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Cook Islands Amendment Act 1946

Public Act 1946 No 30
Date of assent 12 October 1946

Cook Islands Amendment Act 1946: repealed, on 20 September 2007, by section 7(1) of the Cook Islands Amendment Act 2007 (2007 No 49).

Contents

	Page
Title	2
1 Short Title	2
Part 1	
The Legislative Government of the Cook Islands	
Part 2	
The Land Appellate Court	
26 Appeals from provisional determinations as to title to land	5
Part 3	
Miscellaneous amendments	
50 Land Court may make orders as to occupation of Native land	8
Part 4	
Land development	
54 Application of this Part to land by order of Land Court	9
55 Minister may cultivate land on behalf of owners	9
56 Disposal of revenues received by Minister	12
57 Money to be paid out of Cook Islands Government Account	13
58 Minister may delegate powers	13
	1

59	Interference and obstruction prohibited	14
61	Validation of acts done in anticipation	14

An Act to amend the Cook Islands Act 1915

1 Short Title

This Act may be cited as the Cook Islands Amendment Act 1946, and shall be read together with and deemed part of the Cook Islands Act 1915 (hereinafter referred to as the principal Act).

Part 1 The Legislative Government of the Cook Islands

2

Sections 2 to 18 were repealed, as from 1 September 1958, by section 96(1) Cook Islands Amendment Act 1957 (1957 No 103). *See* regulations (2) Cook Islands Amendment Act Commencement Order 1958 (SR 1958/119); regulations (2) Cook Islands Amendment Act Commencement Order 1959 (SR 1959/62); and regulations (2) Cook Islands Amendment Act Commencement Order (No 2) 1959 (SR 1959/148).

3

Sections 2 to 18 were repealed, as from 1 September 1958, by section 96(1) Cook Islands Amendment Act 1957 (1957 No 103). *See* regulations (2) Cook Islands Amendment Act Commencement Order 1958 (SR 1958/119); regulations (2) Cook Islands Amendment Act Commencement Order 1959 (SR 1959/62); and regulations (2) Cook Islands Amendment Act Commencement Order 1959 (No 2) (SR 1959/148).

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Part 2

The Land Appellate Court

19

Sections 19 and 20 were repealed, as from 4 August 1965, by section 58 Cook Islands Amendment Act 1964 (1964 No 70). *See* regulations (2) Cook Islands Constitution Act Commencement Order 1965 (SR 1965 No 128).

20

Sections 19 and 20 were repealed, as from 4 August 1965, by section 58 Cook Islands Amendment Act 1964 (1964 No 70). *See* regulations (2) Cook Islands Constitution Act Commencement Order 1965 (SR 1965 No 128).

21

Sections 21 and 22 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

22

Sections 21 and 22 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

23

The former subsection (1) was substituted, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1).

The former subsection (2) was amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1) by substituting the word “enactment” for the word “rules”.

Section 23 was repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

24

Sections 24 and 25 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

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Sections 24 and 25 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

26 Appeals from provisional determinations as to title to land

(1) By leave of the Land Court an appeal shall lie to the Land Appellate Court from any provisional or preliminary determination of the Land Court made in the course of any proceedings for the ascertainment of the title to customary land or for partition.

(2) Any such appeal may be brought at the suit of any person who is interested in the determination appealed from or who would be bound by a freehold order or partition order made in pursuance thereof.

- (3) When leave to appeal is so given, the Land Court may either stay further proceedings in the matter or continue the same, but no final order shall be made until the appeal has been finally disposed of or dismissed.
- (4) When any such appeal has been determined by the Land Appellate Court, no further appeal shall lie as of right at the suit of any person from any final order thereafter made in those proceedings by the Land Court, so far as that order conforms to the determination of the Land Appellate Court.

In subsections (1), (3), and (4) the words “the Land Court” were substituted, as from 4 August 1965, for the words “the Native Land Court” by section 57(4) Cook Islands Amendment Act 1964 (1964 No 70). *See* regulations (2) Cook Islands Constitution Act Commencement Order 1965 (SR 1965/128).

In subsections (1) and (4) the words “the Land Appellate Court” were substituted, as from 4 August 1965, for the words “the Native Appellate Court” by section 57(4) Cook Islands Amendment Act 1964 (1964 No 70). *See* regulations (2) Cook Islands Constitution Act Commencement Order 1965 (SR 1965/128).

27

Sections 27 to 33 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

28

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33

Sections 27 to 33 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

34

The former subsection (2) was amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1) by inserting the words “in charge of the Justice Department”.

