

COOK ISLANDS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Cook Islands Act 1915 and the Cook Islands Amendment Act 1957, and makes provision for the granting of financial assistance for the purposes of a housing improvement scheme in the Cook Islands.

Clause 2 re-enacts in an amended form the provisions of section 103 of the principal Act relating to the Judges and Commissioners of the High Court of the Cook Islands. The new provisions in this clause provide that if only one Judge is appointed he is to be deemed to be the Chief Judge, and that the office of Judge or Commissioner may be held in conjunction with any other office.

Clause 3 amends section 104 of the principal Act relating to the tenure of office of Judges and Commissioners of the High Court, and provides for the retirement of every Judge at the age of 65 years, subject to his continuing in office until his successor is appointed. The clause also provides that a Judge or Commissioner may be removed from office by the Governor-General for inability or misbehaviour.

Clause 4 re-enacts in an amended form the provisions of section 106 of the principal Act relating to the appointment of acting Judges of the High Court. The new provisions in this clause relate to the circumstances in which the Resident Commissioner of Rarotonga or his Deputy may act as a Judge, and provide that he may so act if—

- (a) The office of Chief Judge is vacant; or
- (b) The Chief Judge is, by reason of sickness or absence, unable to act; or
- (c) The Resident Commissioner happens to be on any island where Court proceedings are pending, and no Judge will be available on that island within a reasonable time, or the proceedings are within the jurisdiction of a Commissioner of the High Court and no Commissioner will be available within a reasonable time.

Clause 5 re-enacts in an amended form the provisions of section 370 of the principal Act relating to the appointment and tenure of office of Judges of the Native Land Court. The new provisions place those Judges in substantially the same position as the Judges of the High Court in that the age of retirement is to be 65 years, they may be removed by the Governor-General for inability or misbehaviour, and their salaries are to be fixed by the Governor-General.

Clause 6 provides that an employee of the Cook Islands Public Service who immediately before his appointment to that Service was not permanently resident in the Cook Islands is not obliged to become a contributor to the

Government Superannuation Fund, but may elect to do so at any time. If he so elects, he will have the right to cease to be a contributor on giving six months' notice.

The clause also provides that where an employee of the Cook Islands Public Service is a contributor to the Government Superannuation Fund and either holds a position concurrently in the New Zealand Public Service or is a supernumerary employee of that Service, his salary for superannuation purposes is to be the salary that he would have received as an employee of the New Zealand Public Service if he had not been appointed to the Cook Islands Public Service, that is, he does not contribute in respect of any additional salary or allowances received in respect of his service in the Cook Islands. Where such an employee has served for six years continuously in the Cook Islands, he may elect to contribute on the basis of his salary in the Cook Islands, by an election made either while he is a member of the Cook Islands Public Service or within twelve months after returning to New Zealand. Such an election will have effect from the date of his appointment to the Cook Islands Public Service, subject to payment of such amount and in such manner as the Government Superannuation Board fixes in respect of the excess of his Cook Islands salary over his New Zealand salary.

Clause 7 authorises the making of advances for the purpose of providing dwellings and improved housing and living conditions in the Cook Islands. The advances may be made to any permanent resident of the Cook Islands, or to the Cook Islands Cooperative Thrift and Loan Society Limited for re-advance to its members, or to any other body corporate approved by the Minister. The advances may be made for the purpose of—

- (a) The erection, repair, alteration, or improvement of dwellings and necessary outbuildings and appurtenances:
- (b) The repair, alteration, improvement, or installation of lighting, sanitation, or water supply systems or other conveniences:
- (c) The acquisition of land for housing:
- (d) The draining, cultivation, development, or improvement of land used or intended to be used for housing.

Clause 8 provides for the establishment of a Housing Improvement Fund into which funds for housing improvement purposes are to be paid.

Clause 9 provides that the rate of interest on advances under *clause 7* is to be fixed by the Minister of Island Territories with the concurrence of the Minister of Finance, and the advances are to be repaid by such instalments and on such terms as the Minister directs.

Clause 10 provides that the Minister may require security for any advances made. Where advances are made to the Cook Islands Cooperative Thrift and Loan Society Limited, the Society is to undertake to use any advances exclusively in making loans for housing purposes and not to charge interest at a rate exceeding a rate fixed by the Minister with the concurrence of the Minister of Finance.

