



1995/08

**COMMISSION OF INQUIRY INTO LAND
ORDER 1995**

A.P. SHORT,

Queen's Representative

ORDER IN EXECUTIVE COUNCIL

At Avarua, Rarotonga, this **25th** day of **September** 1995

Present:

**HIS EXCELLENCY THE QUEEN'S REPRESENTATIVE
IN EXECUTIVE COUNCIL**

PURSUANT to section 3 of the Commissions of Inquiry Act 1966, His Excellency the Queen's Representative, acting on the advice of the Executive Council hereby makes the following Order:

ANALYSIS

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|------------------------------------|------------------------------------|
| 1. Title | 4. Procedure |
| 2. Commission of Inquiry into Land | 5. Report of Inquiry |
| 3. Terms of reference | 6. Public consultation
Schedule |

ORDER

1. Title - This Order may be cited as the Commission of Inquiry into Land Order 1995.
2. Commission of Inquiry into Land - There is hereby established a Commission of Inquiry, to be known as "The Commission of Inquiry into Land" (in this Order referred to as "the Commission") the membership of which shall comprise:
Judge Elliot Smith, who shall be chairman,
Mr Tere Mataio,
Mr Nikau Tangaroa,
Mrs Cecilia Short.

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3. Terms of reference - The terms of reference of the Commission shall be as set out in the Schedule to this Order.

4. Procedure - The Commission is authorised and empowered to make and conduct any inquiry or investigation under this Order in such manner and at such time and place as the Commission thinks expedient, with power to adjourn from time to time and place to place as the Commission thinks fit.

5. Report of Inquiry - The Commission shall first publish or otherwise disclose the contents of any report made by it, to His Excellency the Queen's Representative not later than 6 months from the coming into force of this Order, and expeditiously thereafter to Cabinet and Parliament. The Commission shall make available to the public all of its reports on the fourteenth day after the date of submission of its report to His Excellency the Queen's Representative.

6. Public consultation - In the exercise of its terms of reference the Commission shall meet with and accept submissions from interested members of the public, including community leaders and organisations (e.g. the House of Arikis, the Koutu Nui, Island Councils, Law Society, Chamber of Commerce, religious bodies, non-governmental organisations, commercial banks) and relevant governmental entities (e.g. Leases Approval Committee, Land Division of the High Court, Department of Survey, Monetary Board, Immigration Department, Crown Law Office, General Licensing Authority, Tourist Authority, Environment Service, Ministry of Works, Public Health Division, Cook Islands Development Bank, Inland Revenue Department, Te Aponga Uira o Tumu-te-Varovaro, Telecom Cook Islands, Department of Agriculture, Department of Water Supply) and other interested bodies and individuals.

M. Taruia
Clerk of the Executive Council

This order is administered by the Justice Department

BY AUTHORITY:
Cook Islands Government - 1995

SCHEDULE**(Clause 3) (Terms of Reference)**

The terms of reference of the Commission shall be to -

- (1) Consult with the public in order to identify problems related to the tenure, use, and administration of land, and ways to alleviate any such problems; and
- (2) Without limiting its power to make any inquiry which it considers relevant to these objectives, the Commission should particularly inquire into the following:

2.1. Land Tenure and Land Use Policies:

- (a) The nature, extent, and causes of land disputes, and the effectiveness of current legislation in dealing with said disputes;
- (b) The need, if any, for legislation to deal with more specific issues such as:
 - (i) interests in land, including occupation rights, vesting orders, leases, subleases, assignments, mortgages and mortgagee's sales, life estates, easements and other forms of interests or alienation;
 - (ii) creation and transmission of interests in land through family and domestic relationships, such as inheritance, wills, adoption and marriage;
 - (iii) utilisation of unimproved land and related issues, such as: rights of absentee landowners; rights of family members residing in the Cook Islands to use unimproved land; movement onto land by people without traditional or legal rights to that land; and rights of returning landowners to the use of land and houses being used by others in their absence;
 - (iv) group use of land for plantations, commercial enterprises, or community activities;
 - (v) transmission of interests in land for governmental or other public use;
 - (vi) improved use of land in both urban and rural areas.

2.2. Commercial interests in Land:

- (a) Issues arising from land used for commercial purposes, such as hotels, motels, restaurants, shops, and other businesses, and possible remedial legislation to deal with the said issues;
- (b) The effect of the current system of commercial leases, subleases, assignments, mortgages, occupation rights and other tenures on the investment climate in the Cook Islands.

2.3. Administration of Land Matters

- (a) The effectiveness of the Land Division, Survey Department and the Leases Approval Committee in dealing with land matters, including issues such as:
 - (i) ways to improve public confidence in the system of land administration;
 - (ii) public access to, and effectiveness of, the Land Division, Survey Department and Leases Approval Committee;
 - (iii) representative issues, including the need for legal or other assistance; certification of lawyers and/or other representatives prior to representing clients in land matters; cost issues related to representation; role of court professionals and staff in assisting and educating the public;

- (iv) recording and registration procedures and related computerisation of land records.
 - (b) Alternate methods of resolving disputes, such as land mediation and arbitration, local councils or other non-judicial methods;
 - (c) Procedures necessary to implement any legislation required by Government as a result of the Commission's inquiries.
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