Section 34 was repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

35

Sections 35 to 38 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

36

Sections 35 to 38 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

37

Sections 35 to 38 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

38

Sections 35 to 38 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

39

The former subsection (1) was amended, as from 1 December 1950, by section 11(3) Cook Islands Amendment Act 1950 (1950 No 92) by inserting the words “or to the interests of descendants of Natives in any Native Freehold land”.

Section 39 was repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

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Section 40 was Repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

Part 3

Miscellaneous amendments

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Section 41 was repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

42

Section 42 was repealed, as from 1 September 1958, by section 96(1) Cook Islands Amendment Act 1957 (1957 No 103). *See* regulations (2) Cook Islands Amendment Act Commencement Order 1958 (SR 1958/119); regulations (2) Cook Islands Amendment Act Commencement Order 1959 (SR 1959/62); and regulations (2) Cook Islands Amendment Act Commencement Order 1959 (No 2) (SR 1959/148).

43

Sections 43 to 48 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

44

Sections 43 to 48 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

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47

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48

Sections 43 to 48 were repealed, as from 23 November 1982, by section 2(2) Cook Islands Amendment Act 1982 (1982 No 65).

49**50 Land Court may make orders as to occupation of Native land**

- (1) In any case where the Land Court is satisfied that it is the wish of the majority of the owners of any Native land that that land or any part thereof should be occupied by any person or persons (being Natives or descendants of Natives), the Court may make an order accordingly granting the right of occupation of the land or part thereof to that person or those persons for such period and upon such terms and conditions as the Court thinks fit.
- (2) Any person occupying any land under any such order of the Court shall, subject to the terms of the order, be deemed to be the owner of the land under Native custom.
- (3) No order shall be made by the Court under this section without the consent of the person or persons to whom the right of occupation is granted.

In subsection (1) the words “the Land Court” were substituted, as from 4 August 1965, for the words “the Native Land Court” by section 57(4) Cook Islands Amendment Act 1964 (1964 No 70). *See* regulations (2) Cook Islands Constitution Act Commencement Order 1965 (SR 1965/128).

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Part 4 Land development

54 Application of this Part to land by order of Land Court

- (1) The Land Court may, with the consent of a majority of the owners, by order declare that any land owned by Natives shall be subject to the provisions of this Part of this Act for such period as may be defined in the order, and the period fixed by the order may be extended by the Court from time to time.
- (2) The Land Court may by order direct that any land shall be no longer subject to the provisions of this Part of this Act, and thereupon the Minister responsible for agriculture shall cease to have any right of control in respect thereof, but without releasing the land or any of the parties from any antecedent liability incurred to or by the Minister, and the Minister may, notwithstanding the order of the Court, continue to exercise his powers of creation and enforcement of charges hereunder so long as any such liability remains.
- (3) For the purposes of this Part of this Act, the term **Native** shall include any descendant of a Native as defined in section 2 of the principal Act.

In subsection (1) the words “the Land Court” were substituted, as from 4 August 1965, for the words “the Native Land Court” by section 57(4) Cook Islands Amendment Act 1964 (1964 No 70). *See* regulations (2) Cook Islands Constitution Act Commencement Order 1965 (SR 1965/128).

The original subsection (2) was amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1).

Subsection (2) was substituted, as from 1 January 1967, by section 2(2) Cook Islands Amendment Act 1966 (1966 No 39).

55 Minister may cultivate land on behalf of owners

- (1) Where any land has been declared by the Land Court to be subject to the provisions of this Part of this Act, the Minister responsible for agriculture (in this Part of this Act referred to as the Minister) may, subject to any lease, licence, or other alienation to which the land is subject, cultivate, use, and man-

age the whole or any part or parts of the land, and may carry on any agricultural business or any other business or occupation connected with the land and the produce thereof on behalf of and for the benefit of the owners or such Natives as may be interested in the business carried on.