Clause 11 authorises the Minister to enter into agreements in relation to advances, and validates an agreement entered into on 21 March 1958 by the Minister with the Cook Islands Cooperative Thrift and Loan Society Limited relating to a loan for housing purposes. The clause authorises the Minister to delegate to the Resident Commissioner his powers to enter into agreements.

Clause 12 declares the Bill to be a reserved enactment. The effect of this is that neither the Legislative Assembly of the Cook Islands nor the Legislative Assembly of Niue may make an Ordinance containing any provision that is repugnant to any provision of this Bill.

Hon. Mr Mathison

COOK ISLANDS AMENDMENT

ANALYSIS

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A BILL INTITULED

An Act to amend the Cook Islands Act 1915

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same,
5 as follows:

1. Short Title—This Act may be cited as the Cook Islands Amendment Act 1958, and shall be read together with and deemed part of the Cook Islands Act 1915 (hereinafter referred to as the principal Act).

10 **2. Judges and Commissioners of the High Court**—The principal Act is hereby amended by repealing section one hundred and three, and substituting the following section:

“103. (1) The High Court hereby constituted shall consist
15 from time to time appoints.

“(2) If only one Judge is so appointed, he shall be deemed to be Chief Judge, but, if more than one Judge is appointed, one shall be appointed Chief Judge.

“(3) The office of Judge or Commissioner respectively may be held in conjunction with any other office.” 5

3. Tenure of Judges and Commissioners—Section one hundred and four of the principal Act is hereby amended by adding the following subsections as subsections two, three, and four thereof:

“(2) No person who has attained the age of sixty-five years shall be appointed to or continue to hold the office of Judge. 10

“(3) Notwithstanding anything to the contrary in this Act, every Judge, unless he sooner vacates his office, shall continue to hold his office until his successor comes into office. 15

“(4) The Governor-General may, if he thinks fit, remove a Judge or Commissioner for inability or misbehaviour.”

4. Acting Judges of the High Court—The principal Act is hereby amended by repealing section one hundred and six, and substituting the following section: 20

“106. (1) The Resident Commissioner of Rarotonga (or his Deputy lawfully acting as such) may, without further authority or appointment, act as a Judge of the High Court if—

“(a) The office of Chief Judge of the High Court is vacant and there is no other Judge of the High Court in the Cook Islands other than Niue; or 25

“(b) The Chief Judge is incapable, by reason of sickness or absence from the Cook Islands other than Niue, of executing the duties of his office, and there is no other Judge of the High Court in the Cook Islands other than Niue available to act; or 30

“(c) The Resident Commissioner is present on any island in the Cook Islands where civil or criminal proceedings of the High Court are pending, and— 35

“(i) The Chief Judge or any other Judge of the High Court cannot be present on that island within a reasonable time to act; or

“(ii) Such proceedings are within the jurisdiction of a Commissioner of the High Court and there is no Commissioner or Judge present on that island. 40

“(2) Where no Judge of the High Court is appointed for Niue, or where a Judge is so appointed but is incapable by reason of sickness or absence from Niue of executing the duties of his office, the Resident Commissioner of Niue (or
5 his Deputy lawfully acting as such) may, without further authority or appointment, act in Niue as a Judge of the High Court.

“(3) The fact that a Resident Commissioner or his Deputy so acts in pursuance with the provisions of this section shall
10 be conclusive proof of his authority so to do.”

5. Appointment, salary, and tenure of Judges of Native Land Court—The principal Act is hereby further amended by repealing section three hundred and seventy, and substituting the following section:

15 “370. (1) The Judges of the Native Land Court shall be appointed by the Governor-General, and shall hold office during his pleasure.

“(2) The Judges of the Native Land Court shall receive out of money appropriated by Parliament for the purpose such
20 salaries and allowances as the Governor-General determines.

“(3) No person who has attained the age of sixty-five years shall be appointed to or continue to hold the office of Judge of the Native Land Court.

“(4) Notwithstanding anything to the contrary in this
25 Act, every Judge of the Native Land Court, unless he sooner vacates his office, shall continue to hold his office until his successor comes into office.

“(5) The Governor-General may, if he thinks fit, remove a
30 Judge of the Native Land Court for inability or misbehaviour.”

