to do so for the proper discharge of his functions under this Act, discloses to any person any information received by him or any statement or admission made to him in the course of an investigation under section 11 of this Act or an endeavour to bring about a settlement under section 14 of this Act commits an offence and is liable to a fine not exceeding \$200.

14. Procedure after investigation - (1) After investigating a case referred to him under section 11 of this Act, the conciliator shall use his best endeavours to secure a settlement acceptable to the parties and, if he considers it appropriate in a case where he is of the opinion that a

breach of any of the provisions of sections 3 to 7 of this Act has occurred, a satisfactory assurance against the repetition of the act or omission constituting the breach or the doing of further acts or omissions of a similar kind by the person considered to have committed the breach.

(2) As soon as reasonably practicable and in any event not later than 60 days after the matter has been referred to him or within such further time as the Court may allow the conciliator shall furnish a report to the Court which shall state whether or not the endeavour to secure a settlement between the parties or, as the case may be, a settlement and an assurance of the kind referred to in subsection (1) of this section, has been successful.

(3) A copy of every such report shall be made available to each party or to his solicitor or counsel.

(4) If the conciliator reports that he has secured a settlement or a settlement and such an assurance as aforesaid the proceedings shall lapse but without prejudice to the right of the aggrieved person to commence fresh proceedings at any time in respect of the same cause of action if there has been a breach of any term of the settlement or of the assurance. In this event, the Court, if it is satisfied that such a breach has occurred, shall proceed to hear the case and subsection (1) of section 14 of this Act shall have no application. The Court shall otherwise dismiss the case.

REMEDIES

15. Remedies - (1) If in any proceedings under section 10 of this Act the Court is satisfied on the balance of probabilities that the defendant has committed a breach of any of the provisions of sections 3 to 7 of this Act, it may grant one or more of the following remedies:

(a) A declaration that the defendant has committed a breach of this Act;

(b) An injunction restraining the defendant from continuing or repeating the breach or from engaging in, or causing breach or from engaging in, or permitting others to engage in, conduct of the same kind as that constituting the breach, or conduct of any similar kind specified in the injunction;

(c) Damages in accordance with section 16 of this Act;

(d) A declaration that any contract entered into or performed in contravention of any of the provisions of sections 3 to 7 of this Act is an illegal contract;

(e) Such other relief as the Court thinks just. (2) It shall not be a defence to proceedings under this section that the breach was unintentional or without negligence on the part of the defendant, but the Court may take the conduct of the defendant into account in granting a remedy.

DAMAGES

16. Damages - In any proceedings under section 10 of this Act the Court may award damages against the defendant for a breach of any of the provisions of sections 3 to 7 of this Act in respect of any one or more of the following:

- (a) Pecuniary loss suffered and expenses reasonably incurred by the aggrieved person for the purpose of the transaction or activity out of which the breach arose;
- (b) Loss of any benefit which the aggrieved person might reasonably have been expected to obtain but for the breach;
- (c) Humiliation, loss of dignity, and injury to the feelings of the aggrieved person;

Provided that damages awarded under paragraph (c) of this section shall not exceed \$200.

LICENCES AND REGISTRATION

17. Licences and registration - (1) Where any person is licensed or registered under any enactment to carry on any occupation or activity or where any premises or vehicle are registered or licensed for any purpose under any enactment, and where the person or other authority authorised to renew, revoke, cancel, or review any such licence or registration is satisfied -

- (a) That in the carrying on of the occupation or activity; or

(b) That in the use of the premises or vehicle, there has been a breach of any of the provisions of sections 3 to 7 of this Act, the person or authority, in addition to any other powers which that person or authority has, but subject to subsection (2) of this section, may refuse to renew or may revoke or cancel any such licence or registration, as the case may require, or may impose any other penalty authorised by the enactment, whether by way of censure, fine, or otherwise.

(2) Any procedural requirements of the enactment, including any whereby a complaint is a prerequisite to the exercise by the person or authority of its powers under the enactment, shall be observed.

(3) In any case in which any of the powers conferred by subsection (1) of this section are exercised -

- (a) The person or authority shall in giving its decision state that the decision is being made pursuant to subsection (1) of this section; and
- (b) Any person who would have been entitled to appeal against that decision if it had been made on other grounds shall be entitled to appeal against the decision made pursuant to subsection (1) of this section.

(4) In this section the term "enactment" has the same meaning as in the Constitution of the Cook Islands.

