

1965

Government of the Cook Islands



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Definitions of the Constitution

Article 1 of the Constitution contains a number of key definitions which include the following:-

- 'Cabinet' means the Cabinet of Ministers of the Cook Islands'
- 'Executive Council' means the Executive Council of the Cook Islands established under this Constitution
- 'High Court' means the High Court of the Cook Islands established under this Constitution
- 'Legislative Assembly' or 'Assembly' where it appears in this Constitution or any other enactment means the [Parliament] of the Cook Islands established under this Constitution
- 'Minister' means a Minister of the Government of the Cook Islands and includes the Prime Minister
- 'New Zealand' means New Zealand exclusive of the Cook Islands
- 'Parliament' means the Parliament of the Cook Islands established under this Constitution, and the term 'Legislative Assembly' or 'Assembly' where it appears in this Constitution or in any other enactment shall

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have the same meaning

- 'Prime Minister' means the Prime Minister of the Cook Islands
- 'Queen's Representative' means the representative of Her Majesty the Queen in the Cook Islands appointed under Article 3 hereof.

Article 1 also defines the Cook Islands by using the same degrees of latitude and longitude as those specified in the Order in Council of May 13 1901 except for that part of the Ocean relating to Niue; that is, 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 10 miles of the coasts thereof".

The Head of State/The Realm of New Zealand

Article 2 of the Constitution states that *"Her Majesty the Queen in right of New Zealand shall be the Head of State of the Cook Islands"*.

The above expression, *"in right of New Zealand"* refers directly to the constitutional concept of 'realm of New Zealand' as described in the 1983 Letters Patent Constituting the Office of Governor-General of New Zealand approved by the Cook Islands after consultation with New Zealand. In those Letters Patent, Her Majesty Queen Elizabeth II declared, *inter alia*, *"Our will and pleasure as follows:*

- 1. We do hereby constitute, order and declare that there shall be, in and over Our Realm of New Zealand, which comprises -
 - (a) New Zealand; and
 - (b) the self-governing state of the Cook Islands; and
 - (c) the self-governing state of Niue; and
 - (d) Tokelau; and
 - (e) The Ross Dependency, -
- a Governor-General and Commander-in-Chief who shall be Our representative in Our Realm of New Zealand, and shall have and may exercise the powers and authorities conferred on him by these Our Letters Patent, **but without prejudice to the office, powers or authorities of any other person who has been or may be appointed to represent Us in any Part of Our Realm of New Zealand and to exercise powers and authorities on Our behalf."**

Thus, Her Majesty Queen Elizabeth II, by virtue of being Head of State of Her entire Realm of New Zealand as described in the Letters Patent, is also Head of State of that part of Her Realm of New Zealand referred to in the Letters Patent as *"the self-governing state of the Cook Islands"*. Oaths of office taken by the Queen's Representative, Members of Parliament and Judges of the High Court and prescribed in the Constitution require allegiance to be sworn to the reigning Sovereign (eg Her Majesty Queen Elizabeth II) *"as the Head of State of the Cook Islands"*.

The Queen's Representative in the Cook Islands

The qualification noted in Clause 1 of the Letters Patent is of central importance for when the Constitution entered into force on "*Constitution Day*", that is, August 4 1965, Her Majesty the Queen was represented in the Cook Islands' part of the Realm of New Zealand by the "*High Commissioner of the Cook Islands*" (Article 3). The High Commissioner was both representative of the Head of State as well as representative of the New Zealand Government in the Cook Islands.

The Constitution Amendment (No 10) Act 1981-82 provided that there "*shall be a representative of Her Majesty the Queen in the Cook Islands, to be known as the Queen's Representative,*" the latter to be appointed "*by Her Majesty the Queen and shall hold office for a period of three years, and may from time to time be reappointed*" (Article 3).

