

COOK ISLANDS CONSTITUTION BILL

EXPLANATORY NOTE

THIS Bill makes provision for self-government by the people of the Cook Islands (other than Niue) under a Constitution which is set out in the Schedule to the Bill.

The Constitution provides for full self-government by the people of the Cook Islands, but allows for continued association with New Zealand under a common Head of State, Her Majesty the Queen, and with a common citizenship, that of New Zealand.

Clause 1 relates to the Short Title and commencement. The Constitution is to come into force on a date to be fixed by Proclamation, which is to be a date later than the date of the first meeting of the Legislative Assembly of the Cook Islands held after the next general election of that Assembly. The purpose of this is to defer the commencement of the Constitution until after the newly elected Assembly has had an opportunity of deciding whether or not the Constitution provided by this Bill meets with its approval. By *clause 61* of the Cook Islands Amendment Bill the next Legislative Assembly will consist of elected members only (with no official members), who are to be elected under a system of universal suffrage by the electors of the several islands constituting the Cook Islands.

Clause 2 defines the term "Cook Islands" for the purposes of the Bill and the Constitution, and excludes the Island of Niue.

Clause 3 declares that the Cook Islands shall be self-governing.

Clause 4 declares that the Constitution set out in the Schedule to the Bill is to be the Constitution of the Cook Islands and the supreme law of the Cook Islands.

Clause 5 provides that nothing in the Bill or in the Constitution is to affect the status of any person as a British subject or New Zealand citizen.

SCHEDULE

THE CONSTITUTION OF THE COOK ISLANDS

Article 1 is an interpretation provision.

PART I

THE GOVERNMENT OF THE COOK ISLANDS

Article 2 declares that Her Majesty the Queen in right of New Zealand shall be the Head of State of the Cook Islands.

Article 3 provides for the appointment of a High Commissioner of the Cook Islands, who is to be the representative of Her Majesty the Queen in the Cook Islands and is also to be the representative of the Government of New Zealand in the Cook Islands. The High Commissioner is to be appointed by the Governor-General on the recommendation of the Minister of the Government of New Zealand who is responsible for matters relating to the Cook Islands, made after consultation with the Premier of the Cook Islands.

Article 4 requires the High Commissioner to take an oath of office before the Chief Judge of the High Court.

Article 5 provides that, except where by the Constitution he may act in his discretion, the High Commissioner in the performance of his functions as the representative of Her Majesty the Queen must act on the advice of Cabinet, the Premier, or the appropriate Minister.

Article 6 provides that it shall be the duty of the Premier to arrange for the circulation to the High Commissioner of copies of the agenda and minutes of Cabinet and of all other papers laid before Cabinet and to furnish to the High Commissioner such information relating to the affairs of the Cook Islands and proposals for legislation as the High Commissioner may call for.

Article 7 enables a Deputy of the High Commissioner to be appointed with power to act when the office of High Commissioner is vacant or the High Commissioner is absent or unable to perform his functions.

PART II

THE EXECUTIVE GOVERNMENT OF THE COOK ISLANDS

Article 8 provides that the executive authority of the Cook Islands shall be vested in Her Majesty the Queen, and may be exercised on her behalf by the High Commissioner, either directly or through officers subordinate to him.

The Cabinet

Article 9 establishes a Cabinet comprising the Premier of the Cook Islands and four other Ministers, to be appointed by the High Commissioner.

The High Commissioner is to appoint as Premier a member of the Legislative Assembly who, in the opinion of the High Commissioner, commands the confidence of a majority of the members of the Assembly.

The Ministers other than the Premier are to be appointed by the High Commissioner on the advice of the Premier. A person may not be appointed unless he is a member of the Assembly.

Provision is made in this Article with respect to appointments of the Premier or a Minister where the appointment is to be made after the Assembly has been dissolved and before the commencement of the first session after the general election following that dissolution.

By *subclause (5)*, an employee of the Cook Islands Public Service vacates his office in that Service if he is appointed to the Cabinet.

Article 10 defines the duration of office of the members of Cabinet, and sets out the circumstances in which the appointment of the Premier or of any other Minister will be terminated. The clause also contains provisions for the appointment of an acting Premier in cases where, by reason of illness or absence from the Cook Islands, the Premier is temporarily unable to act as such.

Article 11 requires the Premier and other Ministers to take an oath of office.

Article 12 provides that the portfolios of Ministers are to be assigned by the Premier.

Article 13 provides that Cabinet may be summoned only by the Premier or, in his absence, by a Minister appointed in that behalf by the Premier.

Article 14 authorises the Cabinet to regulate its own procedure.

By *subclause (3)*, if the High Commissioner so requires, the Premier must refer to Cabinet any decision of a Minister (including the Premier) that has not been considered in Cabinet.

Article 15 defines when a decision of Cabinet takes effect.

Article 16 provides that the Secretary of the Premier's Department will also be the Secretary to the Cabinet.

Article 17 authorises one Minister to act for another.

The Executive Council

Article 18 establishes an Executive Council, consisting of the High Commissioner and the members of Cabinet. The Executive Council may regulate its own procedure.

Article 19 provides that the Secretary to the Cabinet will also be the Clerk of the Executive Council.

Article 20 provides that meetings of the Executive Council may be summoned only by the High Commissioner or by the Premier.

Article 21 provides that the Executive Council may be summoned to consider any Cabinet decision. If the Council confirms that decision and the High Commissioner concurs, that decision will take effect as a decision of Cabinet. If he does not concur, the decision must be referred back to Cabinet for reconsideration.

The Seal of the Cook Islands

Article 22 makes provision for a Public Seal of the Cook Islands.

PART III

THE LEGISLATIVE GOVERNMENT OF THE COOK ISLANDS

The Legislative Assembly

Article 23 establishes the Legislative Assembly of the Cook Islands. The Assembly is to consist of 22 members, all of whom are to be elected under a system of universal suffrage by the electors of the islands or groups of islands as set out in this Article.

Article 24 prescribes the qualifications as to nationality and residence of electors and candidates. Every elector or candidate must be a British subject, every elector must have been ordinarily resident in the Cook Islands throughout the period of 12 months preceding his application for enrolment, and every candidate must have been ordinarily resident in the Cook Islands throughout the three years preceding his nomination.

Subclause (2) defines what constitutes ordinary residence in the Cook Islands for the purposes of this Article.

Article 25 provides that the Legislative Assembly must meet within 90 days after a general election, and must meet at least once a year.

Article 26 requires members of the Legislative Assembly to take an Oath of Allegiance.

Article 27 requires the Legislative Assembly to elect a Speaker. The Speaker may be either a member of the Assembly (other than a Minister) or a person who is not a member of the Assembly.

Article 28 prescribes the circumstances in which the Speaker is to vacate his office.

Article 29 authorises the Legislative Assembly to elect one of its members (other than a Minister) to be Deputy Speaker.

Article 30 prescribes the procedure of the Assembly. Subject to this Article, the procedure of the Assembly is to be regulated by Standing Orders.

Article 31 provides that all debates and discussions in the Legislative Assembly are to be conducted in the Maori language as spoken in Rarotonga and also in English. All Bills and Acts are to be in both languages, but the Assembly may in particular cases dispense with a Maori version. The records of the Assembly and its committees are to be in English, and such of them as the Standing Orders specify are to be in Maori also.

Article 32 defines the privileges of the Legislative Assembly and its members and of the Speaker.

Article 33 defines the circumstances in which the High Commissioner may prorogue or dissolve the Legislative Assembly and the circumstances in which he must dissolve it.

Article 34 provides for the appointment of a Clerk of the Legislative Assembly. The Clerk is to keep a record of the proceedings of the Assembly and is to transmit a copy of those records to the High Commissioner as soon as practicable.

Article 35 provides that the Legislative Assembly may make laws (to be known as Acts) for the peace, order, and good government of the Cook Islands. That power includes power to repeal or revoke or amend, in its application to the Cook Islands, any law in force in the Cook Islands.

Article 36 defines the power of the Legislative Assembly to repeal or amend the Constitution. No Bill repealing or amending the Constitution will have any force or effect unless at both the second and third readings it is passed by at least fifteen members of the Assembly (that is, two-thirds of the total membership, including vacancies) and there is an interval of at least 90 days between those readings.

Article 37 provides that, subject to the Constitution and to the Standing Orders of the Legislative Assembly, any member may introduce a Bill or propose a motion or present a petition.

Article 38 imposes restrictions with regard to financial measures. A High Commissioner's Message will be necessary before the Assembly may proceed on a Bill (or an amendment to a Bill) imposing or altering taxation or imposing or altering any charge upon the public revenues or providing for any payment from public funds or any increase of any such payment or for the composition or remission of a debt due to the Crown. A Message will also be necessary in the case of a motion or petition making provision for any such purpose.

Article 39 makes provision for the High Commissioner to assent or refuse his assent to Bills passed by the Legislative Assembly. On the advice of the Premier, he must assent or refuse his assent, but will be entitled to refer the Bill to the Executive Council for it to consider amendments proposed by him or whether he should refuse his assent.

If, in a case where a Bill has been referred to the Executive Council to consider any proposed amendments, the Council approves the proposed amendments, the Bill is to be referred back to the Assembly for consideration of those amendments. If the Council does not approve the proposed amendments, the High Commissioner must assent to the Bill.

If, in any case where a Bill has been referred to the Executive Council for it to consider whether or not the High Commissioner should refuse his assent, the Council decides that he should so refuse, the Bill must be referred back to the Assembly for reconsideration. If the Executive Council decides that he should not refuse his assent, the High Commissioner must assent to the Bill.

When a Bill referred back to the Assembly under this Article is again passed by the Assembly either in its original form or with the amendments made under this Article, the High Commissioner must assent to the Bill and cannot propose any further amendments. If the Bill as again passed contains any additional amendments, the foregoing provisions of this Article will again apply.

Article 40 provides that an Act will come into force on the date of the High Commissioner's assent to the Bill, unless a later or earlier date is provided therein for its commencement.

Article 41 provides that the Parliament of New Zealand may legislate for the Cook Islands only if the application of that Act to the Cook Islands is requested and consented to by the Government of the Cook Islands, and the Act must expressly declare that the Government of the Cook Islands has so requested and consented.