CRIMINAL PROCEEDINGS

18. Access by the public to places, vehicles, and facilities - (1) Every person commits an offence who -

- (a) Refuses to allow any other person access to or use of any place or vehicle which members of the public are entitled or allowed to enter or use; or
- (b) Refuses any other person the use of any facilities in that place or vehicle which are available to members of the public; or

- (c) Requires any other person to leave or to cease to use that place or vehicle or those facilities -

by reason of the colour, race, or ethnic or national origins of that person or of any relative of that person as defined in section 3 of this Act or of any associate of that person.

(2) Every person who commits an offence against this section is liable to a fine not exceeding \$100.

(3) In this section the term "vehicle" includes a vessel, an aircraft, or a hovercraft.

19. Inciting racial disharmony - (1) Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$200 who with intent to excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in the Cook Islands on the ground of the colour, race, or ethnic or national origins of that group of persons -

- (a) Publishes or distributes written matter which is threatening, abusive, or insulting, or broadcasts by means of radio or television words which are threatening, abusive, or insulting;

(b) Uses in any public place (as defined in section 2 of the Crimes Act 1969) or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting, or words likely to excite hostility or ill-will against, or bring into contempt or ridicule, any such group of persons in the Cook Islands on the ground of the colour, race, or ethnic or national origins of that group of persons.

(2) For the purposes of this section -

- "Publishes" or "distributes" mean publishes or distributes to the public at large or to any member or members of the public;
"Written matter" includes any writing, sign, visible representation, or sound recording.

20. No prosecution without consent of Minister of Justice - No prosecution for an offence under section 18 or section 19 of this Act shall be instituted without the consent of the Minister of Justice.

RESTRAINT OF MARRIAGE

21. Condition in restraint of marriage - (1) A condition, whether oral or contained in a deed, will, or other instrument, which restrains or has the effect of restraining marriage shall be void if the person or class of person whom the person subject to the condition may or may not marry is identified or defined, expressly or by implication, by reference to the colour, race, or ethnic or national origins of the person or class of person.

(2) Nothing in this section shall affect the construction of any deed, will, or other instrument executed before the commencement of this Act.

(3) For the purposes of this section, the will of any testator who dies after the 31st day of December 1973 shall (notwithstanding the actual date of the execution thereof) be deemed to have been executed after the commencement of this Act.

MISCELLANEOUS PROVISIONS

22. Offences - Every person commits an offence against this Act and is liable to a fine not exceeding \$100 who -

- (a) Without lawful justification or excuse, wilfully obstructs; hinders, or resists any person appointed as conciliator under section 11 of this Act in the exercise of his powers under this Act;
- (b) Without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of any person appointed as conciliator under section 11 of this Act;
- (c) Wilfully makes any false statement to or misleads or attempts to mislead any person appointed as conciliator under section 11 of this Act in the exercise of his powers under this Act.

SAVINGS

23. Other enactments not affected - Except as expressly provided in this Act, nothing in this Act shall limit or affect in any way the provisions of any other enactment as defined in the Cook Islands Act 1915 including, but without limiting the generality of this section, the enactments entitled the Cook Islands Act 1915 and the Entry, Residence and Departure Act 1971-72.

24. Charitable instruments - (1) Nothing in this Act shall apply to any provision contained in any existing or future charitable instrument which confers benefits, or enables benefits to be conferred, on persons of a particular colour, race, or ethnic or national origin, or to any act done in order to comply with any such provision.

(2) For the purposes of this section, -

"Instrument" means a deed or will;

"Charitable instrument" means an instrument the purposes of which are exclusively charitable in accordance with the law of the Cook Islands.

25. Savings - (1) Nothing in this Act shall affect the right to bring any proceedings, whether civil or criminal, which might have been brought if this Act had not been passed, but, in assessing any damages to be awarded to or on behalf of any person under this Act or otherwise, the Court shall take account of any damages already awarded to or on behalf of that person in respect of the same cause of action.

(2) No proceedings, civil or criminal, shall lie against any person, except as provided by this Act, in respect of any act or omission which is unlawful by virtue only of any of the provisions of sections 3 to 7 of this Act.

(3) Nothing in this Act shall affect any enactment or rule of law, or any administrative practice, which distinguishes between New Zealand citizens and other persons, or between British subjects or Commonwealth citizens (including citizens of the Republic of Ireland) and aliens, or between Cook Islanders and other persons.

(4) For the purposes of subsection (3) of this section the term "enactment" has the same meaning as in the Constitution of the Cook Islands and also includes any provision of any notice, consent, approval, or direction which is given by any person pursuant to a power conferred by any enactment.

This Act is administered in the Justice Department.

BAROTONGA, COOK ISLANDS: Printed under the authority of the Cook Islands Government, by T. KAPL, Government Printer - 1972.