By previous agreement between the Governments of the Cook Islands and New Zealand, when there was a High Commissioner of the Cook Islands, the appointment was made by the New Zealand Governor-General after consultation with the Government of the Cook Islands in keeping with the then quasi-diplomatic role of the High Commissioner. By convention, the appointment of the Queen's Representative is made by Her Majesty upon the recommendation of the Prime Minister of the Cook Islands.

Article 5(1) of the Constitution states clearly that the Queen's Representative is to act on the advice of Her Cook Islands Ministers:-

"except as otherwise provided in this Constitution, the [Queen's Representative] in the performance of his functions as the representative of Her Majesty the Queen shall act on the advice of Cabinet, the [Prime Minister], or the appropriate Minister as the case may be."

House of Ariki

The Constitution provides for a House of Ariki comprising up to 14 ariki appointed by the Queen's Representative, the functions of the House being to "*consider such matters relative to the welfare of the people of the Cook Islands as may be submitted to it by [Parliament] for its consideration, and it shall express its opinion and make recommendations thereon to [Parliament]*" (Articles 8 and 9).

Executive Government of the Cook Islands

The Constitution vests the executive authority of the Cook Islands in Her Majesty the Queen in right of New Zealand. Subject to the Constitution, that authority may be exercised on behalf of Her Majesty in the Cook Islands either directly by the Queen's Representative or through officers subordinate to the latter (Article 12).

The Constitution provides for a Cabinet of Ministers comprising the Prime Minister and not fewer than six nor more than eight other Ministers (up from no fewer than three nor more than six other Ministers in 1965), "*which shall have the general direction and control of the executive government of the Cook Islands, and shall be collectively responsible to Parliament*" (Article 13(1)).

The Queen's Representative appoints from among the members of the Parliament as Prime Minister the person who commands, or, if Parliament is not in session, who, in his discretion, he considers would command, the confidence of the majority of the members of Parliament (Article 13(2)). Other Ministers are appointed by the Queen's Representative on the recommendation of the Prime Minister (Article 13(3)).

The Constitution establishes an Executive Council, comprising the Queen's Representative and the members of Cabinet, to consider such Cabinet decisions as may be required (Articles 22-25).

Parliament of the Cook Islands

Article 27 of the Constitution establishes "*a sovereign Parliament for the Cook Islands, to be called the Parliament of the Cook Islands*", consisting of 25 members (up from 22 in 1965) elected by secret ballot under a system of universal suffrage. Subject to the Constitution, Parliament "*may make laws (to be known as Acts) for the peace, order and good government of the Cook Islands*" (Article 39(1), including "*laws having extra-territorial operation*" (Article 39 (2)). Bills passed by Parliament only become law when they have been assented to by the Queen's Representative (Article 44(1)).

Subject to the provisions of the Constitution, Parliament's law-making power includes "*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*" (Article 39(3)). Amendments to the Constitution require, *inter alia*, (a) *at both the final vote thereon and the vote preceding that final vote, the affirmative votes of not less than two-thirds of the total membership, including vacancies, of the Parliament; and* (b) *an interval of not less than 90 days between the date on which that final vote was taken and the date on which the preceding vote was taken* (Article 41(1)).

Sections 2 (relating to definitions) to 6 of the Cook Islands Constitution Act 1964 and Articles 2 and 41 of the Constitution are "*entrenched*" in that they can only be amended if the conditions in the preceding paragraph are met **and** the proposed amendments(s) have been supported by not less than two-thirds of the valid votes cast in a poll of the persons entitled to vote as electors at a general election of the members of Parliament (Article 41(2)). With the Cook Islands Parliament thus having the power to amend or even to repeal the above Sections and Article 2, the Cook Islands is free at any time to terminate its relationship of free association with New Zealand.