PART IV

THE JUDICIARY

The High Court of the Cook Islands

Article 42 establishes the High Court of the Cook Islands. Except where jurisdiction is conferred on any other Court, the High Court is to have all such jurisdiction (civil and criminal) as may be necessary to administer the law in force in the Cook Islands.

Article 43 provides that the High Court is to consist of a Chief Judge and such other Judges and Commissioners of that Court as may be appointed. The qualifications for appointment as a Judge or Commissioner of the Court are to be determined by the High Commissioner on the advice of the Judicial Service Commission.

Article 44 defines the jurisdiction of Commissioners of the High Court.

Article 45 enables an acting Chief Judge of the High Court to be appointed to act where the office of Chief Judge is vacant or the Chief Judge is absent or unable to act.

Article 46 enables an acting Judge of the High Court to be appointed in cases where no Judge is available to act.

The Land Court of the Cook Islands

Article 47 establishes the Land Court of the Cook Islands, which is to have the jurisdiction and powers conferred on it by law.

Article 48 provides that the Land Court is to consist of a Chief Judge and such other Judges and Commissioners of that Court as may be appointed. The qualifications for appointment are to be prescribed by the High Commissioner on the advice of the Judicial Service Commission.

Article 49 defines the jurisdiction of Commissioners of the Land Court.

The Land Appellate Court of the Cook Islands

Article 50 establishes the Land Appellate Court of the Cook Islands, which is to have the jurisdiction and powers conferred on it by law.

Article 51 provides that the Judges of the Land Court and the Judges of the Maori Land Court of New Zealand are to be the Judges of the Land Appellate Court, and contains provisions as to the quorum of Judges and the precedence of Judges.

Appointments, Tenure of Office, and Salaries of Judges and Commissioners

Article 52 prescribes the manner in which Judges and Commissioners are to be appointed. The Chief Judge of the High Court and the Chief Judge of the Land Court are to be appointed by the High Commissioner on the advice of the Premier, and the other Judges and the Commissioners of those Courts are to be appointed by the High Commissioner on the advice of the Judicial Service Commission.

Article 53 defines the tenure of office of Judges and Commissioners.

Except in the case of a person appointed for a term of years under *sub-clause (2)*, Judges of the High Court or of the Land Court must retire on attaining 65 years of age.

By *subclause (2)*, a person who is not ordinarily resident in the Cook Islands may be appointed as a Judge of the High Court or of the Land Court for a term of years.

A Commissioner of either Court may be removed from office by the High Commissioner on the advice of the Judicial Service Commission.

Article 54 prescribes the circumstances in which a Judge of the High Court or of the Land Court may be removed from office. A Judge may be removed on the ground of disability or misbehaviour if a tribunal appointed under this Article so recommends after holding an inquiry into the matter.

The Tribunal is to be appointed by the High Commissioner, and is to consist of three persons, all of whom must hold or have held office as a Judge of the Supreme Court of New Zealand or of the Court of Appeal of New Zealand or equivalent office in any other part of the Commonwealth or in an approved country or must have been in practice as a barrister in New Zealand or in any other part of the Commonwealth or in an approved country for a total period of not less than seven years. For the purpose of this Article, an approved country is one designated as such by the High Commissioner, and must be a country having a legal system similar to that of New Zealand.

Article 55 provides that the salaries of the Judges of the High Court or of the Land Court are to be fixed by enactment. The salary of a Judge may not be reduced during his term of office except as part of a general reduction of salaries applied proportionately.

Appeals from High Court

Article 56 preserves the existing right of appeal to the Supreme Court of New Zealand from decisions of the High Court. There is an additional appeal as of right where the case involves a substantial question of law as to the interpretation or effect of any provision of the Constitution.

Article 57 prescribes the manner in which effect is to be given in the Cook Islands to any order made by the Supreme Court of New Zealand in an appeal from the High Court.

Article 58 provides that there is no further right of appeal to the Court of Appeal from any decision of the Supreme Court on an appeal from the High Court.

Justices of the Peace

Article 59 provides for the appointment of Justices of the Peace. Any two or more Justices of the Peace may together exercise the jurisdiction of a Commissioner of the High Court.

Oath of Allegiance and Judicial Oath

Article 60 requires Judges and Commissioners of the High Court or of the Land Court and Justices of the Peace to take the Oath of Allegiance and the Judicial Oath.

The Judicial Service Commission

Article 61 establishes the Judicial Service Commission, consisting of the Chief Judge of the High Court, a member nominated by the Minister in Charge of the Justice Department of the Cook Islands, and a member (other than an employee of the Cook Islands Public Service or a member of the Legislative Assembly) nominated by that Minister with the concurrence of the Chief Judge of the High Court.

PART V

THE PUBLIC REVENUES OF THE COOK ISLANDS

Article 62 provides that there is to be a Cook Islands Government Account and such other public funds and accounts as are established by law.

Article 63 prohibits the imposition of taxation except by law.

Article 64 requires all public revenue to be paid into the Cook Islands Government Account unless required or permitted by law to be paid into some other public fund or account.

Article 65 requires all expenditure from public funds or accounts to be appropriated (unless a specific appropriation is provided by any enactment) and in accordance with annual estimates. Payments, not exceeding the unexpended balance of the vote in the Appropriation Act for the previous year plus one-fourth of that vote, may be made in anticipation of appropriation. Payments, not exceeding $1\frac{1}{2}$ per cent of all sums appropriated, may be made in excess of or without appropriation.

Article 66 requires all public funds and accounts to be audited by the Audit Office of New Zealand. The Audit Office is to make an annual report to the Speaker for presentation to the Legislative Assembly.

PART VI

THE COOK ISLANDS PUBLIC SERVICE

Article 67 establishes the Cook Islands Public Service, which is to comprise such persons in the service of the Government of the Cook Islands as is prescribed by law.

Article 68 provides for the appointment of a Secretary of the Premier's Department, who is to be the permanent head of that Department and the principal administrative officer of the Government of the Cook Islands. He is to be appointed by the High Commissioner on the advice of the Premier.

The Secretary of the Premier's Department will not be an employee of the Cook Islands Public Service, but will be entitled to the same tenure of office and will have the same right of appeal against dismissal as if he were an employee of that Service.

Article 69 places the Cook Islands Public Service under the control of the Secretary of the Premier's Department, who in performing his functions must have regard to the general policy of Cabinet relating to that Service.

Provision is made in *subclause (3)* for an Act to designate as a special post any post of head of department or any other senior post in the Service. Appointments to any such post are to be made by the Secretary of the Premier's Department with the concurrence of Cabinet.

There will be no right of appeal against the promotion or appointment of any person to or in any post designated as a special post. A decision of Cabinet with respect to any recommendation of the Secretary of the Premier's Department as to the promotion or appointment of any person to a special post will be one which is subject to review by the Executive Council under *Article 21*.

Article 70 provides that the staff of the High Commissioner are to be appointed by him and are to be under his control. Employees of the Cook Islands Public Service may be appointed by him to his staff, at his discretion but after consulting the Premier, from a list submitted by the Secretary of the Premier's Department.

Article 71 establishes the Cook Islands Public Service Board of Appeal, comprising the Chief Judge of the High Court, an employee or former employee of the Cook Islands Public Service nominated by the Premier, and an employee or former employee of that Service elected by the employees or nominated by an organisation of employees. Rights of appeal are to be prescribed by Act.

PART VII

TRANSITIONAL PROVISIONS

Article 72 provides that all law in force in the Cook Islands immediately before the commencement of the Constitution (referred to in the Constitution as Constitution Day) is to continue in force until repealed or amended.

Article 73 declares that the person in office as Resident Commissioner immediately before Constitution Day is to continue in office as High Commissioner.

Article 74 declares that the Legislative Assembly is to continue in being on and after Constitution Day. The existing members and Speaker and Deputy Speaker are to continue in office and its Standing Orders are to continue in force.

Article 75 continues in force all existing Ordinances made by the Legislative Assembly or by the former Legislative Council of the Cook Islands.

Article 76 declares the High Court established by the Constitution to be the same Court as the existing High Court, and the Judges and Commissioners are to continue in office.

Article 77 declares the Land Court established by the Constitution to be the same Court as the existing Native Land Court of the Cook Islands. The Judges and Commissioners are to continue in office.

Article 78 declares the Land Appellate Court established by this Constitution to be the same Court as the existing Native Appellate Court of the Cook Islands.

Article 79 continues the appointment of existing Justices of the Peace.

Article 80 declares the Cook Islands Government Account established by this Constitution to be the same account as the existing Cook Islands Assembly Account.

Article 81 authorises the Governor-General, by Order in Council, to make regulations, not inconsistent with the Constitution, for the peace, order, and good government of the Cook Islands if the Government of the Cook Islands requests and consents to the making of such regulations. The regulations must expressly state that they are made at that request and with that consent.

Hon. Mr Hanan

COOK ISLANDS CONSTITUTION

ANALYSIS

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A BILL INTITULED

An Act to make provision for self government by the people of the Cook Islands (other than Niue) and to provide a constitution for those islands

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

1. **Short Title and commencement**—(1) This Act may be cited as the Cook Islands Constitution Act 1964.

10 (2) This Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General, by Proclamation, being a date later than the date on which the first meeting of the Legislative Assembly of the Cook Islands is held after the first general election of the Assembly held
15 after the passing of this Act.

2. **Interpretation and application**—(1) In this Act the term “the Cook Islands” has the same meaning as in Article 1 of the Constitution of the Cook Islands, as set out in the Schedule to this Act.

(2) Unless the context otherwise requires, this Act shall apply to the Cook Islands only and not to New Zealand.

3. **Cook Islands to be self-governing**—The Cook Islands shall be self-governing.