6. Contribution to Government Superannuation Fund by employees of Cook Islands Public Service—The Cook Islands Amendment Act 1957 is hereby amended by inserting in Part III, after section eighty-five, the following section:

35 “85A. (1) The provisions of subsections two and three of section fifty of the Superannuation Act 1956 shall not apply to any permanent employee of the Cook Islands Public Service who was not ordinarily resident in the Cook Islands immediately before his appointment to the Cook Islands Public
40 Service, unless at any time, by notice in writing to the Superintendent of the Government Superannuation Fund, he elects to become a contributor to that Fund, and, if he so elects,—

“(a) He shall be a contributor to that Fund from the dates specified in subsection two or subsection three, as the case may be, of the said section fifty, or from such date as he may elect pursuant to the provisions of section twenty-two of the Superannuation Act 1956; and 5

“(b) He shall have the right, pursuant to section twenty-eight of that Act, to cease to be a contributor.

“(2) While any employee holds positions concurrently in the New Zealand Government Service and in the Cook Islands Public Service or is a supernumerary employee of the New Zealand Government Service, and is a contributor to the Government Superannuation Fund, the salary together with increments, if any, that in the opinion of the New Zealand controlling authority he would have been entitled to receive in respect of his employment in the New Zealand Government Service had he not been appointed to the Cook Islands Public Service shall be deemed to be his salary for the purposes of the Superannuation Act 1956. 10 15

“(3) Notwithstanding anything in subsection two of this section, any such employee who has held a position in the Cook Islands Public Service for a continuous period of six years may, at any time after the expiration of that period while he still holds a position in that Service, or, if he is transferred to or returns to employment in the New Zealand Government Service, within one year after the termination of his service in the Cook Islands, elect to contribute on the salary received by him in respect of his employment in the Cook Islands (exclusive of any special allowance received by him in respect of his residence in the Cook Islands) with effect from the date of his appointment in the last-mentioned Service: 20 25 30

“Provided that, where any such employee was at the commencement of this section contributing on the salary received by him in respect of his employment in the Cook Islands Public Service (exclusive of any special allowance received by him in respect of his residence in the Cook Islands), but at that date had held a position in that Service for less than a continuous period of six years, he may, at any time before the expiry of three months from the date of the commencement of this section, elect to continue to contribute on that salary. 35 40

“(4) Upon any such election (not being an election under the proviso to subsection three of this section), there shall be payable by the employee to the Government Superannuation Fund, within such time and in such manner as the Government Superannuation Board determines, such sum as the Board fixes in respect of the excess of his salary during the past period as an employee of the Cook Islands Public Service over the amount deemed to be his salary during that period under the provisions of subsection two of this section.

10 “(5) In this section the term ‘employee’ includes—

“(a) The Resident Commissioner of the Cook Islands:

“(b) The Chief Judge of the High Court of the Cook Islands:

“(c) A Judge of the High Court of the Cook Islands:

15 “(d) A Judge of the Native Land Court of the Cook Islands:

“(e) The holder of any position specified in a declaration made pursuant to section seventy-eight of this Act:

20 “(f) The holder of any position specified in a notice given pursuant to paragraph (e) of subsection nine of section fifty of the Superannuation Act 1956.”

7. Housing improvement scheme—(1) For the purpose of providing dwellings and improved housing and living conditions in the Cook Islands, advances may from time to time be made out of money appropriated by Parliament for the purpose to—

(a) Any permanent resident of the Cook Islands on the security of any real or personal property:

30 (b) The Cook Islands Cooperative Thrift and Loan Society Limited (a body corporate constituted and registered under the Cook Islands Cooperative Societies Regulations 1953) under an agreement that the Society will make advances to such of the Society’s registered members who are duly qualified from time to time under the Society’s bylaws for loans from the Society:

35 (c) Any other body corporate in the Cook Islands approved by the Minister,—

40 for all or any of the purposes specified in subsection two of this section. All such advances shall be made subject to such conditions as the Minister thinks fit.

(2) Advances may be made under subsection one of this section for the following purposes:

- (a) The erection, repair, alteration, or improvement of any dwellings and of all necessary outbuildings and appurtenances attached thereto: 5
- (b) The repair, alteration, improvement, or installation in or in respect of any dwelling of a system of lighting, sanitation, water supply, or other conveniences:
- (c) The purchase of any land or interest in land as a site for a dwelling or dwellings: 10
- (d) The draining, cultivation, development, or general improvement of the land appurtenant to a dwelling or intended to be used as a site for a dwelling.