- (2) For the purpose of any such business the Minister may—
 - (a) Purchase or otherwise acquire implements or other personal property as he may think expedient, and may also sell or otherwise dispose of all crops or other personal property acquired, held, grown, or produced by the Minister in the course of the business:
 - (b) Provide, erect, maintain, and equip stores, factories, sheds, offices, or buildings of any kind:
 - (c) Do all other things reasonably necessary for the development and operation of the business, and for the improvement of the land.
- (3) Subject to the control of the Secretary of the Premier's Department, the Minister may employ all such servants or agents as he may deem necessary, at such remuneration as he shall think fit.
- (4) The Minister may enter into a contract with any beneficial or other owner for farming or cropping on shares upon any land being administered or dealt with under this Part of this Act, for such period and upon such conditions as to remuneration or otherwise as the Minister thinks fit. Any such contract shall be in the name of the Minister, and shall be as effective as if he were the legal owner of the land mentioned therein.
- (5) The Minister may retain any part of the revenue derived from the operation of any business as a reserve fund for expenditure in the management of the business, and may from time to time, as he thinks fit, either expend the reserve fund accordingly or may apply it or any part of it in any other manner in accordance with this Part of this Act.
- (6) The Minister may from time to time expend such sum or sums as he considers expedient for the purposes of carrying on any business.
- (7) The Minister shall be entitled to make a reasonable charge for administration, and all expenses and liabilities (including ad-

ministration expenses) incurred by the Minister in the conduct of any business shall be a charge upon the revenue received by him from the business as well as upon the lands whereon the business is conducted.

- (8) The Minister may make advances to any Native beneficiary in respect of his share or interest in the profits of the business, either by way of anticipation or otherwise.
- (9) All sums of money advanced by the Minister, whether on account of the business generally or to a beneficial or other owner, shall constitute a charge upon the land and shall bear interest at such rate as the Minister shall from time to time determine. The Land Court may make separate orders evidencing any charge in respect of different pieces of land or in respect of different parts of or interests in any piece of land, and for that purpose may apportion, in such manner and in such proportions as it thinks just and equitable, any money secured or proposed to be secured by any charge.
- (10) The provisions of section 473 of the principal Act (prohibiting the assignment of rents or profits) shall apply to all advances or other money which is or may become payable to any Native in respect of his share or interest in the profits of the business. No person other than a Native beneficiary shall be capable of acquiring any beneficial interest except by will or by order of the Land Court in any crops or chattels held by the Minister or in any revenue derived or to arise therefrom, nor shall the beneficial interest of any Native beneficiary be liable to be taken in execution or attached or become assets in the bankruptcy of a Native beneficiary.
- (11) Nothing in section 470 of the principal Act (prohibiting alienation by way of security) shall apply to any land that is subject to the provisions of this Part of this Act.

In subsection (1) the words “the Land Court” were substituted, as from 4 August 1965, for the words “the Native Land Court” by section 57(4) Cook Islands Amendment Act 1964 (1964 No 70). See regulations (2) Cook Islands Constitution Act Commencement Order 1965 (SR 1965/128).

Subsection (1) was amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1) by substituting the words “the Minister responsible for agriculture (in this Part of this Act referred to as the Minister) in the case of land situated in the Cook Islands other than Niue, and the Resident Commissioner in the case of land situated in Niue” for the words “the Resident Commissioner”

Subsection (1) was further amended, as from 1 January 1967, by section 2(2) Cook Islands Amendment Act 1966 (1966 No 39) by substituting the words “the Minister responsible for agriculture (in this Part of this Act referred to as the Minister)” for the words “the Minister responsible for agriculture (in this Part of this Act referred to as the Minister) in the case of land situated in the Cook Islands other than Niue, and the Resident Commissioner, in the case of land situated in Niue”.

Subsections (2) to (10) were amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1) by substituting the words “Minister or the Resident Commissioner, as the case may be” for the words “Resident Commissioner”.

Subsections (2) to (10) were further amended, as from 1 January 1967, by section 2(2) Cook Islands Amendment Act 1966 (1966 No 39) by substituting the word “Minister” for the words “Minister or the Resident Commissioner, as the case may be”.

Subsection (3) was amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1) by substituting the words “in the case of land situated in Niue, to the control of the Commission, and, in the case of any other land, to the control of the Secretary of the Premier’s Department” for the words “to the control of the Public Service Commissioner”.

Subsection (3) was further amended, as from 1 January 1967, by section 2(2) Cook Islands Amendment Act 1966 (1966 No 39) by substituting the words “to the control of the Secretary of the Premier’s Department” for the words “in the case of land situated in Niue, to the control of the Commission, and, in the case of any other land, to the control of the Secretary of the Premier’s Department”.

In subsections (9) and (10) the words “the Land Court” were substituted, as from 4 August 1965, for the words “the Native Land Court” by section 57(4) Cook Islands Amendment Act 1964 (1964 No 70). *See* regulations (2) Cook Islands Constitution Act Commencement Order 1965 (SR 1965/128).

