



## ANALYSIS

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1993, No. 2

An Act to recognise and give effect to the customs and traditions of the people of the island of Palmerston as they relate to the local government of that island

(14 September 1993)

**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 - This Act may be cited as the Palmerston Island Local Government Act 1993.

2. Interpretation - In this Act, unless the contrary intention appears - "Custom and Tradition" means:

- (a) in respect of the election of members, powers, duties, functions, and proceedings of the Island Council, those customs and traditions observed by the Island Council and recognised by the people of Palmerston as they have evolved since the time of that Council's original establishment in or about 1901;

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- (b) in respect of the island and people of Palmerston generally, those customs and traditions which are observed and recognised generally by the people of Palmerston as those customs and traditions have evolved from the time of first settlement of Palmerston by William Marsters in 1863;
- (c) in respect of any matter concerning the internal affairs of any family, those customs and traditions which are observed and recognised generally by members of that family.

"Family" means each of the three Marsters families descended from William Marsters who settled in Palmerston in the year 1863 being:

- (i) the Akakaingaro family;
- (ii) the Tepou Tenioi family;
- (iii) the Matavia family;

and the word "families" shall mean those three families collectively;

"Family Head" means that person who from time to time is recognised by a family as being the head of that family on Palmerston;

"Elders" means those male or female elders of each family who are recognised by the members of that family on Palmerston as having authority, subject to the family head, to represent the interests of that family in accordance with custom and tradition;

"Island Council" means the Palmerston Island Council established in or about the year 1901 and continued under, inter alia, the provisions of the Cook Islands Act 1915, the Cook Islands Amendment Act 1957, the Local Government Act 1966, the Outer Islands Local Government Act 1976, and the Outer Islands Local Government Act 1987;

"Palmerston" means all the motu, lagoon and encircling reef, of the atoll commonly known as Palmerston Island.

3. Interpretative Principles - (1) This Act is intended to reconstitute the Island Council as a Council -

- (a) elected; and
- (b) having powers and duties; and
- (c) regulating its procedures;

in accordance with custom and tradition and shall accordingly be interpreted and construed to give full effect to custom and tradition, subject to the provisions of subsection (4).

(2) Custom and tradition are recognised as growing and evolving over time, and this Act shall not be interpreted or construed as referring only to custom and tradition as at the time of its commencement, but to custom and tradition as it continues to grow and evolve over time.

(3) If at any time there arises a dispute as to what constitutes the true nature and intent of custom and tradition, as it applies to any question arising out of the matters the subject of this Act, then that dispute shall be determined by a majority decision of the three family heads whose decision in the matter shall be final, except in the case of a matter concerning the internal affairs of any family.

(4) Nothing in this Act shall be interpreted or construed as affording custom and tradition primacy over the Constitution or over the provisions of any enactment in any case where a conflict arises between custom and tradition and any such enactment.

4. Continuous existence of Island Council - It is declared for all purposes under this Act -

- (a) that the Palmerston Island Council established in or about the year 1901 by the fathers of that time, and endorsed by Colonel Gudgeon, and
- (b) the Island Council in existence at the date of commencement of this Act;

is the same institution, and that customs and traditions which relate to the Island Council as they have evolved since the Council's establishment shall, subject to this Act, continue to have full effect.

5. Appointment to Island Council - (1) The Island Council shall consist of the following members -

- (a) the family head of the Akakaingaro family;
- (b) the family head of the Tepou Tenioi family;
- (c) the family head of the Matavia family;
- (d) one person appointed by and from among the elders of the Akakaingaro family in accordance with custom and tradition;
- (e) one person appointed by and from among the elders of the Tepou Tenioi family in accordance with custom and tradition;
- (f) one person appointed by and from among the elders of the Matavia family in accordance with custom and tradition.

(2) If any dispute arises within a family as to who, for the purposes of subsection (1), is the family head then such dispute shall be determined by the elders of that family.

(3) A member of the Island Council shall hold office in accordance with, and for such period as is from time to time provided for by custom and tradition subject however to the provisions of subsection (4) of this section.

