



ANALYSIS

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2005, No. 14

An Act to provide for the salary, allowances and expenses of the Queen's Representative and Members of Parliament.

(14 October 2005)

BE IT ENACTED by the Parliament of the Cook Islands in Session assembled, and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Civil List Act 2005.

(2) This Act shall come into force on a date to be determined by the Queen's Representative by Order in Executive Council.

2. Grants for civil purposes – The several sums specified in this Act shall be paid out of the Cook Islands Government Account and, except as expressly provided by this Act, without further appropriation than this section.

3. Interpretation - In this Act, unless the context otherwise requires -

“Associate Minister” means a member appointed pursuant to section 14;

“Clerk” means the Clerk of Parliament or where he or she is absent or that office is vacant, includes the Clerk Assistant or other person for the time being performing the duties of the Clerk with the approval of the Speaker;

“Constituency” means a constituency referred to in section 6 of the Electoral Act 2004;

“Constitution” means the Constitution of the Cook Islands as set out in the Second Schedule to the Cook Islands Constitution Amendment Act 1965 together with any amendments;

“the Cook Islands” means the Cook Islands as defined by the Constitution;

“Deputy Leader of the Opposition” means that member appointed to that position;

“Incidental allowances” means out of pocket expenses incurred while traveling away from the Cook Islands on official business or duties;

“Leader of the Opposition” means that member who -

- (a) commands the support of the majority of members in the opposition; or
- (b) commands the support of the majority of the members opposed to Government;

“Member” means a member of Parliament;

“Minister” means the Minister of Finance;

“office holder” means a person who has been appointed to one or more of the following offices -

- (a) Speaker of Parliament;
- (b) Prime Minister;
- (c) Deputy Prime Minister;
- (d) Ministers;
- (e) Leader of the Opposition; or
- (f) Deputy Leader of the Opposition;

“official business” means the undertaking of any task or function that a member could reasonably be expected to carry out in his or her capacity as a member of Parliament and that complements the business of Parliament and includes the following -

- (a) attending a sitting of Parliament; or
- (b) attending a meeting of a select committee of Parliament of which the member is a member, or which the member is required to attend because of being in charge of a Bill or other matter under consideration by the committee or because of any other valid reason relating to the business of the committee; or
- (c) undertaking research or administrative functions that relate directly to the business of Parliament; or
- (d) attending meetings for the purpose of representing electors or explaining the application of policy or to receive representations; or
- (e) attending caucus meetings that are expressly for the purpose of enhancing the Parliamentary process; or
- (f) attending meetings of his or her party; or
- (g) attending any ceremony or official function or national or international conference as a representative of Parliament or Government;

“official duties” means duties which are undertaken by the Queen’s Representative on behalf of Her Majesty the Queen whether in the Cook Islands or not and “official duty” shall have the same meaning;

“official function” means any function to which the member may have been invited, by reason of that member’s status as a member of Parliament or, while attending to official business outside the Cook Islands, but does not include political party functions or functions attended for personal reasons;

“official information” means information obtained or made available in relation to official business;

“Opposition” means that group of members whether of one or more political parties opposed to Government;

“principal allowances” means basic allowances, representation allowances, clothing, communication, housing, member’s office, transport allowances, and office holders allowance or entitlements (not being traveling expenses or other incidental allowances);

“private commercial business” means any private business from which a commercial profit is derived;

“Remuneration” includes -

- (a) salary, wages, fees and other payments, whether in the form of bonuses or otherwise, in return for services; and
- (b) benefits and other emoluments (whether in money or not) in return for services;

“Remuneration Tribunal” means the Remuneration Tribunal established by section 4 of the Remuneration Tribunal Act 2005;

“travelling expenses” means payments for accommodation and incidentals incurred while traveling on official business or official duty.