As originally enacted, Article 46 of the Constitution enabled the New Zealand Parliament to pass laws for, and with the advice and consent of, the Cook Islands. This allowed the Cook Islands, with insufficient legal resources in the early post-1965 period, to benefit from New Zealand legislation in often complicated areas (see, for example, the Extradition Act 1965 (NZ), which was applied, *mutatis mutandis*, to the Cook Islands under Section 18 of the Act by virtue of Article 46 of the Constitution). By 1980, however, it was considered by the Cook Islands Parliament that local resources and conditions had developed to such an extent that the above arrangement was

no longer required. In accordance with Constitution Amendment (No 9) Act 1980-81, Article 46 now reads:-

"except as provided by Act of Parliament of the Cook Islands, no Act, and no provision of any Act, of the Parliament of New Zealand passed after the commencement of this Article [5 June 1981] shall extend or be deemed to extend to the Cook Islands as part of the law of the Cook Islands".

The Judiciary

The Constitution establishes a *"Court of record, to be called the High Court of the Cook Islands, for the administration of justice throughout those islands"* (Article 47(1)). The High Court has Civil, Criminal and Land Divisions (Article 47(2)), with jurisdiction to:

"hear and determine ...[s]uch proceedings as are, under or by virtue of any enactment, to be heard and determined by that Division [and s]uch other proceedings as may from time to time be determined by the Chief Justice, either generally or in any particular proceedings or classes of proceedings" (Article 48(1)).

The Chief Justice of the High Court is appointed by the Queen's Representative, *"acting on the advice of the Executive Council tendered by the Prime Minister"*; other Judges, *"by the Queen's Representative, acting on the advice of the Executive Council tendered by the Chief Justice of the High Court and the Minister of Justice"* (Article 52).

Because of the costs involved and the shortage of requisite human and other resources in the Cook Islands at the time, the Constitution in 1965 recognised a right of appeal from the High Court of the Cook Islands to the Court of Appeal of New Zealand. By the early 1980s, however, the domestic resource situation had improved and Constitution Amendment (No 9) Act 1980-81 did away with the initial arrangement. Established was a Court of Appeal of the Cook Islands as a *"superior Court of record"* (Article 56(1)). Article 59 provides that

"the determination of the Court of Appeal shall be final, and there shall be no appeal to the High Court of New Zealand or to the Court of Appeal of New Zealand from any judgment of the Court of Appeal of the Cook Islands. [However, t]here shall be a right of appeal to Her Majesty the Queen in Council, with the leave of the Court of Appeal, or, if such leave is refused, with the leave of Her Majesty the Queen in Council, from judgments of the Court of Appeal in such cases and subject to such conditions as are prescribed by Act".

Fundamental Human Rights and Freedoms

Not initially in the Constitution, part IVA was inserted by Constitution Amendment (No 9) Act 1980-81. Article 64 states:

"(1). It is hereby recognised and declared that in the Cook Islands there exist, and shall continue to exist, without discrimination by reason of race, national origin, color, religion, opinion, belief, or sex, the following fundamental human rights and freedoms-

- "(a) The right of the individual to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with law;
- "(b) The right of the individual to equality before the law and to the protection of the law;
- "(c) The right of the individual to own property and the right not to be deprived thereof in accordance with law;

Provided that nothing in this paragraph or in Article 40 of this Constitution ['No property to be taken compulsorily without compensation'] shall be construed as limiting the power of Parliament to prohibit or restrict by Act the alienation of native land...;

- "(d) Freedom of thought, conscience, and religion;
- "(e) Freedom of speech and expression;
- "(f) Freedom of peaceful assembly and association.

"(2) It is hereby recognised and declared that every person has duties to others, and accordingly is subject to the exercise of his rights and freedoms to such limitations as are imposed, by any enactment or rule of law for the time being in force, for protecting the rights and freedoms of others or in the interests of public safety, order, or morals, the general welfare, or the security of the Cook Islands."

The Constitution also contains provisions relating to the construction of law aimed at supplementing and supporting Article 64 above, including, e.g. prohibiting the imposition on any person of cruel and unusual treatment or punishment (Article 65).