(4) The following persons shall not be eligible for appointment to the Island Council or, if appointed, shall be disqualified and the seat shall be declared vacant by the Clerk of the Island Council -

- (a) any person under the age of 18 years;
- (b) any person who has been or is convicted of any offence punishable by imprisonment for a term of three months or more, unless he has received a free pardon or has undergone the sentence or punishment to which he was adjudged for the offence;
- (c) any person who is or becomes mentally unstable;
- (d) any person who is not ordinarily resident on the island or ceases to become ordinarily resident;
- (e) any person who takes or has taken an oath of allegiance to any foreign country;

provided always that the Island Council may, in accordance with a resolution of the Council apply to the Prime Minister to grant an exemption from the provisions of this subsection for such period as shall be set out in the application, and the Prime Minister may in his discretion grant such application on such terms and conditions as the Prime Minister thinks fit.

(5) Notwithstanding any other enactment, the Government Representative shall not be excluded from any appointment hereunder on account only of his tenure as Government Representative.

6. Functions of the Island Council - (1) The Island Council shall have the following functions -

- (a) to carry into effect and administer the provisions of Ordinances and By-laws that shall be applicable to Palmerston;
- (b) to assist in the co-ordination of any activity relevant to the economic and social development of Palmerston;
- (c) to assist the Government of the Cook Islands in the good rule and government of Palmerston;
- (d) subject to the Constitution, and without limiting the jurisdiction of the High Court, to advise on or determine any matter, question or dispute referred to it by any person or organisation.

(2) The Island Council shall have such further functions and powers as are conferred on it by custom and tradition including the power to make rules and bylaws for the peace order and good government of Palmerston, subject to section 3(4) of this Act.

7. Proceedings of Island Council - (1) Subject only to -

- (a) the provisions of this Act, and
- (b) custom and tradition

the Island Council may meet together for the despatch of business, adjourn and otherwise regulate its proceedings as it thinks fit.

(2) The powers of the Island Council shall not be affected by the absence of any member, provided always that the rights and authority of any absent member shall, in the event of his absence, be modified, suspended, or terminated in such manner as custom and tradition may require.

(3) The Island Council shall have a Chairman who shall be appointed in accordance with custom and tradition.

8. Offences against bylaws punishable in the High Court - Every offence against any bylaw made by the Island Council in accordance with this Act shall be punishable in the High Court of the Cook Islands, and notwithstanding the provisions of any other enactment, a Justice of the Peace shall have jurisdiction in respect of any such offence.

9. Enforcement by Police of bylaws - (1) It shall be the responsibility of the police in addition to any other functions and powers which the police may have pursuant to any law, to ensure the enforcement of any bylaw applying to Palmerston.

(2) Every complaint made under any bylaw shall be referred to the senior member of the police on Palmerston for action by the police who shall investigate the complaint and if necessary prosecute any offender.

(3) The police shall forward to the Secretary of the Prime Minister's department full details of any complaint referred to them.

10. Fines and fees - All fines and fees that may be imposed and collected under any bylaw having application exclusively to Palmerston shall become part of the funds of the Island Council and shall form part of the revenues thereof.

11. Clerk of the Island Council - There shall be a Clerk of the Island Council who shall be appointed by the Island Council.

12. Minutes - The Clerk of the Island Council shall cause to be kept the minutes for every meeting of the Island Council and shall transmit a copy of all minutes to the Secretary of the Prime Minister's department.

13. Accounts of the Island Council - The accounts of the Island Council shall be kept by the office of the Government Representative on Palmerston.

14. Employees - (1) The Island Council may appoint such other employees as are deemed necessary for the efficient performance of the Council's functions.

(2) All employees appointed under this section shall be paid such wages or salaries from the Island Council funds as are agreed to by the Island Council.

15. Subsidy payable to Island Council - There shall be payable to the Island Council in respect of each financial year by way of subsidy such sum as may be appropriated by Parliament.

16. Remuneration of Island Council members - (1) Members of the Island Council shall receive such remuneration as may be determined from time to time by Order in Executive Council and such remuneration shall be paid out of the funds of the Island Council.