PART I
REMUNERATION, TERMS OF APPOINTMENT
AND TAX EXEMPTIONS OF THE QUEEN’S REPRESENTATIVE

4. Salary and allowances of the Queen’s Representative – (1) There shall be paid to the Queen’s Representative –

- (a) salary at a rate determined from time to time by the Remuneration Tribunal which salary shall be recommended on the basis that it is and will remain exempt from income tax; and
- (b) a non-taxable and non-accountable principal allowance and non-taxable traveling expenses at a rate fixed from time to time by Order in Executive Council.

(2) Any Order in Executive Council made under subsection (1)(b) of this section shall come into force on a date to be specified therein, whether on or before the making of the Order.

- (3) The salary and allowances of the Queen's Representative shall –
- (a) commence to be payable on the date on which he or she assumes the duties of the office; and
 - (b) continue to be payable until the date on which he or she ceases to hold office as Queen's Representative.

(4) Where the office of Queen's Representative becomes vacant (otherwise than by the death of the person holding that office), there shall, in respect of the period of 3 months commencing with the date on which the vacancy occurs be paid to him or her a sum equal to the salary and principal allowance of the Queen's Representative for that period of three months.

5. Terms of appointment of the Queen's Representative – (1) The terms of appointment of the Queen's Representative may be recorded in an agreement in writing made between the person who is to be appointed and the Government acting through the Minister of Finance.

(2) Without limiting the generality of subsection (1) of this section, any such agreement may include provisions relating to superannuation, annuities, clothing allowance, staff, traveling arrangements and expenses, leave of absence, transfer expenses, official residence, security, privileges and exemption.

(3) All payments made or refunds directed from any public fund or account, pursuant to any agreement shall be made without further appropriation than this section.

6. Travelling expenses – Any travelling expenses paid to the Queen's Representative shall be paid in relation to travel within or outside the Cook Islands on official duties during his or her term of office in respect of himself or herself, his or her family and staff.

7. Power to grant exemption from tax – (1) Notwithstanding anything to the contrary in any Act, but without limiting any exemption under any other Act, the Minister of Finance may from time to time wholly or partly exempt from any public or local tax, duty, rate, levy or fee, any of the following persons –

- (a) the Queen's Representative;
- (b) the spouse and any dependent child or children of the Queen's Representative.

(2) Any exemption granted under subsection (1) of this section may be granted either unconditionally or subject to such conditions as the Minister thinks fit, and the Minister may at any time revoke any such exemption or revoke and vary or add to any such conditions.

(3) Every such exemption shall come into force on such date as may be specified in that behalf by the Minister. The date so specified may be before or after the date of the granting of the exemption or before or after the commencement of this Act.

(4) If any question arises as to the persons entitled to any such exemption or as to the extent of such exemption, it shall be determined by the Minister and his decision shall be final.

(5) The Minister may direct that such refunds or account be paid from money of any public body or person as may in the opinion of the Minister be necessary to give effect to any such exemption.

(6) All refunds or payments directed under this section to be made from any public fund or account shall be made without further appropriation than this section.

PART 2
REMUNERATION OF
MEMBERS OF PARLIAMENT AND SPEAKER

8. Salaries and allowances to be fixed by Remuneration Tribunal - (1) The Remuneration Tribunal shall from time to time, in accordance with the Remuneration Tribunal Act 2005, fix the salaries and allowances to be paid to an office holder and to other members of Parliament.

(2) Such salaries and allowances may differ in accordance with the office that the member of Parliament holds or with the electorate that the member represents in accordance with such other considerations as may be determined by the Remuneration Tribunal.

(3) The salaries and allowances fixed pursuant to subsection (1) of this section shall be payable to each member including a member who is the Speaker for each year he or she completes as a member or a proportionate payment for such part of a year completed.

(4) Such salaries and allowances shall be payable in respect of the period commencing on the day on which the warrant declaring the member's election is signed by the Chief Electoral Officer pursuant to section 78 of the Electoral Act 2004 and ending with the earliest of the following days -

- (a) the day upon which the member's seat becomes vacant pursuant to section 9 subsection (1) of the Electoral Act 2004 other than by resignation pursuant to paragraph (d) of that subsection; or
- (b) the day 3 months after the day that the member's seat becomes vacant in accordance with section 9 subsection (3) of the Electoral Act 2004 and the member is -
 - (i) a member immediately before the dissolution of Parliament; and
 - (ii) is an unsuccessful candidate at the next following General Election;
- (c) the day 3 months after the day that the member resigns his seat.