56 Disposal of revenues received by Minister

All revenues received by a Minister from any land subject to this Part of this Act or from any business carried on under this Part shall from time to time be applied as follows:

- (a) In defraying the cost of the administration of the land or business:
- (b) In paying all rates, taxes, and other assessments and outgoings payable by the Minister in respect of the land or business:
- (c) In the discharge, to such extent as may be required or as the Minister thinks fit, of any mortgage, charge, encumbrance, or liability to which the land or business is subject:

- (d) In payment of sums (if any) set apart to meet any charge for improvements made upon any land:
- (e) For any other purposes in connection with the administration, improvement, and settlement of the land from which the revenues are derived, or for any other purposes of general utility to the Native owners of that land:
- (f) In paying at the times and in the manner prescribed the residue of the revenues to the Native owners or other persons having any estate or interest in the land or business in accordance with their respective interests.

This section was amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1) by substituting the words “Minister or the Resident Commissioner, as the case may be” for the words “Resident Commissioner”.

This section was further amended, as from 1 January 1967, by section 2(2) Cook Islands Amendment Act 1966 (1966 No 39) by substituting the word “Minister” for the words “Minister or the Resident Commissioner, as the case may be”.

57 Money to be paid out of Cook Islands Government Account

- (1) All money expended or advanced by the Minister under this Part of this Act shall be paid out of the Cook Islands Government Account.
- (2) All money received by the Minister under this Part of this Act shall be paid into the Cook Islands Government Account.

The original section was amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1).

This section was substituted, as from 1 January 1967, by section 2(2) Cook Islands Amendment Act 1966 (1966 No 39).

58 Minister may delegate powers

- (1) Subject to the provisions of any enactment, the Minister may from time to time delegate any of his powers or functions under this Part to any officer of the Cook Islands Public Service, and any such officer may, subject to the control of the Minister, exercise or perform those powers or functions accordingly.
- (2) All things done by an officer of the Cook Islands Public Service pursuant to any delegation under this section shall be as valid and effective as if they had been done by the Minister,

and accordingly shall, where necessary, be deemed to have been so done.

The original section was amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1).

This section was substituted, as from 1 January 1967, by section 2(2) Cook Islands Amendment Act 1966 (1966 No 39).

59 Interference and obstruction prohibited

- (1) Except with the consent of the Minister, no person shall be entitled to exercise any rights of ownership in respect of any land that is subject to this Part of this Act.
- (2) Every person shall be liable on summary conviction to a fine of \$40, or to imprisonment for 3 months, who—
 - (a) Wilfully trespasses on any such land, and neglects or refuses to leave the land after being warned to do so by any person authorised in that behalf by the Minister:
 - (b) Wilfully obstructs, hinders, or delays any officer, servant, or workman in the performance or intended performance of his duties under this Part of this Act, or otherwise obstructs or interferes with the carrying out of any works under this Part of this Act.
- (3) In any proceedings for an offence against this section in respect of any land, the fact that the defendant has an interest in the land shall not be a defence.
- (4) No proceedings shall be commenced under this section except with the consent of the Minister.

Subsections (1), (2)(a) and (4) were amended, as from 7 June 1965, by section 3(2) Cook Islands Amendment Act 1965 (1965 No 1) by substituting the words “Minister or Resident Commissioner, as the case may require” for the words “Resident Commissioner”.

Subsections (1), (2)(a) and (4) were further amended, as from 1 January 1967, by section 2(2) Cook Islands Amendment Act 1966 (1966 No 39) by substituting the word “Minister” for the words “Minister or Resident Commissioner, as the case may require”.

60

Section 60 was repealed, as from 1 January 1967, by section 2(2) Cook Islands Amendment Act 1966 (1966 No 39).

61 Validation of acts done in anticipation

- (1) All acts of any nature done before the commencement of this Act that by virtue of this Part of this Act would have been valid

and lawful if they had been done after the commencement of this Act shall be deemed to have been validly and lawfully done, and, in so far as they are subsisting at the commencement of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the appropriate provisions of this Part of this Act, and accordingly shall, where necessary, be deemed to have so originated.

- (2) Without limiting the provisions of the last preceding subsection, all payments made, and all liabilities incurred, before the commencement of this Act by a Resident Commissioner in relation to the development or farming or intended development or farming of any land or in relation to advances for any such purpose are hereby validated and declared to have been lawfully made or lawfully incurred, as the case may be.
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Contents

- 1 General
 - 2 About this eprint
 - 3 List of amendments incorporated in this eprint (most recent first)
-

Notes**1 General**

This is an eprint of the Cook Islands Amendment Act 1946 . It incorporates all the amendments to the Cook Islands Amendment Act 1946 as at 20 September 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Cook Islands Amendment Act 2007 (2007 No 49): section7(1)