(2) Remuneration paid to members shall, notwithstanding any Order made pursuant to subsection (1), be increased from time to time in accordance with any general increase in salary granted to members of the public service.

17. Island Council funds - (1) There shall be a fund for the Island Council which shall consist of the following monies -

- (a) Such subsidies as may be paid under section 15 of this Act;
- (b) All revenues of the Island Council from fees, services, charges, fines, contributions, subscriptions, rents, and other monies paid pursuant to any bylaw;
- (c) Such other monies as may be appropriated by Parliament.

(2) All monies forming part of the Island Council Fund shall be deposited in a separate account within the Cook Islands Government Account to be known as the "Palmerston Island Council Account".

(3) No monies shall be withdrawn from the Palmerston Island Council Account save pursuant to a resolution of the Island Council duly certified as correct by either the Chairman of the Island Council and the Government Representative, or by one other elected member of the Island Council, the Clerk of the Island Council, and the Government Representative.

(4) The Island Council fund, or any part of it, may be invested by the Island Council with any bank, finance company, or lending institution carrying on business in the Cook Islands and approved by the Minister of Finance for that purpose.

18. Accounting for Island Council Funds - (1) All monies forming part of the Island Council Fund and any buildings, machinery, and other equipment or stores belonging to the Island Council shall be deemed to be public money and stores as the case may be, within the meaning of the Public Money and Stores Act 1987, and shall be subject to audit accordingly.

(2) All money forming part of the Island Council funds shall be subject to such accounting requirements as the Financial Secretary may from time to time in writing direct.

19. Estimates The Island Council shall not later than the 30th April of each year, submit to the Secretary of the Prime Minister's Department estimates of all receipts and expenditure by the Island Council for the forthcoming financial year.

20. Restrictions on expenditure - (1) Where the Government Representative considers any expenditure by the Island Council to be outside the Island Council's authority or unnecessary or unwarranted he may withhold the expenditure of such funds.

(2) Where the Government Representative exercises the power to withhold expenditure of funds conferred upon him by subsection (1) of this section, he shall send full details of the matter to the Secretary of the Prime Minister's Department.

(3) Where the Island Council has had any expenditure withheld under subsection (1) of this section, the Island Council may by resolution appeal to the Minister of Finance whose decision shall be final.

21. Liability of members of Island Council - No member of the Island Council shall be personally liable for any act or default of the Island Council done or omitted to be done in good faith in the exercise of the Council's powers and authorities.

22. Privileges of members of Island Council - (1) No member of the Island Council or any other person entitled to speak at any meeting or proceedings of the Council shall be liable to any proceedings in any Court in respect of anything said or any vote given by him at such meeting or proceedings of the Council.

(2) No person shall be liable to any proceedings in any Court in respect of the publication by or under the authority of the Island Council of any report, paper, vote, or proceeding.

23. Taxation - The income of the Island Council shall be exempt from income tax and turnover tax.

24. Power to borrow - The Island Council may with the consent of the Minister of Finance, borrow monies on such terms as shall be approved by Cabinet.

25. Transitional - Upon the commencement of this Act, appointments to the Island Council as contemplated by section 5 shall be made, and forthwith upon the making of those appointments and their notification to the Prime Minister, those members of the Island Council then holding office pursuant to elections held under the Outer Islands Local Government Act 1987, shall be deemed to have vacated their seats.

26. Savings - Every order, bylaw, agreement, arrangement, determination, resolution, decision, payment, obligation, authorisation, approval or prohibition made or entered into by the Island Council before the coming into force of this Act shall, so far as it is subsisting or in force at the time of the coming into force of this Act, and if validly made or done in accordance with law, or custom and tradition not inconsistent with law, shall continue in force and have effect according to its tenor after the coming into force of this Act.

27. Repeals - The First Schedule to the Outer Islands Local Government Act 1987 is amended by deleting -

- (a) from the First Column, the reference to the island of Palmerston;
- (b) from the Second Column, the constituencies for the island of Palmerston;
- (c) from the Third Column, the number of elected members for the island of Palmerston.

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This Act is administered by the Prime Minister's Department