(5) A Minister who holds more than one office shall receive no more than one salary and allowance whichever salary and allowance is the greater.

(6) Where the Deputy Prime Minister or other Minister is suspended pursuant to Article 14(7)(b) of the Constitution the salary and allowance shall be payable in respect of the period of suspension and shall cease upon -

- (a) his or her appointment as a Minister being revoked as a result of the finding of the investigation or inquiry into his or her conduct; or
- (b) his or her resignation as a Minister.

(7) Subject to subsection (8) of this section, the salary and allowance of an office holder shall be payable in respect of the period commencing on the day on which the office holder is appointed to office and ending with the earliest of the following days -

- (a) the day upon which the member's seat becomes vacant pursuant to section 9(1) of the Electoral Act 2004 other than by resignation pursuant to paragraph (d) of that subsection; or
- (b) the day 3 months after the day that the office holder's appointment is revoked unless he is convicted of a criminal offence; and
- (c) the day 3 months after the day that the office holder resigns his or her office; or
- (d) the day 3 months after the day that the office holder's seat becomes vacant in accordance with section 9 subsection (3) of the Electoral Act 2004 and the office holder:
 - (i) held office immediately before the dissolution of Parliament; and
 - (ii) is an unsuccessful candidate at the next following General Election.

(8) The salary and allowance of the Speaker where he or she is not a member shall be payable in respect of the period commencing on the day on which he or she is elected and ending with the earliest of the following days:

- (a) the day 3 months after the day upon which he or she tenders his or her resignation;
- (b) the day 3 months after the day of the first meeting of the next Parliament after the dissolution of any Parliament where he or she held office of Speaker immediately before Parliament was dissolved;
- (c) the day 3 months after the day upon which he or she ceases to be qualified for election as a member of Parliament pursuant to paragraph (d) of Article 32 of the Constitution;
- (d) the day 3 months after the day upon which he or she is removed from office, pursuant to paragraph (e) of Article 32 of the Constitution.

9. Allowances and expenses - (1) There shall be provided to each member and the Speaker such principal allowances, and traveling allowances and expenses as may be fixed from time to time by Order in Executive Council.

(2) Any Order in Executive Council or part thereof made under subsection (1) of this section shall come into force on a date to be specified therein, whether before or after the making of that Order.

PART 3
APPOINTMENT OF OFFICE HOLDERS
AND OTHER POSITIONS

10. Deputy Prime Minister - The Queen's Representative on the advice of the Prime Minister may from time to time appoint a Minister to be the Deputy Prime Minister.

11. Functions of Deputy Prime Minister - The Deputy Prime Minister shall perform such functions as shall be prescribed for him or her by the Prime Minister.

12. Leader of the House - The Prime Minister may appoint a member to be Leader of the House.

13. Functions of Leader of the House - The Leader of the House shall perform such functions as shall be prescribed for him by the Prime Minister.

14. Associate Minister - (1) The Queen's Representative on the advice of the Prime Minister may appoint any member to be an Associate to a Minister.

(2) For the purpose of subsection (1) of this section there shall be appointed not more than three Associate Ministers at any one time.

(3) A member who is appointed an Associate Minister pursuant to subsection (1) of this section shall not be entitled to any additional salary or allowance other than that which he or she is already entitled to as a member.

15. Functions of Associate Minister - An Associate to a Minister shall perform such functions as shall be prescribed by his or her Minister.

16. Term of office - The office of an office holder appointed pursuant to this Part of this Act shall be vacated by him or her if:

- (a) the office holder resigns his or her office by notice in writing to the Queen's Representative or, in the case of the Leader of the opposition, to the Speaker; or
- (b) the office holder ceases to be a member of Parliament; or
- (c) the office holder's appointment is revoked by the Queen's Representative on the advice of the Prime Minister or, in the case of the Deputy Leader of the opposition and any opposition whip, by the Leader of the opposition.