8. Housing Improvement Fund—(1) There is hereby established in the Cook Islands Account and in the Niue Island Account respectively a fund to be called the Cook Islands Housing Improvement Fund and the Niue Housing Improvement Fund respectively (hereinafter referred to as the Fund). 15

(2) Each Fund shall consist of—

- (a) All money that may be appropriated by Parliament for the purpose of the Fund; 20
- (b) All accumulations of money belonging to the Fund; and
- (c) All other money that may otherwise be lawfully payable into the Fund.

(3) All principal, interest, purchase money, rent, or other money received in respect of advances made out of the Fund, or otherwise received in respect of expenditure made from the Fund, shall belong to the Fund. 25

(4) All money in the Fund shall be used exclusively for the purposes specified in section seven of this Act. 30

9. Rate of interest and repayment—(1) The rate of interest to be charged upon any advances made under the provisions of section seven of this Act shall be fixed from time to time by the Minister with the concurrence of the Minister of Finance.

(2) Repayment of any advances made under the provisions of section seven of this Act shall be by such instalments and on such terms as the Minister fixes from time to time. 35

10. Security for advances—(1) As security for the repayment of any advances made under the provisions of section seven of this Act, the Minister may require the person or body corporate to whom it is proposed to make the advance to execute a mortgage or agreement to his satisfaction. 40

(2) The Cook Islands Cooperative Thrift and Loan Society Limited and any other body corporate in the Cook Islands to whom advances are made under the provisions of section seven of this Act shall undertake with the Minister—

- 5 (a) To use and apply any amounts advanced to it exclusively in making loans for the purposes set out in section seven of this Act; and
- (b) Not to charge interest on any such loans at a rate in excess of a rate fixed from time to time by the Minister with the concurrence of the Minister of Finance.
- 10 (3) All money advanced under the provisions of section seven of this Act to any permanent resident together with interest at the prescribed rate shall constitute a charge against the land in respect of which the same has been made, and shall
- 15 be repayable at such time or times and in such manner as the Minister determines from time to time.

11. Minister may enter into agreements—(1) The Minister, or any other person authorised in that behalf by the Minister, may enter into any agreement with the Cook Islands Co-operative Thrift and Loan Society Limited or any other body corporate approved by him pursuant to section seven of this Act to give effect to the provisions of that section.

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(2) The agreement signed by the Minister on the twenty-first day of March, nineteen hundred and fifty-eight, with the Cook Islands Cooperative Thrift and Loan Society Limited, a copy of which is set out in the Schedule to this Act, is hereby validated, and shall be as valid and effective for all purposes as if the Minister had had full power and authority at that time to sign the agreement.

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(3) Any payments made before the passing of this Act pursuant to the said agreement are hereby validated and declared to have been lawfully made.

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(4) The Minister may by writing delegate to the Resident Commissioner of Rarotonga or the Resident Commissioner of Niue power to execute agreements on his behalf in respect of advances made under the provisions of section seven of this Act.

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12. Reserved enactment—The First Schedule to the Cook Islands Amendment Act 1957 is hereby amended by adding the following words:

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“1958, No. —
The Cook Islands Amendment Act 1958 | The whole Act.”

Section 11 (2)

SCHEDULE

AN agreement made this 21st day of March, One Thousand Nine Hundred and Fifty Eight, by the COOK ISLANDS CO-OPERATIVE THRIFT AND LOAN SOCIETY LIMITED, a corporate body duly constituted and registered under the Cook Islands Co-operative Societies Regulations 1953 (hereinafter called "the Grantee") of the one part AND HER MAJESTY THE QUEEN (hereinafter with Her successors referred to as "the Grantor") of the other part WHEREAS the Grantee was duly registered as No. 4/55 on the 21st day of November 1955 AND WHEREAS at the time of such registration bylaws of the Grantee were duly promulgated AND WHEREAS pursuant to regulation 52 of the said regulations rules by the Resident Commissioner of Rarotonga have been duly made and publicly notified AND WHEREAS the Grantee pursuant to bylaw No. 36 is enabled (subject to the approval of the Registrar) to fix in general meeting the amount which the Society may from time to time borrow AND WHEREAS on the 2nd day of October 1957 such general meeting of the Grantee resolved to fix the last mentioned amount at two thousand five hundred pounds (£2500) from outside sources AND WHEREAS the Grantor and the Grantee have embarked upon a scheme for the improvement of the housing conditions of (inter alia) members of the Grantee or so many thereof as require the same and can qualify accordingly AND WHEREAS the Grantee has not sufficient resources to provide all the monies likely to be required for such advances AND WHEREAS the Grantor has offered to lend the Grantee certain monies upon the conditions herein appearing and the Grantee has accepted such an offer NOW THIS AGREEMENT WITNESSETH—