Public Revenues of the Cook Islands

The Constitution contains basic provisions establishing a Cook Islands Government Account and allowing for the establishment of such other public funds or accounts as may be necessary (Article 67), prohibiting the imposition of taxation except by law (Article 67) and setting out fundamental principles concerning revenue and expenditure of the above Account (Articles 69 and 70).

When the Legislative Assembly was considering constitutional aspects of public revenue in the early 1960s, it was very much aware both that the Territory had very limited local auditing expertise and that much of the Territory's revenue came from New Zealand Government grants and subsidies. It was agreed, therefore, that the Audit Office of New Zealand would be the auditor of the Cook Islands Government Account and such other funds and accounts as may be established.

That Office reported annually to the Speaker of the Cook Islands Parliament (Article 71). Over succeeding years, however, local auditing expertise developed and New Zealand Government financial assistance became a much reduced proportion of Government's overall budget revenue (approximately 17 per cent in 1991/92). As a consequence, therefore, it was finally decided in 1991 after consultations between the Governments of the Cook Islands and New Zealand that the Audit Office of the Cook Islands would assume the functions previously performed by the Audit Office of New Zealand and the Constitution was amended accordingly (Constitution Amendment (No 14)

Act 1991).

Public Service

The Constitution establishes a "*Cook Islands Public Service, which shall comprise such persons in the the service of the Government of the Cook Islands as may from time to time be prescribed by law*" (Article 72). Subject to the provisions of the Constitution and other enactments, the Public Service Commissioner is responsible for the appointment, dismissal, and disciplinary control of employees of the Cook Islands Public Service (Article 74B). The Commissioner is appointed by the Queen's Representative on the advice of the Prime Minister (Article 73).

Miscellaneous

This Part was inserted into the Constitution by the Constitution Amendment (No 9) Act 1980-81.

a) Persons entitled to permanent residence

The Constitution contains provisions setting out qualifications for the status of a permanent resident of the Cook Islands; ie.

"A person shall have the status of a permanent resident of the Cook Islands if he was born in the Cook Islands, and -...

- *"(a) Either or both of his parents had the status of a permanent resident of the Cook Islands at the date of his birth; or*
- *"(b) In the case of a child who was born after the death of his father to a mother who did not have the status at the date of birth of the child, his father had that status at the date of his death; or*
- *"(c) He was adopted by a person who at the date of adoption had that status" (Article 76A(1)).*

The Constitution also provides for other legislation to regulate the granting of permanent resident status to others, qualifications to be held by a permanent resident, and conditions under which that status may be withdrawn (Article 76A(2)-(4)).

Special Relationship with New Zealand

The relationship between New Zealand and the Cook Islands was defined by New Zealand in August 1965 to the United Nations as follows:-

"The Cook Islands people, because of their many natural links with New Zealand, have determined to exercise their right of self-government or self-rule or independence -- call it what you will -- but not at this time as a separate, sovereign State.

"They have worked out a form of full self-government in free association with New Zealand, but -- and here is the special feature -- they may at any time in future, if they so desire, move into full independence, or any other status that may become practicable, by a unilateral act, that is, one which New Zealand has denied itself power to countermand. The right is spelled out

in the provisions of article 41 of the Constitution...

"This new status is not sovereign independence in the juridical sense, for the Cook Islanders wish to remain New Zealand citizens and in the meantime they wish New Zealand to discharge the responsibilities in the field of external affairs and defence in consultation with them; but it means that the Cook Islanders have a continuing right to self-determination. Henceforth the legal links between the Cook Islands and New Zealand rests on consent; this is what we understand by 'free association' ".

On the subjects of external affairs and defence New Zealand said they were "*entrenched subjects under the Constitution*".

"These are not subjects which New Zealand has 'reserved' for itself and withheld from the Cook Islanders. The legislative autonomy of the Cook Islands Assembly means what it says. New Zealand has no unilateral power within the Cook Islands to pass laws or make regulations on external affairs or defence or anything else.