4. **Constitution of the Cook Islands**—The Constitution set out in the Schedule to this Act shall be the Constitution of the Cook Islands, and shall be the supreme law of the Cook Islands. 5

5. **British nationality and New Zealand citizenship**—Nothing in this Act or in the Constitution of the Cook Islands shall affect the status of any person as a British subject or New Zealand citizen by virtue of the British Nationality and New Zealand Citizenship Act 1948. 10

SCHEDULE

THE CONSTITUTION OF THE COOK ISLANDS

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SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

1. Interpretation—(1) In this Constitution, unless the context otherwise requires,—

“Act” means an Act of the Legislative Assembly of the Cook Islands:

“Cabinet” means the Cabinet of Ministers of the Cook Islands:

“Constitution” means this Constitution; and includes any amendment thereof:

“Constitution Day” means the date appointed for the commencement of this Constitution:

“The Cook Islands” means all islands in the South Pacific Ocean lying between the 8th and 23rd degrees of south latitude and the 156th and 167th degrees of longitude west of Greenwich; and each island of the Cook Islands shall be deemed to include all smaller islands lying within ten miles of the coasts thereof:

“Enactment” means any Act of the Legislative Assembly of the Cook Islands, any Ordinance, any Act of Parliament of New Zealand in force in the Cook Islands, and any Proclamation, order, regulation, or rule, or any Island Council Ordinance or bylaw:

“Executive Council” means the Executive Council of the Cook Islands established under this Constitution:

“Existing law” means any law in force in the Cook Islands immediately before Constitution Day; and includes any enactment passed or made before Constitution Day and coming into force on or after Constitution Day:

“High Commissioner” means the High Commissioner of the Cook Islands:

“High Court” means the High Court of the Cook Islands established under this Constitution:

“Land Appellate Court” means the Land Appellate Court of the Cook Islands established under this Constitution:

“Land Court” means the Land Court of the Cook Islands established under this Constitution:

“Law” means any law for the time being in force in the Cook Islands; and includes this Constitution and any enactment:

“Legislative Assembly” or “Assembly” means the Legislative Assembly of the Cook Islands established under this Constitution:

“Minister” means a Minister of the Government of the Cook Islands; and includes the Premier:

“New Zealand” means New Zealand exclusive of the Cook Islands:

“Ordinance” means an Ordinance of the Legislative Assembly of the Cook Islands made before Constitution Day and continuing in force on Constitution Day:

“Premier” means the Premier of the Cook Islands.

(2) Where under the provisions of this Constitution any person is required to subscribe an oath, he shall be permitted, if he so desires, to comply with that requirement by taking and subscribing an affirmation.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

PART I

THE GOVERNMENT OF THE COOK ISLANDS

2. The Head of State—Her Majesty the Queen in right of New Zealand shall be the Head of State of the Cook Islands.

3. High Commissioner of the Cook Islands—(1) There shall be a High Commissioner of the Cook Islands, who shall be the representative of Her Majesty the Queen in the Cook Islands, and shall also be the representative of the Government of New Zealand in the Cook Islands.

(2) The High Commissioner shall be appointed by the Governor-General on the recommendation of the Minister of the Government of New Zealand who is responsible for matters relating to the Cook Islands, made after consultation by that Minister with the Premier of the Cook Islands.

4. Oath of office—The High Commissioner shall, before assuming the functions of his office, take and subscribe before the Chief Judge of the High Court the following oath:

I,, swear by Almighty God that I will be faithful and bear true allegiance to Her [or His] Majesty [*Specify the name of the reigning Sovereign, as thus: Queen Elizabeth the Second*] as the Head of State of the Cook Islands, Her [or His] heirs and successors, according to law, and that I will uphold the dignity of the office of High Commissioner of the Cook Islands, and will justly and faithfully carry out my duties in the administration of the Cook Islands in accordance with the Constitution and the law. So help me God.

5. High Commissioner to act on advice—(1) Except as otherwise provided in this Constitution, the High Commissioner in the performance of his functions as the representative of Her Majesty the Queen shall act on the advice of Cabinet, the Premier, or the appropriate Minister, as the case may be.

(2) If the Cabinet, the Premier, or an appropriate Minister tenders advice to the High Commissioner as to the performance of any function of the High Commissioner as the representative of Her Majesty the Queen, and if the High Commissioner does not, within fourteen days after the date on which the tendering of that advice comes to the notice of the High Commissioner, accept that advice or take some other action in relation thereto which he is entitled to take under the provisions of this Constitution or of any other law, the High Commissioner shall be deemed to have accepted that advice; and an instrument under the hand of the Secretary to the Cabinet, acting on the instruction of the Premier, to that effect shall operate as to the performance of the function concerned in accordance with that advice.

6. Information to High Commissioner—It shall be the duty of the Premier—

(a) To arrange for the circulation to the High Commissioner of copies of the agenda and minutes of Cabinet and of all other papers laid before Cabinet at the time when they are circulated to Ministers; and

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (b) To furnish such information relating to the affairs of the Cook Islands and proposals for legislation as the High Commissioner may call for.

7. Deputy of the High Commissioner—(1) A Deputy of the High Commissioner may from time to time be appointed by the Governor-General on the recommendation of the Minister of the Government of New Zealand who is responsible for matters relating to the Cook Islands, made after consultation by that Minister with the Premier of the Cook Islands.

(2) Whenever the office of the High Commissioner is vacant or the holder of that office is absent from the Cook Islands or is for any reason unable to perform any functions conferred on him by law, those functions shall be performed by the Deputy of the High Commissioner or, if no person is for the time being appointed as the Deputy of the High Commissioner or if the person so appointed is for any reason unable to act, those functions shall be performed by the Chief Judge of the High Court, or, if the Chief Judge is also for any reason unable to act, those functions shall be performed by such person as the High Commissioner appoints from time to time.

(3) Nothing in this Article shall preclude the High Commissioner from performing at any time when he is absent from the Cook Islands any of the functions conferred upon him by law.

(4) No act done by the Deputy of the High Commissioner or by the Chief Judge of the High Court or by any person appointed as aforesaid in the performance of any function of the High Commissioner shall be questioned or invalidated on the ground that the occasion therefor had not arisen or had ceased.

PART II

THE EXECUTIVE GOVERNMENT OF THE COOK ISLANDS

8. Executive authority—(1) The executive authority of the Cook Islands shall be vested in Her Majesty the Queen in right of New Zealand.

(2) Subject to the provisions of this Constitution, the executive authority of the Cook Islands may be exercised on behalf of Her Majesty by the High Commissioner, either directly or through officers subordinate to him.

(3) Nothing in this Article shall prevent the Legislative Assembly from conferring functions on persons or authorities other than the High Commissioner.

Cabinet

9. Cabinet—(1) There shall be a Cabinet of Ministers, comprising the Premier of the Cook Islands (who shall preside over Cabinet) and four other Ministers, which shall have the general direction and control of the executive government of the Cook Islands, and shall be collectively responsible therefor to the Legislative Assembly.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (2) The Premier shall be appointed as follows:
- (a) If the appointment is to be made after the commencement of the first session of the Legislative Assembly following a general election of the Assembly and before the dissolution thereof, the High Commissioner shall appoint as Premier of the Cook Islands a member of the Assembly who in the opinion of the High Commissioner is likely to command the confidence of a majority of the members of the Assembly;
 - (b) If the appointment is to be made after a dissolution of the Legislative Assembly and before the holding of the general election of the Assembly following that dissolution, the High Commissioner shall appoint as Premier of the Cook Islands a person who was a member of the Assembly immediately before that dissolution and who in the opinion of the High Commissioner is likely to command the confidence of a majority of the persons who were members of the Assembly immediately before that dissolution;
 - (c) If the appointment is to be made after the holding of a general election of the Legislative Assembly and before the commencement of the first session of the Assembly following that election, the High Commissioner shall appoint as Premier of the Cook Islands a person who was elected as a member of the Assembly at that election and who in the opinion of the High Commissioner is likely to command the confidence of a majority of the persons elected as members of the Assembly at that election.
- (3) The Ministers other than the Premier shall be appointed by the High Commissioner on the advice of the Premier. No person shall be so appointed unless—
- (a) He is a member of the Legislative Assembly; or
 - (b) If the appointment is to be made after a dissolution of the Legislative Assembly and before the holding of the general election of the Assembly following that dissolution, he was a member of the Assembly immediately before that dissolution; or
 - (c) If the appointment is to be made after the holding of a general election of the Legislative Assembly and before the commencement of the first session of the Assembly following that election, he was elected as a member of the Assembly at that election.
- (4) Appointments under the provisions of this Article shall be made by instrument under the Seal of the Cook Islands.
- (5) If any employee of the Cook Islands Public Service is appointed to be a Minister, he shall forthwith be deemed to have vacated his office as an employee of that Service.

10. Duration of office of members of Cabinet—(1) The appointment of the Premier who is in office at the commencement of the first session of the Legislative Assembly following a dissolution thereof shall be terminated by the High Commissioner on the seventh day of that session if the Premier has not sooner resigned.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(2) The appointment of the Premier shall also be terminated by the High Commissioner—

- (a) If the Premier ceases to be a member of the Legislative Assembly for any reason other than the dissolution of the Assembly; or
- (b) If the Legislative Assembly passes a motion in express words of no confidence in Cabinet or if Cabinet is defeated on any question or issue which the Premier has declared to be a question or issue of confidence:

Provided that, if after the passing of such a motion or after that defeat the Premier so requests, the High Commissioner, acting in his discretion, may dissolve the Legislative Assembly instead of terminating the appointment of the Premier; or

- (c) If the Premier resigns his office by writing under his hand addressed to the High Commissioner; or
- (d) If the Premier is absent from the Cook Islands, otherwise than on official business, for a period of more than three months without written authority given by the High Commissioner, acting in his discretion.

(3) The office of any other Minister shall become vacant—

- (a) If the appointment of the Premier has been terminated under the provisions of subclause (1) or subclause (2) of this Article; or
- (b) If the appointment of the Minister to that office is revoked by the High Commissioner, acting on the advice of the Premier, by instrument under the Seal of the Cook Islands; or
- (c) If the Minister ceases to be a member of the Legislative Assembly for any reason other than the dissolution of the Assembly; or
- (d) If the Minister resigns his office by writing under his hand addressed to the High Commissioner.

