



ANALYSIS

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2005, No. 15

An Act to provide for the establishment of a Tribunal to determine the salaries and allowances 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 Remuneration Tribunal 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. Interpretation - In this Act, unless the context otherwise requires -

“Crown agency” means a Crown agency as defined by section 2 of the Ministry of Finance and Economic Management Act 1995-96;

“Tribunal” means the Remuneration Tribunal established by section 4;

“Minister” means the Minister of Finance;

“Public office” means the office of -

- (a) Queen's Representative;
- (b) Speaker of Parliament;
- (c) Prime Minister;
- (d) Deputy Prime Minister;
- (e) Ministers;
- (f) Leader of the Opposition;
- (g) Deputy Leader of the Opposition;
- (h) Member of Parliament;

“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;

“State Service” means a State Service as defined pursuant to section 44 of the Public Service Act 1995-96.

3. Act to bind the Crown - This Act shall bind the Crown.

4. Establishment of Remuneration Tribunal - There is hereby established a Tribunal to be called the Remuneration Tribunal.

5. Membership of Tribunal - (1) The Tribunal shall consist of 3 members, to be appointed by the Queen's Representative by Order in Executive Council.

(2) One member of the Tribunal shall be so appointed as the Chairperson of the Tribunal.

(3) The Tribunal may from time to time appoint one of the other members of the Tribunal to be the Deputy Chairperson of the Tribunal.

(4) Of the three members of the Tribunal not less than one member shall have knowledge of the work of Parliament and Parliamentary committees.

(5) A person shall not be appointed as a member of the Tribunal if that person is –

- (a) the holder of a public office;
- (b) employed under the Public Service Act 1995-96;
- (c) employed by a Crown agency or State Service.

6. Term of office - (1) Except as otherwise provided in this Act, every member of the Tribunal shall be appointed for a term not exceeding 3 years, but may from time to time be reappointed.

(2) Unless he or she sooner vacates office under section 8 of this Act, every member of the Tribunal shall continue in office until his or her successor comes into office, notwithstanding that the term for which he or she was appointed may have expired.

7. Disclosure of interest by Tribunal members - (1) A Tribunal member who has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered by the Tribunal shall, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Tribunal.

(2) A disclosure under subsection (1) shall be recorded in the minutes of the meeting of the Tribunal and the member shall not –

- (a) be present during any deliberation of the Tribunal with respect to that matter; or
- (b) take part in any decision of the Tribunal with respect to that matter.

8. Extraordinary vacancies - (1) Any member of the Tribunal may at any time be removed from office by the Queen's Representative for inability to perform the functions of the office, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Queen's Representative.

(2) Any member of the Tribunal may at any time resign his or her office by giving written notice to that effect to the Minister.

(3) If any member of the Tribunal dies, or resigns, or is removed from office, the vacancy thereby created shall be deemed to be an extraordinary vacancy.

(4) An extraordinary vacancy shall be filled by the appointment of a member by Order in Executive Council.

(5) Every person appointed to fill an extraordinary vacancy shall be appointed for the residue of the term for which the vacating member was appointed.

(6) The powers of the Tribunal shall not be affected by one vacancy in its membership.

9. Meetings - (1) Meetings of the Tribunal shall be held at such times and places as the Tribunal or its Chairperson from time to time appoints.

(2) At any meeting of the Tribunal, 2 members shall form a quorum.

(3) The Chairperson shall preside at every meeting of the Tribunal at which he or she is present.

(4) In the absence of the Chairperson from any meeting, the Deputy Chairperson shall preside at that meeting.

(5) A decision of a majority of the members present at any meeting shall be the decision of the Tribunal, and, in the event of an equality of votes, the member presiding shall have a casting vote as well as a deliberative vote.

(6) Subject to the provisions of this Act, the Tribunal may regulate its procedure in such manner as it thinks fit.

(7) No decision or determination of the Tribunal, and no proceeding before the Tribunal, shall be held bad for want of form, or be void or in any way vitiated by reason of any informality or error of form.