17. Notice of appointment and vacation of office - Notice of the appointment of any person appointed pursuant to this Part of this Act and of the vacation of his or her office by resignation or otherwise, shall be published in the Gazette immediately after the appointment or vacation of office, as the case may be.

PART 4
MISCELLANEOUS

18. Declaration of interest - (1) Every member and the Speaker shall make an annual declaration disclosing any financial or other interest held by him in any company, partnership or unincorporated body;

(2) The declaration of every Minister other than the Prime Minister's shall be lodged with the Prime Minister.

(3) The declarations of the Speaker and all other members including the Prime Minister shall be lodged with the Clerk.

(4) The contents of any declaration shall only be disclosed in connection with private commercial business.

(5) Every declaration made pursuant to this section shall be made before the 31st day of January every year, and shall record the interest of the declarant as at the 31st of December of the previous year.

19. Duties of members - No member shall -

- (a) enter into any transaction whereby the private pecuniary interest may come into conflict with his or her public duty;
- (b) use official information which comes to him or her as an office holder for his or her own private profit or for that of his or her associates;
- (c) put himself or herself, or allow himself or herself to be put in a position to use his or her official influence in support of any scheme or in furtherance of any contract, in regard to which he or she has any private interest;
- (d) use his or her influence to support the candidature of any person for admission to, or promotion within the Public Service;
- (e) accept any kind of favour from persons who are in negotiation with, or seeking to enter into contractual or proprietary or pecuniary relations with Government.

20. Payment only on certificate of Clerk - No payment shall be made of any salary or allowance pursuant to the provisions of this Act for any period except upon the certificate of the Clerk.

21. Public Service Act 1995-96 not to apply - Nothing in the Public Service Act 1995-96 or any enactment in substitution thereof shall apply with respect to any payment made under this Act to an employee of the Cook Islands Public Service who is the Speaker or the Deputy Speaker.

22. Parliament to be notified of payments under certain provisions of this Act - The details of expenditure of public money under any of the provisions of this Act shall appear in the Estimates of Expenditure presented annually to Parliament.

23. Allowances exempted from tax - Notwithstanding anything to the contrary in any Act but without limiting any exemption under any Act all allowances and expenses paid pursuant to the provisions of section 9 of this Act shall be exempt from any public or local tax, duty, rate, levy or fee.

24. Commission of Inquiry - Notwithstanding the provisions of section 4 and section 8 of this Act the Queen's Representative acting on the advice of Cabinet may appoint a Commission of Inquiry under the Commissions of Inquiry Act 1966 comprising persons who are not members of Parliament or the Speaker to inquire into and make recommendations as it thinks fit as to the adequacy or otherwise of the salaries specified in this Act or any allowances in any Order made pursuant to section 6 of this Act.

25. Regulations - The Queen's Representative may by Order in Executive Council prescribe all matters that are necessary or convenient for carrying out or giving effect to this Act.

26. Consequential amendments - The Public Service Act 1995-96 is amended by deleting from section 11(3) the words "Parliamentary Under-secretary" and substituting the words "Associate Minister".

27. Savings and Transitional - (1) The Civil List Order 1995-96 made pursuant to the Civil List Act 1984 shall notwithstanding the repeal of that Act by this Act, continue in force as if prescribed under this Act.

(2) Without limiting the provisions of the Acts Interpretation Act 1924, it is hereby declared that the repeal of the Civil List Act 1984 by this Act shall not affect any salary and allowance of the Queen's Representative, or Parliamentary salary, office holder's salary, or allowances of members of Parliament and the Speaker from time to time recommended to be fixed by the Higher Salaries Commission pursuant to the Higher Salaries Commission Act 1989.

28. Repeals - The Civil List Act 1984 and its amendments are hereby repealed.

This Act shall be administered by the Office of the Legislative Service