(4) Whenever, by reason of illness or of absence from the Cook Islands, the Premier is temporarily prevented from performing, in the Cook Islands, the functions of his office, the High Commissioner may, by instrument under the Seal of the Cook Islands, appoint another Minister to perform those functions until such time as the Premier is capable of again performing them or has vacated his office.

(5) The power conferred on the High Commissioner under the provisions of subclause (4) of this Article shall be exercised by the High Commissioner, acting in his discretion, if in his opinion it is impracticable to obtain the advice of the Premier by reason of the illness or absence of the Premier, and, in any other case, shall be exercised by the High Commissioner, acting on the advice of the Premier.

(6) The High Commissioner, acting on the advice of the Premier, may, by instrument under the Seal of the Cook Islands,—

- (a) Declare a Minister to be by reason of illness temporarily incapable of performing his functions as a Minister; or
- (b) Suspend a Minister during the period of any investigation or inquiry into the conduct of that Minister.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(7) Any Minister in respect of whom action has been taken under the provisions of subclause (6) of this Article shall not perform any of the functions of his office or sit in or otherwise take part in the proceedings of Cabinet or of the Executive Council until the High Commissioner, acting on the advice of the Premier, has revoked the aforesaid instrument under the Seal of the Cook Islands.

11. Official oath—Every Minister shall, before assuming the functions of his office, take and subscribe before the High Commissioner the following oath:

I,, being chosen and accepted as Premier (*or* a Minister) and member of Cabinet, swear by Almighty God that I will to the best of my judgment, at all times when thereto required, freely give my counsel and advice to the High Commissioner of the Cook Islands for the good management of the affairs of the Cook Islands, and that I will not directly or indirectly reveal such matters as shall be debated in Cabinet and committee and in Executive Council and committed to my secrecy, but that I will in all such things be a true and faithful Premier (*or* Minister). So help me God.

12. Assignment of responsibilities to Ministers—(1) The Premier may, by direction in writing under his hand,—

- (a) Charge any Minister with the responsibility for any Department or subject; and
 - (b) Revoke or vary any direction given under the provisions of this subclause.
- (2) The Premier may retain in his charge any Department or subject.

13. Summoning of Cabinet—Cabinet shall be summoned only by the Premier or, in his absence, by such Minister as the Premier appoints in that behalf.

14. Cabinet procedure—(1) Subject to the provisions of this Constitution, Cabinet may regulate its procedure (including the fixing of a quorum) in such manner as it thinks fit.

(2) Cabinet shall not be disqualified for the transaction of business by reason of any vacancy in the number of its members, and any proceedings of Cabinet shall be valid notwithstanding that some person who was not entitled to do so sat or voted in Cabinet or otherwise took part in the proceedings.

(3) It shall be the duty of the Premier, if the High Commissioner so requires, to submit for the consideration of Cabinet any matter on which a decision has been taken by a Minister (including the Premier) but which has not been considered by Cabinet.

(4) A decision of Cabinet shall be recorded in minutes, which shall, under the hand of the Secretary to the Cabinet, be communicated to the High Commissioner within forty-eight hours of the making of the decision or, if the decision is one to which paragraph (c) of subclause (1) of Article 15 hereof applies, within twenty-four hours of the making of the decision.

(5) A decision of Cabinet shall not take effect except under the provisions of Article 15 hereof.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

15. When decision of Cabinet takes effect—(1) A decision of Cabinet shall take effect—

- (a) On its approval by the High Commissioner acting in his discretion; or
- (b) On the expiry of four days after the date of the decision, unless a meeting of the Executive Council is sooner held under the provisions of Article 21 hereof; or
- (c) If the issue involved in the decision is, in the opinion of Cabinet, of extreme urgency, on the expiry of two days after the date of the decision, unless a meeting of the Executive Council is sooner held under the provisions of Article 21 hereof; or
- (d) Under the provisions of Article 21 hereof.

(2) For the purposes of paragraphs (b) and (c) of subclause (1) of this Article, the date of a decision of Cabinet shall be the date on which the minutes in which the decision is recorded are communicated to the High Commissioner under the provisions of subclause (4) of Article 14 hereof.

(3) An instrument under the hand of the Secretary to the Cabinet certifying that a decision of Cabinet has taken effect shall be conclusive evidence that that decision has taken effect.

16. Secretary to the Cabinet—The person for the time being holding office as the Secretary of the Premier's Department shall also be the Secretary to the Cabinet.

17. One Minister may act for another—In this Constitution and in every enactment, unless the context otherwise requires, words directing or empowering any Minister to do any act or thing, or otherwise applying to him by his title of office, include any other Minister acting for, or, if the office is vacant, in the place of that first-mentioned Minister, and also his successors in that office.

The Executive Council

18. Executive Council—(1) There shall be an Executive Council of the Cook Islands, which shall consist of—

- (a) The High Commissioner; and
- (b) The members of Cabinet.

(2) Subject to the provisions of this Constitution, the Executive Council may regulate its procedure (including the fixing of a quorum) in such manner as it thinks fit.

19. Clerk of the Executive Council—The Secretary to the Cabinet shall also be the Clerk of the Executive Council.

20. Meetings of Executive Council—The Executive Council shall be summoned only by the High Commissioner, acting in his discretion, or by the Premier.

21. Consideration of Cabinet decisions by Executive Council—(1) A meeting of the Executive Council may be summoned to consider any decision recorded in the minutes of a Cabinet meeting.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(2) If at a meeting of the Executive Council thus summoned the High Commissioner concurs in the decision concerned, that decision shall take effect as a decision of Cabinet.

(3) If at a meeting of the Executive Council thus summoned the High Commissioner does not concur in the decision concerned or requests any amendment thereto, Cabinet shall thereupon be summoned under the provisions of Article 13 hereof and requested to reconsider that decision.

(4) If Cabinet after that reconsideration reaffirms its original decision or accepts the amendment requested by the High Commissioner, the original decision or the decision as so amended, as the case may be, shall forthwith take effect as a decision of Cabinet.

(5) If Cabinet after that reconsideration adopts a decision which incorporates an amendment to its original decision, other than an amendment requested by the High Commissioner, the decision as so amended shall operate as a new decision of Cabinet to which the provisions of subclauses (4) and (5) of Article 14 hereof shall apply.

The Seal of the Cook Islands

22. Seal of the Cook Islands—(1) There shall be a Public Seal of the Cook Islands (in this Constitution referred to as the Seal of the Cook Islands), to be in such form or forms as the Executive Council from time to time approves.

(2) The Seal shall be in the custody of the High Commissioner.

(3) The Seal may be used by the High Commissioner for the authentication of any public document in relation to the government of the Cook Islands or for the execution of any document required by law to be executed under the Seal of the Cook Islands.

(4) Judicial notice shall be taken of the Seal in all Courts in the Cook Islands and in New Zealand.

PART III

THE LEGISLATIVE GOVERNMENT OF THE COOK ISLANDS

The Legislative Assembly

23. Legislative Assembly of the Cook Islands—(1) There shall be a Legislative Assembly to be called the Legislative Assembly of the Cook Islands.

(2) The Legislative Assembly shall consist of twenty-two members, to be elected by secret ballot under a system of universal suffrage by the electors of the following islands or groups of islands and in the following numbers:

- (a) The Island of Aitutaki and the Island of Manuae, three members:
- (b) The Island of Atiu, two members:
- (c) The Island of Mangaia, two members:
- (d) The Island of Manihiki, one member:
- (e) The Island of Mauke, one member:
- (f) The Island of Mitiaro, one member:
- (g) The Island of Penrhyn, one member:

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (h) The Island of Pukapuka and the Island of Nassau, one member:
- (i) The Island of Rakahanga, one member:
- (j) The Island of Rarotonga and the Island of Palmerston, nine members.

(3) Subject to the provisions of this Article and of Article 24 hereof, the qualifications and disqualification of electors and candidates, the mode of electing members of the Legislative Assembly, and the terms and conditions of their membership shall be as prescribed by law.

24. Nationality and residential qualifications of electors and candidates—(1) Without limiting the provisions of any law prescribing any additional qualifications, a person shall be qualified to be an elector for the election of members of the Legislative Assembly or to be a candidate at any such election, if, and only if—

- (a) He is a British subject; and
- (b) In the case of an elector, he has been ordinarily resident in the Cook Islands throughout the period of twelve months immediately preceding his application for enrolment; and
- (c) In the case of a candidate, he has been ordinarily resident in the Cook Islands throughout the period of three years immediately preceding his nomination as a candidate.

(2) For the purposes of this Article a person shall be deemed to be ordinarily resident in the Cook Islands if, and only if,—

- (a) He is actually residing in the Cook Islands with the intention of residing therein indefinitely; or
- (b) Having been actually resident in the Cook Islands with the intention of residing therein indefinitely, he is outside the Cook Islands but has, and has had ever since he left the Cook Islands, an intention to return and reside therein indefinitely:

Provided that any person who has been outside the Cook Islands continuously for more than three years shall be deemed not to be ordinarily resident in the Cook Islands.

25. Meetings of Legislative Assembly—The Legislative Assembly shall meet at such places and at such times as the High Commissioner from time to time appoints in that behalf:

Provided that the Assembly shall meet not later than ninety days after the holding of a general election and at least once in every year thereafter, so that a period of twelve months shall not intervene between the last sitting of the Assembly in one session and the first sitting thereof in the next session.

26. Members to take Oath of Allegiance—Except for the purpose of enabling this Article to be complied with and for the election of a Speaker, no member of the Legislative Assembly shall be permitted to sit or vote therein until he has taken and subscribed the following oath before the Speaker of the Assembly, namely:

I,, swear by Almighty God that I will be faithful and bear true allegiance to Her [or His] Majesty [*Specify the name of the reigning Sovereign, as thus:* Queen Elizabeth the Second] as the Head

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

of State of the Cook Islands, Her [*or His*] heirs and successors, according to law, and that I will justly and faithfully carry out my duties as a member of the Legislative Assembly of the Cook Islands. So help me God.

27. The Speaker of the Legislative Assembly—(1) The Legislative Assembly shall, immediately when it first meets after a general election and as soon as possible after any vacancy occurs in the office of Speaker otherwise than by reason of a dissolution of the Assembly, and before it proceeds to the despatch of any other business, elect a person (not being a Minister) to be Speaker of the Legislative Assembly.