10. Members and officers to maintain secrecy - (1) Every member of the Tribunal and every person engaged or employed in connection with the work of the Tribunal shall maintain and aid in maintaining the secrecy of all matters which come to his or her knowledge when carrying out his or her functions or duties under this Act, and shall not communicate any such matters to any person except in the discharge of his or her functions and duties under this Act.

(2) Every person who willfully acts in contravention of subsection (1) commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000 or both.

11. Remuneration and travelling allowances - There shall be paid out of money appropriated by Parliament for the purpose to the members of the Tribunal, remuneration by way of fees or salary or allowances and travelling allowances and expenses in accordance with regulations made from time to time by Order in Executive Council.

12. Staff of Tribunal - The Financial Secretary shall from time to time second to the Tribunal, such staff of the Ministry of Finance and Economic Management as shall be necessary to enable the Tribunal to exercise its functions and powers.

13. Functions of Tribunal - (1) The functions of the Tribunal shall be -

(a) to consider and determine the salaries and allowances required to be fixed by this Act as set out in Schedule 1 of this Act;

(b) to carry out such other functions as may be conferred or imposed on it by this Act or any other Act.

(2) In carrying out its functions under subsection (1)(a), the Tribunal may fix scales of salaries and scales of allowances or ranges of rates of remuneration or alternative forms of remuneration within a remuneration package for any position, and may prescribe rules governing the application of any such scales of salaries or allowances, or ranges of rates of remuneration, or alternative forms of remuneration within a remuneration package fixed by it.

(3) Except as provided in this Act, where the remuneration due to any person is fixed under this Act, no amount in excess of the remuneration so fixed for the time being shall be granted to any person on account of that remuneration.

14. Amendment of Schedule - The Queen's Representative may from time to time, by Order in Executive Council -

- (a) add to or omit from Schedule 1, the name of any position;
- (b) otherwise amend Schedule 1, or revoke any such Schedule and substitute a new Schedule, as the case may require.

15. Implementation of determinations of Tribunal - (1) The Minister shall be advised of every determination of the Tribunal and shall forthwith present the same to the Queens Representative for promulgation by Order in Executive council.

(2) Every determination of the Tribunal shall take effect upon a date to be specified by Order in Executive Council.

16. Release of determinations to Government Statisticians - The Tribunal shall release to the Government Statistician such of its determinations as the Government Statistician may require for the purpose of publishing statistics pursuant to the Statistics Act 1966.

17. Obligation to consult before making determinations about Parliamentary salaries and allowances - Before making a determination under section 13(1)(a), the Tribunal must -

- (a) consult with the Collector of Inland Revenue about the taxation consequences of the Tribunal's proposed determination; and
- (b) consult with the Speaker of Parliament and with the Minister responsible for the Legislative Service, regarding the services over which each of them has jurisdiction.

18. Criteria for Tribunal - (1) In determining any remuneration under section 13(1)(a), the Tribunal shall have regard in particular to the following criteria -

- (a) the need to achieve and maintain fair relativity with the levels of remuneration received elsewhere; and
- (b) the need to be fair both -
 - (i) to the persons or group of persons whose remuneration is being determined; and
 - (ii) to the taxpayer; and
- (c) the state of the Cook Islands economy.

(2) In determining the remuneration of any persons or group of persons pursuant to section 13(1)(a), the Tribunal shall take into account -

- (a) the requirements of the position concerned; and
- (b) the conditions of service enjoyed by the persons whose remuneration is being determined, and those enjoyed by the persons or members of the group of persons whose remuneration and conditions of employment are, in the opinion of the Tribunal, comparable with those of the persons or members of the group of persons, whose remuneration is being determined.