"'Entrenched' does not mean 'reserved to' or 'held under the control of' New Zealand. 'Entrenched' means that whereas other clauses of the Constitution can be changed by a two-thirds vote of the Legislative Assembly, these six points can be modified only if there has been a two-thirds vote of the Legislative Assembly and also a two-thirds vote of the people in a referendum.

"For so long as the Cook Islands chooses to be associated with New Zealand, rather than to become a sovereign State, New Zealand cannot repudiate an ultimate responsibility for questions of external affairs and defence.

"Section 5 of the Constitution Act 1964... does not bring about this situation; nor does it in any way detract from the powers of self-government which the Act and the Constitution bestow on the Cook Islands. Section 5 simply reflects one of the inherent characteristics of 'free association': the Cook Islands can do as it chooses but as long as it chooses not to be internationally responsible for its own affairs it thereby recognises New Zealand's continuing responsibility for the matters mentioned in Section 5.

"Another feature of the relationship is that New Zealand must rely upon the Cook Islands to use its self-governing powers in ways which give effect to international obligations. This is not a question of legislative power only: compliance with a treaty obligation may equally depend upon executive or administrative action. It is not contemplated either in the Constitution Act or in the Constitution itself that the executive branch of the New Zealand Government will have any civil power within the Cook Islands -- or ... that the New Zealand Legislature will make any change in the Law in force in the Cook Islands except at the request and with the consent of the authorities in Rarotonga. New Zealand no longer has any power to do these things.

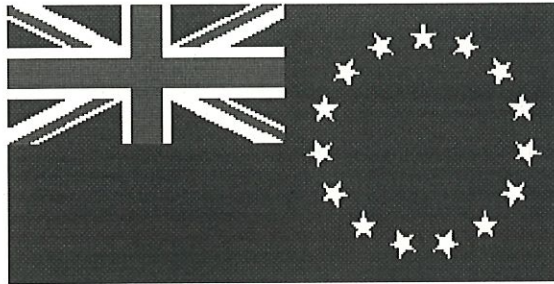
"There is no real incompatibility between Section 5 of the 1964 Act and the concept of a legislative, or executive autonomy. Both are facets of a relationship which can be maintained only by voluntary cooperation between two governments which are constitutionally equal, though only one bears

international responsibility.

"If the voluntary cooperation should ever break down, it would rest with either to move to terminate an impossible relationship, but neither would have any right to coerce the other.

"Some legal purists may find this arrangement untidy. Complete sovereign independence or complete dependence are clear and simple concepts and this is neither one thing nor the other."

The Cook Islands Ensign



The constitution declares the Cook Islands Ensign described below to be the recognised flag of the Cook Islands (Article 76C):-

"The Cook Islands Ensign shall be a Royal blue ensign. The Union Jack shall occupy the upper staff quarter, having on the fly 15 stars in a symmetrical ring, all of equal size and equal spacing, and the colour of the stars shall be white. The flag proportion of length to breadth shall be two to one.

"And it shall mean -

"Blue - is the colour most expressive of our Nation, it is representative of the vast area of the Pacific Ocean in which the islands of the Cook Islands are scattered. Blue also depicts the peaceful nature of the inhabitants of our islands.

"Union Jack - indicates our historical association with and membership of the British Commonwealth.

"The 15 white stars - represent the 15 islands of the group." (Third Schedule to the Constitution).

National anthem

The Constitution declares the anthem 'Te Atua Mou E' to be the national anthem of the Cook Islands (Article 76(D)). The words of the anthem and an unofficial English translation are:-

Te Atua Mou E

*Te Atua mou e
Ko koe rai te nu*

*Ko koe rai te pa
O te pa enua e
Akarongo mai
I to matou nei reo
Te kapiki atu nei
Paruru mai
Ia matou nei
Omai te korona mou
Kia ngateitei
Kia vai rai te aroa
O te pa enua e.
(Fourth Schedule to the Constitution)*

To God Almighty

*To God Almighty
Ruler of the isles of the sea
Hearken our call
Protect us
Crown us with liberty
May peace and love reign supreme
throughout the land.*

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