(2) The Speaker may be elected in such manner as the Assembly decides from time to time, either from among the members of the Assembly who are not Ministers or from among persons who are not members of the Assembly:

Provided that a person who is not a member of the Assembly shall not be elected Speaker unless he is qualified for election as a member of the Assembly.

(3) Before a person who has been elected Speaker enters upon the duties of his office, he shall, unless he has already done so in accordance with Article 26 hereof, take and prescribe before the High Commissioner the Oath of Allegiance prescribed in that Article, substituting the word “Speaker” for the words “a member” where they appear in that oath.

(4) The Speaker shall receive from the Cook Islands Government Account such remuneration and allowances as may be prescribed by enactment:

Provided that such remuneration and allowances shall not be reduced during his continuance in office unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

28. Tenure of office of Speaker—The Speaker may at any time resign his office by writing under his hand addressed to the Clerk of the Legislative Assembly, and shall vacate his office—

- (a) On the dissolution of the Assembly next following his election; or
- (b) If he becomes a Minister; or
- (c) If, being a member of the Assembly at the time of his election, he ceases to be a member; or
- (d) If, not being a member of the Assembly at the time of his election, he ceases to be qualified for election as a member.

29. Deputy Speaker—(1) The Legislative Assembly may elect a member of the Assembly, not being the Speaker or a Minister, to be Deputy Speaker.

(2) The Deputy Speaker may at any time resign his office by writing under his hand addressed to the Clerk of the Legislative Assembly, and shall vacate his office—

- (a) On the dissolution of the Assembly next following his election; or
- (b) If he ceases to be a member of the Assembly; or
- (c) If he becomes a Minister; or
- (d) If he is elected Speaker.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(3) Subject to the provisions of this Constitution and of the Standing Orders of the Legislative Assembly, the functions conferred by this Constitution or those Standing Orders upon the Speaker shall, if there is no person holding the office of Speaker or if the Speaker is absent from the Cook Islands or is otherwise unable to perform those functions, be performed by the Deputy Speaker.

30. Procedure—(1) The Speaker, or in his absence the Deputy Speaker, shall preside over sittings of the Legislative Assembly. In the absence from any sitting of both the Speaker and the Deputy Speaker, the members present shall choose one of their number (not being a Minister) to preside over that sitting.

(2) Subject to the provisions of Article 36 hereof, every question before the Legislative Assembly shall be decided by a majority of the votes of the members present.

(3) The person presiding over any sitting of the Assembly shall not have a deliberative vote, but, in case of an equality of votes, he shall, unless he is not a member of the Assembly, have a casting vote.

(4) No business shall be transacted at any sitting of the Assembly if the number of members present (excluding the Speaker if he is a member) is less than twelve.

(5) Subject to the provisions of this Constitution, the Legislative Assembly may from time to time make, amend, and repeal Standing Orders for the regulation and orderly conduct of its proceedings and the despatch of business.

(6) The Legislative Assembly shall not be disqualified for the transaction of business by reason of any vacancy among its members, including any vacancy not filled at a general election, and any proceedings therein shall be valid notwithstanding that some person who was not entitled to do so sat or voted in the Assembly or otherwise took part in the proceedings.

31. Languages—(1) All debates and discussions in the Legislative Assembly shall be conducted in the Maori language as spoken in Rarotonga and also in the English language.

(2) Every Bill introduced into the Legislative Assembly and every Act shall be in the Maori language as spoken in Rarotonga and also in the English language:

Provided that the Assembly may, by resolution, determine that any Bill or Act shall be in the English language only.

(3) The records of proceedings in the Legislative Assembly or in committees thereof shall be in the English language, and such of those records as are specified in the Standing Orders of the Assembly shall also be in the Maori language as spoken in Rarotonga.

(4) Where there is any conflict between the Maori version and the English version of any Bill or Act or of any such record, the English version shall prevail.

32. Privileges of Legislative Assembly and of its members—(1) The validity of any proceedings in the Legislative Assembly or in any committee thereof shall not be questioned in any Court.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(2) No officer or member or Speaker of the Legislative Assembly in whom powers are vested for the regulation of procedure or the conduct of business or the maintenance of order shall in relation to the exercise by him of any of those powers be subject to the jurisdiction of any Court.

(3) No member or Speaker of the Legislative Assembly and no person entitled to speak therein shall be liable to any proceedings in any Court in respect of anything said or any vote given by him in the Assembly or in any committee thereof.

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

(5) Subject to the provisions of this Article, the privileges of the Legislative Assembly and of the committees thereof, and the privileges of members and the Speaker of the Assembly and of the persons entitled to speak therein, may be determined by Act:

Provided that no such privilege of the Assembly or of any committee thereof may extend to the imposition of a fine or to committal to prison for contempt or otherwise, unless provision is made by enactment for the trial and punishment of the person concerned by the High Court.

33. Prorogation and dissolution of Legislative Assembly—(1) The High Commissioner may at any time, by notice published in the *Cook Islands Gazette*, prorogue the Legislative Assembly.

(2) If at any time the office of Premier is vacant, the High Commissioner shall, by notice published in the *Cook Islands Gazette*, dissolve the Legislative Assembly as soon as he is satisfied, acting in his discretion, that a reasonable period has elapsed since that office was last vacated and that there is no member of the Assembly likely to command the confidence of a majority of the members.

(3) The High Commissioner may at any time, by notice published in the *Cook Islands Gazette*, dissolve the Legislative Assembly if he is advised by the Premier to do so, but shall not be obliged to act in this respect in accordance with the advice of the Premier unless he is satisfied, acting in his discretion, that in tendering that advice, the Premier commands the confidence of a majority of the members of the Assembly.

(4) The High Commissioner shall dissolve the Legislative Assembly at the expiration of three years from the date of the last preceding general election, if it has not been sooner dissolved.

(5) There shall be a general election of the members of the Legislative Assembly at such time within three months after every dissolution of the Assembly as the High Commissioner appoints by notice published in the *Cook Islands Gazette*.

34. Clerk of the Legislative Assembly—(1) There shall be a Clerk of the Legislative Assembly.

(2) The Clerk shall keep a record of the proceedings of the Legislative Assembly, and shall transmit a copy of those records to the High Commissioner as soon as practicable.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

35. Power to make laws—(1) Subject to the provisions of this Constitution, the Legislative Assembly may make laws (to be known as Acts) for the peace, order, and good government of the Cook Islands.

(2) The powers of the Legislative Assembly shall extend to the making of laws having extra-territorial operation.

(3) Without limiting the generality of the power conferred by sub-clause (1) of this Article to make laws for the peace, order, and good government of the Cook Islands, that power shall, subject to the provisions of this Constitution, include the repeal or revocation or amendment or modification or extension, in relation to the Cook Islands, of any law in force in the Cook Islands.

(4) Except to the extent to which it is inconsistent with this Constitution, no Act and no provision of any Act shall be deemed to be invalid solely on the ground that it is inconsistent with any law in force in the Cook Islands.

36. Power of Legislative Assembly to repeal or amend this Constitution—No Bill repealing or amending or modifying or extending this Constitution or any provision thereof or making any provision inconsistent with any provision of this Constitution shall be deemed to have been passed by the Assembly, unless—

(a) At both the final vote thereon and the vote preceding that final vote it receives the affirmative votes of not less than fifteen members of the Legislative Assembly; and

(b) There is an interval of not less than ninety days between the date on which that final vote was taken and the date on which the preceding vote was taken;—

and no such Bill shall be presented to the High Commissioner for assent unless it is accompanied by a certificate under the hand of the Speaker to that effect.

37. Introduction of Bills, etc., into Legislative Assembly—Subject to the provisions of this Constitution and of the Standing Orders of the Legislative Assembly, any member of the Assembly may introduce any Bill or propose any motion for debate in or present any petition to the Assembly, and the same shall be considered and disposed of in accordance with the Standing Orders.

38. Restrictions with regard to financial measures—Except upon the recommendation of the High Commissioner, the Legislative Assembly shall not—

(a) Proceed upon any Bill (including an amendment to a Bill) that, in the opinion of the person presiding, makes provision for any of the following purposes:

(i) For the imposition or alteration of taxation; or

(ii) For the imposition or alteration of any charge upon the public revenues of the Cook Islands; or

(iii) For the payment, issue, or withdrawal from the Cook Islands Government Account or from any other public account or fund of any money not charged thereon or any increase in the amount of such a payment, issue, or withdrawal; or

(iv) For the composition or remission of any debt due to the Crown:

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (b) Proceed upon any motion (including any amendment to a motion) the effect of which, in the opinion of the person presiding, would be to make provision for those purposes:
- (c) Receive any petition that, in the opinion of the person presiding, requests that provision be made for any of those purposes.

39. Assent to Bills by High Commissioner—(1) No Bill shall become law until it has been passed by the Legislative Assembly and has been assented to by the High Commissioner.

(2) Whenever any Bill which has been passed by the Legislative Assembly is presented to the High Commissioner for his assent, he shall, acting on the advice of the Premier, declare that he assents to the Bill or that he refuses his assent to the Bill:

Provided that the High Commissioner, acting in his discretion, may summon a meeting of the Executive Council, to be held within fourteen days after the Bill is presented to him for his assent, to consider amendments to the Bill proposed by the High Commissioner or to consider whether he should refuse his assent to the Bill.

(3) If at a meeting of the Executive Council thus summoned the Council decides that the Bill should be returned to the Legislative Assembly for consideration of the amendments proposed or, as the case may be, that the High Commissioner should refuse his assent to the Bill, the High Commissioner shall, by Message,—

- (a) Return the Bill with the amendments proposed to the Legislative Assembly for consideration by the Assembly; or, as the case may be
- (b) Return the Bill to the Legislative Assembly for reconsideration by the Assembly.

(4) If at a meeting of the Executive Council thus summoned the Council decides that the Bill should not be returned to the Legislative Assembly for consideration of the amendments proposed or, as the case may be, that the High Commissioner should not refuse his assent to the Bill, the High Commissioner shall declare that he assents to the Bill.