1. The Grantor will advance on loan to the Grantee and the Grantee will accept on loan from the Grantor the sum of two thousand five hundred pounds (£2,500).

2. Such sum of £2,500 will be advanced by the Grantor to the Grantee as follows and subject to conditions hereinafter appearing during the period ending on the 31st day of March 1958.

3. Such monies shall be repaid to the Grantor by the Grantee as follows:

In equal annual instalments of £250 spread over ten years due on the 31st day of March of each year and commencing on the 31st day of March 1959.

4. Interest on any monies outstanding shall be paid by the Grantee to the Grantor at the rate of £3 per centum per annum and shall be computed as from the date of advance thereof by the Grantor to the Grantee and shall be payable quarterly on the last days of March, June, September and December in each and every year during the currency of this agreement and in the case of broken periods of interest shall be payable at the end of the quarter following such advance. In all cases there shall be deemed to be a compliance with this clause if such amounts of interest are paid on or within 14 days after the said respective quarterly dates.

5. The Grantee undertakes to use and apply the money from time to time advanced to it by the Grantor pursuant to this agreement for the sole and exclusive purpose of re-advancing to it registered members who duly qualify for loans for housing under the terms of the bylaws of the

SCHEDULE—continued

Grantee. If the Minister of Island Territories shall impose any conditions on the advancing by the Grantor of monies to the Grantee then such conditions shall so far as they shall apply be incorporated in the conditions to be imposed by the Grantee in respect of its re-advances to its members.

6. The Grantee shall in its advances to its members of monies subject to this agreement not charge its members with interest in excess of the rate of £5 per centum per annum.

7. Monies required by the Grantee to be advanced by the Grantor shall be requisitioned by the Grantee in writing. Such requisition shall be made in such manner and the monies received shall be applied so that the commencement date of loans from time to time made by the Grantee to its members shall be contemporaneous with the several dates of advance for that purpose made by the Grantor to the Grantee and not later to the intent that as the Grantee shall be debited with interest by the Grantor so shall interest commence to run against a member-borrower in favour of the Grantee.

8. During the terms of this Agreement the Grantee shall furnish (forthwith after receipt thereof) to the Grantor a duly certified copy of each annual audit report supplied through the Registrar of Co-operative Societies pursuant to regulation 36 of the Co-operative Societies Regulations 1953.

9. If on any of the several dates provided herein for payment thereof of either principal monies or interest the sums herein agreed to be paid by the Grantee to the Grantor under the terms of this Agreement shall be unpaid then such sums and each of them shall be recoverable as sums due to the Crown pursuant to regulation 53 of the Co-operative Societies Regulations 1953.

10. The Grantee will comply with the provisions of the Cook Islands Co-operative Societies Regulations 1953 and with the Cook Islands Co-operative Societies Rules 1955 and with the by-laws of the Grantee.

IN WITNESS WHEREOF this agreement has been executed the day and year first herein written.

THE COMMON SEAL of THE COOK ISLANDS CO-OPERATIVE THRIFT AND LOAN SOCIETY LIMITED was hereto affixed by and in the presence of the Secretary thereof pursuant to a meeting of a Committee him thereto authorising and in the presence of three members of the said Committee:—

W. ESTALL
Secretary.

SEAL

N. TOU
P. HAURUA
MANA STRICKLAND } Three members of the Committee.

Signed for and on behalf of HER MAJESTY THE QUEEN by the Minister of Island Territories, JOHN MATHISON, in the presence of:
J. MATHISON.

Witness: R. R. KERR
Occupation: P/Secretary.