(5) Where any Bill is returned to the Legislative Assembly under the provisions of paragraph (a) of subclause (3) of this Article, and the Bill is again passed by the Assembly with the amendments proposed, but with no other amendments, or in the form in which it was originally presented to the High Commissioner for his assent, then, when the Bill is again presented to the High Commissioner for his assent, he shall declare that he assents to the Bill.

(6) Where any Bill is returned to the Legislative Assembly under the provisions of paragraph (b) of subclause (3) of this Article, and the Bill is again passed by the Assembly in the form in which it was originally presented to the High Commissioner for his assent, then, when the Bill is again presented to the High Commissioner for his assent, he shall declare that he assents to the Bill.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(7) Where any Bill is returned to the Legislative Assembly under the provisions of this Article and the Bill is again passed by the Assembly with any amendments other than amendments proposed under the provisions of this Article, then, when the Bill is again presented to the High Commissioner for his assent, the foregoing provisions of this Article shall apply with respect to the Bill as if it had not previously been presented to the High Commissioner for his assent.

(8) A Bill assented to by the High Commissioner as herein provided shall be known as an Act of the Legislative Assembly.

40. Commencement of Acts—Every Act shall come into operation either on the day on which the Bill is assented to, or on any date (whether earlier or later than the date on which it is assented to) specified in that behalf in the Act, and different dates may be so specified in respect of different provisions of the Act.

41. Power of New Zealand Parliament to legislate for the Cook Islands—(1) No Act, and no provision of any Act, of the Parliament of New Zealand passed on or after Constitution Day shall extend or be deemed to extend to the Cook Islands as part of the law of the Cook Islands, unless—

- (a) The passing of that Act or the making of that provision, so far as it extends to the Cook Islands, has been requested and consented to by the Government of the Cook Islands; and
- (b) It is expressly declared in that Act that the Government of the Cook Islands has requested and consented to the enactment of that Act or of that provision.

(2) Every such request and consent shall be made and given by resolution of the Legislative Assembly or, if the Assembly is not sitting, at the time when the request and consent are made and given, by a decision of the Executive Council.

PART IV

THE JUDICIARY

The High Court of the Cook Islands

42. High Court established—(1) There shall be a Court of record, to be called the High Court of the Cook Islands, for the administration of justice throughout those islands.

(2) Except as provided in this Constitution or by law, the High Court shall have all such jurisdiction (both civil and criminal) as may be necessary to administer the law in force in the Cook Islands.

43. Judges and Commissioners of the High Court—(1) The High Court shall consist of such Judges and Commissioners of that Court as are from time to time appointed under the provisions of this Constitution.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(2) If only one Judge is so appointed, he shall be deemed to be Chief Judge of the High Court, but, if more than one Judge is appointed, one shall be appointed Chief Judge of that Court.

(3) A person shall not be qualified for appointment as a Judge or Commissioner of the High Court unless he possesses such qualifications as the High Commissioner, acting on the advice of the Judicial Service Commission, prescribes.

44. Commissioners of the High Court—(1) A Commissioner of the High Court shall possess and may exercise such of the powers and functions of a Judge of the High Court (whether judicial or administrative, but excluding those vested exclusively in the Chief Judge of that Court) as the High Commissioner, acting on the advice of the Judicial Service Commission, from time to time determines, either generally or with respect to any particular Commissioner or Commissioners of that Court, and all references in any enactment to a Judge of the High Court shall be construed as applying to a Commissioner of the High Court within the limits of the jurisdiction so conferred on him.

(2) The office of Commissioner of the High Court may, with the approval of the Secretary of the Premier's Department, be held concurrently with the office of a Registrar of that Court or with any other position in the Cook Islands Public Service, or may be held concurrently with any other position, but a Commissioner of the High Court in the exercise of his functions as such shall not be under the control of the Secretary of the Premier's Department.

(3) Provision may be made by law for appeals from a Commissioner of the High Court to a Judge of that Court.

45. Acting Chief Judge of the High Court—Where any vacancy exists in the office of Chief Judge of the High Court or the Chief Judge of the High Court is absent from the Cook Islands or is, by reason of illness or any cause other than absence from the Cook Islands, unable to perform the office or exercise any function of Chief Judge of the High Court, the High Commissioner, acting on the advice of the Premier, may authorise the senior other Judge of the High Court for the time being in the Cook Islands, or, if there is no other Judge of the High Court in the Cook Islands, the Chief Judge of the Land Court, to perform that office or exercise that function until a Chief Judge of the High Court is appointed or, as the case may be, the Chief Judge of the High Court resumes that office or exercises that function.

46. Acting Judge of the High Court—The High Commissioner, acting on the advice of the Premier, may authorise any Judge of the Land Court or, acting on the advice of the Judicial Service Commission, may authorise any other person who is qualified to be appointed as a Judge of the High Court, to act as a Judge of the High Court, if—

(a) There is no Judge of the High Court for the time being in the Cook Islands or, by reason of illness or other cause, there is no Judge of the High Court available to act; or

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (b) The Judge of the Land Court or that other person is present on any island of the Cook Islands where civil or criminal proceedings are pending, and—
- (i) No Judge of the High Court can 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 Judge of the High Court and no such Commissioner present on that island.

The Land Court of the Cook Islands

47. Land Court established—There shall be a Court of record, to be called the Land Court of the Cook Islands, which shall have the jurisdiction and powers conferred upon it by law.

48. Judges and Commissioners of the Land Court—(1) The Land Court shall consist of such Judges and Commissioners of that Court as are from time to time appointed under the provisions of this Constitution.

(2) If only one Judge is so appointed, he shall be deemed to be the Chief Judge of the Land Court, but, if more than one Judge is so appointed, one shall be appointed Chief Judge of that Court.

(3) A person shall not be qualified for appointment as a Judge or Commissioner of the Land Court unless he possesses such qualifications as the High Commissioner, acting on the advice of the Judicial Service Commission, prescribes.

49. Commissioners of the Land Court—(1) A Commissioner of the Land Court shall possess and may exercise such of the powers and functions of a Judge of the Land Court (whether judicial or administrative, but excluding those vested exclusively in the Chief Judge of that Court) as the High Commissioner, acting on the advice of the Judicial Service Commission, from time to time determines, either generally or with respect to any particular Commissioner or Commissioners of that Court, and all references in any enactment to a Judge of the Land Court shall be construed as applying to a Commissioner of the Land Court within the limits of the jurisdiction conferred upon him.

(2) The office of Commissioner of the Land Court may, with the approval of the Secretary of the Premier's Department, be held concurrently with the office of a Registrar of that Court or with any other office in the Cook Islands Public Service, or may be held concurrently with any other position, but a Commissioner of the Land Court in the exercise of his functions as such shall not be under the control of the Secretary of the Premier's Department.

(3) Provision may be made by law for appeals from a Commissioner of the Land Court to a Judge of that Court.

The Land Appellate Court of the Cook Islands

50. Land Appellate Court of the Cook Islands—There shall be a Court of record, to be called the Land Appellate Court of the Cook Islands, which shall have the jurisdiction and powers conferred on it by law.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

51. Judges of the Land Appellate Court—(1) The Judges of the Land Court of the Cook Islands and the Judges of the Maori Land Court of New Zealand shall be the Judges of the Land Appellate Court.

(2) Any two or more of the Judges (other than any Judge who determined the matter in dispute in the Land Court) shall have power to act as the Land Appellate Court:

Provided that two Judges at least shall concur in every decision of that Court.

(3) The Land Appellate Court may sit in two or more divisions at the same time, and each division shall have all the powers and jurisdiction of the Land Appellate Court.

(4) The Chief Judge of the Land Court of the Cook Islands shall preside at any sitting of the Land Appellate Court at which he is present. In his absence the Chief Judge of the Maori Land Court of New Zealand, if present, shall preside, and in the absence of both of those Judges the senior Judge present shall preside.

Appointment, Tenure of Office, and Salaries of Judges and Commissioners

52. Appointment of Judges and Commissioners—The Judges and Commissioners of the High Court or of the Land Court shall be appointed as follows:

- (a) The Chief Judge of the High Court and the Chief Judge of the Land Court shall be appointed by the High Commissioner, acting on the advice of the Premier:
- (b) The Judges of the High Court or of the Land Court (other than the Chief Judge) and the Commissioners of the High Court or of the Land Court shall be appointed by the High Commissioner, acting on the advice of the Judicial Service Commission.

53. Tenure of office of Judges and Commissioners—(1) Except in the case of an appointment made under subclause (2) of this Article, no person who has attained the age of sixty-five years shall be appointed to or continue to hold office as a Judge of the High Court or of the Land Court.

(2) Any person of any age who is not ordinarily resident in the Cook Islands (as defined in subclause (2) of Article 24 hereof) and who is qualified for appointment may be appointed to hold office as a Judge of the High Court or of the Land Court for a term of years.

(3) Nothing done by a Judge of the High Court or of the Land Court in the performance of his functions shall be deemed to be invalid by reason only that he has reached the age at which he is required by this Article to retire or that his term of office has expired, as the case may be.

(4) A Judge or Commissioner of the High Court or of the Land Court may resign his office by writing under his hand addressed to the High Commissioner.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(5) A Commissioner of the High Court or of the Land Court shall not be removed from office as such except by the High Commissioner, acting on the advice of the Judicial Service Commission.

54. Removal of Judges from office—(1) A Judge of the High Court or of the Land Court may be removed from office by the High Commissioner only for inability to discharge the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour, and shall not be so removed unless the question of the removal of that Judge from office has been referred to a tribunal appointed under subclause (2) of this Article and that tribunal has recommended that the Judge be removed from office for inability as aforesaid or misbehaviour.

(2) If the Premier advises the High Commissioner that the question of removing from office a Judge of the High Court or of the Land Court for inability as aforesaid or misbehaviour ought to be investigated, then,—

(a) The High Commissioner shall appoint a tribunal consisting of a chairman and two other members; and

(b) The tribunal shall inquire into the matter and report on the facts thereof to the High Commissioner and recommended to the High Commissioner whether or not that Judge should be removed from office; and

(c) If the tribunal recommends that the Judge be so removed, the High Commissioner shall, by warrant, revoke the appointment of that Judge.

(3) No person shall be qualified for appointment as a member of a tribunal under this Article, unless—

(a) He holds or has held office as a Judge of the Supreme Court of New Zealand or of the Court of Appeal of New Zealand or an equivalent office in any other part of the Commonwealth or in an approved country; or

(b) He has been in practice as a barrister in New Zealand or in any other part of the Commonwealth or in an approved country, or partly in New Zealand and partly in any other part of the Commonwealth or in an approved country, for a period of, or periods amounting in the aggregate to, not less than seven years.

(4) For the purposes of this Article, the High Commissioner may designate as an approved country any country which in his opinion has a legal system similar to that existing in New Zealand.

(5) No business shall be transacted by a tribunal appointed under this Article unless all three members are present, and all questions proposed for decision by the tribunal shall be decided by the votes of a majority of those members.

(6) Subject to this Article, the tribunal shall determine its own procedure.

(7) If the question of removing from office a Judge of the High Court or of the Land Court has been referred to a tribunal under subclause (2) of this Article, the High Commissioner, acting on the advice of the Premier, may suspend the Judge from performing the functions of his office, and any such suspension may at any time be revoked by the

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

High Commissioner, acting on the advice of the Premier, and shall in any case cease to have effect if the tribunal does not recommend to the High Commissioner that the Judge be removed from office.

55. Salaries of Judges—(1) The salaries of the Judges of the High Court or of the Land Court shall be determined by enactment, and shall be charged on the Cook Islands Government Account.

(2) The salaries of those Judges shall not be diminished during their period of office, unless as part of a general reduction of salaries applied proportionately to all persons whose salaries are determined by enactment.

*Appeals from High Court***56. Appeal from High Court to Supreme Court of New Zealand**—

(1) Subject to the provisions of this Constitution, an appeal shall lie to the Supreme Court of New Zealand from a final judgment of the High Court—

- (a) As of right, if the High Court certifies that the case involves a substantial question of law as to the interpretation or effect of any provision of this Constitution:
- (b) As of right, from any conviction by the High Court in the exercise of its criminal jurisdiction whereby the appellant has been sentenced to death or to imprisonment for a term exceeding six months or to a fine of not less than one hundred pounds, and from any such sentence (not being a sentence fixed by law):
- (c) As of right, when the matter in dispute on the appeal amounts to or is of the value of two hundred pounds or upwards:
- (d) With the leave of the High Court in any other case, if in the opinion of that Court the question involved in the appeal is one which by reason of its general or public importance, or of the magnitude of the interests affected, or for any other reason, ought to be submitted to the Supreme Court of New Zealand for decision.

(2) Notwithstanding anything in subclause (1) of this Article, the Supreme Court of New Zealand may, in any case in which it thinks fit and at any time, grant special leave to appeal to that Court from any final judgment of the High Court, subject to such conditions as to security for costs and otherwise as the Supreme Court thinks fit.

57. Transmission of order of Supreme Court on appeal—The determination of the Supreme Court of New Zealand on any appeal from the High Court under Article 56 hereof shall be transmitted to the Registrar of the High Court by the Registrar of the Supreme Court under the seal of the Supreme Court, and judgment shall thereupon be entered by the High Court in conformity with that determination, or such other proceedings by way of a new trial or otherwise shall be taken in the High Court as are required by that determination.

58. No appeal to Court of Appeal—There shall be no appeal to the Court of Appeal of New Zealand from any decision of the Supreme Court of New Zealand on an appeal from the High Court under Article 56 hereof.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued**Justices of the Peace*

59. **Justices of the Peace**—(1) The High Commissioner, acting on the advice of the Judicial Service Commission, may appoint Justices of the Peace for the Cook Islands, who shall hold office for such time as may be prescribed in their warrants of appointment and may be paid such remuneration as may be prescribed by enactment.

(2) Any two or more Justices of the Peace for the Cook Islands acting together may exercise in the Cook Islands the jurisdiction of a Commissioner of the High Court, and Article 44 hereof, with the necessary modifications, shall apply as if references therein to a Commissioner of the High Court were references to two or more Justices of the Peace for the Cook Islands.

(3) A Justice of the Peace for the Cook Islands shall not be removed from office as such, except by the High Commissioner, acting on the advice of the Judicial Service Commission.

Oath of Allegiance and Judicial Oath

60. **Oath of Allegiance and Judicial Oath**—(1) Every Judge or Commissioner of the High Court or of the Land Court, every Judge of the Land Appellate Court who is not also a Judge of the Land Court, and every Justice of the Peace for the Cook Islands (being persons appointed to those offices on or after Constitution Day) shall, as soon as may be after his acceptance of office, take and subscribe before the High Commissioner the following oaths:

(a) An Oath of Allegiance in the following form—

I,, swear by Almighty God that I will be faithful and bear true allegiance to Her [or His] Majesty [*Specify the name of the reigning Sovereign as thus: Queen Elizabeth the Second*] as the Head of State of the Cook Islands, Her [or His] heirs, and successors, in accordance with the Constitution and the law. So help me God.:

(b) The Judicial Oath in the following form—

I,, swear by Almighty God that I will well and truly serve Her [or His] Majesty [*Specify as above*] as the Head of State of the Cook Islands, Her [or His] heirs, and successors, in accordance with the Constitution and the law, in the office of _____; and I will do right to all manner of people, without fear or favour, affection or ill will. So help me God.

(2) If any person mentioned in this Article declines or neglects, when the oaths required to be taken by him under this Article are duly tendered, to take those oaths, he shall if he has already entered on his office vacate the same, and if he has not entered on the same be disqualified from entering on the same; but no person shall be compelled in respect of the same appointment to the same office to take any oath more than once:

Provided that no proceedings before any such person may be questioned in any Court solely on the ground that that person has failed to take the oaths prescribed by this Article.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

The Judicial Service Commission

61. The Judicial Service Commission—(1) There shall be a Judicial Service Commission, which shall consist of—

- (a) The Chief Judge of the High Court, as president;
- (b) A person nominated from time to time by the Minister in Charge of the Justice Department of the Cook Islands;
- (c) A person, not being an employee of the Cook Islands Public Service or a member of the Legislative Assembly, nominated from time to time, with the concurrence of the Chief Judge of the High Court, by the Minister in Charge of the Justice Department of the Cook Islands.

(2) No business shall be transacted by the Judicial Service Commission unless all three members are present, and all questions proposed for decision by the Commission shall be decided by a majority of the votes of those members.

(3) Subject to this Article, the Judicial Service Commission shall determine its own procedure.

PART V

THE PUBLIC REVENUES OF THE COOK ISLANDS

62. Public Funds—There shall be a Cook Islands Government Account and such other public funds or accounts as may be provided by law.

63. Restriction on taxation—No taxation shall be imposed except by law.

64. Public revenue—All taxes and other revenues and money raised or received by the Government of the Cook Islands shall be paid into the Cook Islands Government Account unless required or permitted by law to be paid into any other public fund or account.

65. Revenue and expenditure of Cook Islands Government Account—
(1) Except as provided in subclause (3) of this Article, or by any specific appropriation contained in any enactment, all expenditure in any financial year from the Cook Islands Government Account or from any other public fund or account shall be charged to votes specified in an Appropriation Act and in accordance with the statement of proposed expenditure for that financial year as approved by the Legislative Assembly.

(2) Every Appropriation Act shall lapse at the end of the financial year to which it relates.

(3) Subject to such limits and restrictions as may from time to time be prescribed by any enactment, the Minister responsible for finance, or, where any enactment so provides, the Executive Council, may approve the expenditure of such sums as he or it considers necessary—

(a) In anticipation of provision to be made in the Appropriation Act for any financial year:

Provided that the total amount issued and paid under this paragraph (a) in any financial year shall not exceed the unexpended balance of the vote in the Appropriation Act for the preceding financial year together with an amount equal to one-fourth of that vote; or

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(b) Where during the period between the passing of the Appropriation Act for any financial year and the end of that year it is desirable that money should be expended in excess of or without the appropriation of the Legislative Assembly:

Provided that the total amount of all sums issued and paid under this paragraph (b) in any financial year shall not exceed one and a half per cent of the total amount of all sums appropriated by the Appropriation Act for that year.

(4) A statement of the unauthorised expenditure for any financial year shall be included in the accounts for that year laid before the Legislative Assembly.

(5) Subject to the foregoing provisions of this Article, the collection, receipt, custody, banking, issue, expenditure, care, and management of money credited or to be credited to the Cook Islands Government Account or to any other public fund or account shall be as prescribed by enactment.

66. Audit—(1) The Audit Office of New Zealand shall be the auditor of the Cook Islands Government Account and of all other public funds or accounts, and of the accounts of all Departments and offices of executive government and of such other public, statutory, or local authorities or bodies as may be provided by law.

(2) The Audit Office shall, at least once annually, forward to the Speaker of the Legislative Assembly for presentation to the Assembly a report containing such information as is required to be submitted by any enactment, together with such other information relating to the Cook Islands Government Account or other funds or accounts which under any enactment are required to be audited by the Audit Office as that Office considers desirable.

PART VI

THE COOK ISLANDS PUBLIC SERVICE

67. The Cook Islands Public Service—There shall be a Cook Islands Public Service, which shall comprise such persons in the service of the Government of the Cook Islands as may from time to time be prescribed by law.

68. Secretary of the Premier's Department—(1) There shall be a Secretary of the Premier's Department, who shall be the permanent head of that Department and the principal administrative officer of the Government of the Cook Islands.

(2) The Secretary of the Premier's Department shall be appointed by the High Commissioner, acting on the advice of the Premier.

(3) The Secretary of the Premier's Department shall be deemed not to be an employee of the Cook Islands Public Service:

Provided that the provisions of any law for the time being in force relating to the tenure of office of employees of that Service, the grounds on which such employees may be dismissed or suspended, and the rights of such employees to appeal against dismissal or suspension shall, with any necessary modifications, apply with respect to the Secretary of the Premier's Department as if he were an employee of that Service.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(4) The salary of the Secretary of the Premier's Department shall be determined by the High Commissioner, acting on the advice of the Premier.

69. Cook Islands Public Service to be under the control of Secretary of the Premier's Department—(1) Subject to the provisions of subclause (3) of this Article, the Secretary of the Premier's Department shall be responsible for the appointment, promotion, transfer, termination of appointment, dismissal, and disciplinary control of the Cook Islands Public Service, and shall have such other functions as may be prescribed by law.

(2) In the performance of his functions under this Article, the Secretary of the Premier's Department shall have regard to the general policy of Cabinet relating to the Cook Islands Public Service, and shall give effect to any decision of Cabinet defining that policy conveyed to him in writing by the Premier.

(3) An Act may designate as a special post any post of head of department or any other senior post in the Cook Islands Public Service; and the promotion or appointment to or in any post so designated shall be made by the Secretary of the Premier's Department with the concurrence of Cabinet.

(4) No appeal by any employee of the Cook Islands Public Service shall lie to the Cook Islands Public Service Board of Appeal against the promotion or appointment of any person to or in any post designated as a special post pursuant to subclause (3) of this Article.

(5) A decision of Cabinet concurring or refusing to concur in any recommendation of the Secretary of the Premier's Department with reference to the promotion or appointment of any person to or in any post designated as a special post as aforesaid shall be deemed to be a decision to which Article 21 hereof (which relates to the reconsideration of Cabinet decisions by the Executive Council) applies.

70. Staff of High Commissioner—(1) Except as provided in subclause (2) of this Article, the appointment, terms of service, disciplinary control, termination of appointment, and dismissal of the staff of the High Commissioner shall be matters for the High Commissioner, acting in his discretion.

(2) The High Commissioner, if he so desires, may appoint to his staff such employees of the Cook Islands Public Service as he may select, acting in his discretion but after consultation with the Premier, from a list submitted by the Secretary of the Premier's Department; and the provisions of subclause (1) of this Article (except so far as they relate to appointment) shall apply in relation to a person so appointed in respect of his service on the staff of the High Commissioner but not in respect of his service as an employee of the Cook Islands Public Service.

71. Board of Appeal—(1) There shall be a Cook Islands Public Service Board of Appeal, which shall consist of—

(a) The Chief Judge of the High Court:

(b) One person, being an employee or former employee of the Cook Islands Public Service, to be appointed by, and hold office at the pleasure of, the High Commissioner, acting on the advice of the Premier:

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (c) One person, being an employee or former employee of the Cook Islands Public Service, to be elected by the employees of that Service or nominated by an organisation of those employees, and to hold office for a period of three years.
- (2) The Chief Judge shall be Chairman of the Board of Appeal.
- (3) An Act may—
- (a) Prescribe whether or not the person to be appointed under the provisions of paragraph (c) of subclause (1) of this Article is to be elected or nominated and the manner of that election or nomination:
- (b) Provide for the appointment of deputies to act for members of the Board of Appeal appointed under the provisions of paragraph (b) or paragraph (c) of subclause (1) of this Article:
- (c) Subject to the provisions of subclause (4) of Article 69 hereof, prescribe the jurisdiction of the Board of Appeal to hear and determine appeals from the decisions of the Secretary of the Premier's Department in relation to the Cook Islands Public Service:
- (d) Prescribe the procedure of the Board of Appeal.
- (4) Subject to the provisions of any Act, the Board of Appeal shall determine its own procedure.
- (5) In this Article the term "employee" does not include a temporary or probationary employee.

PART VII

TRANSITIONAL PROVISIONS

72. Existing law to continue—Subject to the provisions of this Constitution,—

- (a) The existing law shall, until repealed, and subject to any amendment thereof, continue in force on and after Constitution Day:
- (b) All rights, obligations, and liabilities arising under the existing law shall continue to exist on and after Constitution Day, and shall be recognised, exercised, and enforced accordingly.

73. High Commissioner of the Cook Islands—The person holding office immediately before Constitution Day as the Resident Commissioner of the Cook Islands shall, without further appointment, be deemed to have been appointed the High Commissioner of the Cook Islands.

74. Legislative Assembly of the Cook Islands—(1) The Legislative Assembly of the Cook Islands shall continue in being on and after Constitution Day, and the members of the Assembly immediately before Constitution Day shall be deemed to have been duly elected under the provisions of this Constitution.

(2) The Speaker and Deputy Speaker of the Legislative Assembly who are in office immediately before Constitution Day shall be deemed to have been duly elected as Speaker and Deputy Speaker, respectively, under the provisions of this Constitution.

(3) For the purposes of subclause (4) of Article 33 hereof, the date of the general election at which the Legislative Assembly was elected shall be the date of the last preceding general election in respect of the Assembly in being on and after Constitution Day.

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

(4) Subject to the provisions of this Constitution, the Standing Orders of the Legislative Assembly in force immediately before Constitution Day shall continue to be the Standing Orders of the Assembly, and they may be amended, repealed, or added to under the provisions of Article 30 hereof.

75. Ordinances of former Legislative Council or Legislative Assembly—(1) All Ordinances made by the Legislative Council of the Cook Islands under section 2 of the Cook Islands Amendment Act 1946, and in force immediately before Constitution Day, shall continue in force on and after Constitution Day as if they were Ordinances made by the Legislative Assembly of the Cook Islands.

(2) All Ordinances made by the Legislative Assembly of the Cook Islands under section 38 of the Cook Islands Amendment Act 1957, and in force immediately before Constitution Day, shall continue in force on and after Constitution Day.

76. The High Court—(1) The High Court of the Cook Islands established by Article 42 hereof is hereby declared to be the same Court as the High Court of the Cook Islands established by the Cook Islands Act 1915.

(2) The Judges and Commissioners of that Court in office immediately before Constitution Day shall continue to hold office on and after Constitution Day as if they had been appointed under the provisions of this Constitution.

(3) All judgments, decrees, records, and acts of the High Court of the Cook Islands shall continue to have full force and effect on and after Constitution Day as judgments, decrees, records, and acts of the High Court established under this Constitution; and all proceedings, civil or criminal, pending in the High Court immediately before Constitution Day, and all appeals pending immediately before Constitution Day from decisions of the High Court, may be continued on and after Constitution Day.

77. The Land Court—(1) The Land Court of the Cook Islands established by Article 47 hereof is hereby declared to be the same Court as the Native Land Court of the Cook Islands established by the Cook Islands Act 1915.

(2) The Land Court of the Cook Islands shall also be deemed for all purposes to be the same Court as that which existed at the commencement of the Cook Islands Act 1915 under the name of the Cook Islands Land Titles Court, and all orders theretofore made by the last-mentioned Court shall have effect accordingly.

(3) The Judges and Commissioners of the Native Land Court of the Cook Islands in office immediately before Constitution Day shall hold office on and after Constitution Day as Judges or Commissioners, as the case may be, of the Land Court of the Cook Islands as if they had been appointed under the provisions of this Constitution.

(4) All judgments, decrees, records, and acts of the Native Land Court of the Cook Islands shall continue in full force and effect on and after Constitution Day as judgments, decrees, records, and acts of the Land Court of the Cook Islands; and all proceedings pending in the Native Land Court of the Cook Islands immediately before Constitution Day may be continued in the Land Court of the Cook Islands on and after Constitution Day.

SCHEDULE—*continued*THE CONSTITUTION OF THE COOK ISLANDS—*continued*

78. The Land Appellate Court—(1) The Land Appellate Court of the Cook Islands established by Article 50 hereof is hereby declared to be the same Court as the Native Appellate Court of the Cook Islands established by section 19 of the Cook Islands Amendment Act 1946.

(2) All judgments, decrees, records, and acts of the Native Appellate Court of the Cook Islands shall continue in full force and effect on and after Constitution Day as judgments, decrees, records, and acts of the Land Appellate Court of the Cook Islands; and all proceedings pending in the Native Appellate Court of the Cook Islands immediately before Constitution Day may be continued in the Land Appellate Court of the Cook Islands on and after Constitution Day.

79. Justices of the Peace—(1) Every person holding office immediately before Constitution Day as a Justice of the Peace for the Cook Islands other than Niue shall continue in office as a Justice of the Peace for the Cook Islands, as if he had been appointed to that office pursuant to Article 59 hereof.

(2) Subject to the provisions of subclause (3) of Article 59 hereof, every such person shall continue to hold office during the pleasure of the High Commissioner.

80. Cook Islands Government Account—The Cook Islands Government Account established by Article 62 hereof is hereby declared to be the same account as the Cook Islands Assembly Account established by section 15 of the Cook Islands Amendment Act 1957; and all money in the last-mentioned account immediately before Constitution Day shall on and after Constitution Day be deemed to form part of the Cook Islands Government Account.

81. Power of Governor-General to make regulations—(1) The Governor-General may from time to time, by Order in Council made at the request and with the consent of the Government of the Cook Islands, make regulations, not inconsistent with any provision of this Constitution, for the peace, order, and good government of the Cook Islands.

(2) Every such request and consent by the Government of the Cook Islands shall be made and given by resolution of the Legislative Assembly or, if the Assembly is not sitting at the time when the request and consent are made and given, by a decision of the Executive Council.

(3) Regulations made pursuant to this section shall expressly declare that the Government of the Cook Islands has requested and consented to the making thereof.

(4) The maximum penalty which may be prescribed for the breach of any regulation made under the provisions of this Article shall not exceed—

(a) In the case of an individual, imprisonment for a term not exceeding one year or a fine not exceeding one hundred pounds and, where the offence is a continuing one, a further fine not exceeding twenty pounds for every day or part of a day during which the offence has continued:

SCHEDULE—*continued*

THE CONSTITUTION OF THE COOK ISLANDS—*continued*

- (b) In the case of a body corporate, a fine not exceeding five hundred pounds and, where the offence is a continuing one, a further fine not exceeding twenty pounds for every day or part of a day during which the offence has continued.
- (5) Regulations made under the provisions of this Article may be made applicable either to all of the islands of the Cook Islands or to one or more thereof exclusively.