19. Frequency of adjustments - (1) Subject to subsection (4), every Order in Executive Council promulgated pursuant to section 15, shall specify the date on which it expires and shall continue in force at least until the close of that date. The Tribunal may advise the Minister of separate determinations, at different times, for the different positions under the jurisdiction of the Tribunal. The Tribunal may make a determination before or after the date upon which that determination is to come into force.

(2) No determination, or any part of it, shall come into force earlier than the date of the expiry of the currency of an existing determination being wholly or partially superseded by the first-mentioned determination.

(3) Notwithstanding the expiry of the currency of a determination, it shall continue in force to the extent that it is not superseded by another determination.

(4) Notwithstanding subsection (1) of this section, the Tribunal may at any time while an Order in Executive Council is in force advise the Minister to have the Order amended -

- (a) for the purpose of remedying any defect or removing any ambiguity of the determination; or
- (b) to deal with any new matter that was not dealt with at the time of the making of the determination; or
- (c) if the Tribunal is satisfied that in all the circumstances there are particular and special reasons that justify a period of less than the term specified in the determination.

(5) The Tribunal shall review and advise the Minister of a determination for each position that is subject to its jurisdiction at intervals of not more than 3 years.

20. Submissions to Tribunal - (1) Any person or any organisation shall be entitled to make written submissions to the Tribunal in relation to the exercise by the Tribunal of its functions under this Act.

(2) Where the Tribunal is considering whether to make a determination in relation to the remuneration of any person or group of persons, the following persons and organisations shall be entitled to make written submissions and, at their option, oral submissions to the Tribunal, at a time and place and in a manner to be determined by the Tribunal -

- (a) either -
 - (i) representatives of the members of each category of persons whose remuneration is being considered; or
 - (ii) any organisation representing the members of each category of persons whose remuneration is being considered;
- (b) any organisation representing employers of persons whose remuneration is being considered;
- (c) each employer or employing authority, or an authorised representative of each employer or employing authority, of the persons whose remuneration is being considered.

21. Remuneration of existing holder not to be reduced - Where any position is subject to the determination of the Tribunal under section 13(1)(a) and the remuneration for that position is determined by the Tribunal at a rate that is lower than that being lawfully received by the holder of that position, the remuneration of any person holding that position shall not be reduced as a result of that determination.

22. Powers of Tribunal - (1) For the purpose of carrying out its functions under this Act, the Tribunal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1966, and the provisions of that Act, except sections 3, 6A, 13, and 14, shall apply accordingly.

(2) To enable it to carry out its functions, the Tribunal may require any person to furnish information concerning salaries or other conditions of employment or both for any positions, whether or not those positions are subject to the jurisdiction of the Tribunal under this Act.

(3) In addition to the powers expressly conferred on the Tribunal by this Act or any other enactment, the Tribunal shall have such other powers as may be reasonably necessary to enable it to carry out its functions.

23. Money to be appropriated by Parliament for purposes of this Act - All fees, salaries, allowances, and other expenditure payable or incurred under or in the administration of this Act shall be payable out of money to be appropriated by Parliament for the purpose.

24. Members not personally liable - No member of the Tribunal shall be personally liable for any act done or default made by the Tribunal in good faith in pursuance or intended pursuance of the powers and authorities of the Tribunal.

25. Other enactments not to prevail - Notwithstanding any provision of any other Act authorising any person or body to fix any remuneration or allowance, as from the commencement of this Act, any remuneration or allowance which the Tribunal has jurisdiction to determine by virtue of this Act or any other enactment shall be fixed by that Tribunal and not otherwise.

26. Consequential amendments - The enactments specified in Schedule 2 to this Act are hereby amended in the manner indicated in that Schedule.

27. Savings and validation - (1) Nothing in this Act shall affect the validity of any determination made by the Higher Salaries Commission before the commencement of this Act and every such determination shall be and be deemed always to have been valid according to its tenor.

(2) Notwithstanding anything in this Act, salaries and allowances in respect of which the Higher Salaries Commission may make determinations shall, until amended or superseded by determination of the Tribunal, continue to be payable at the rates applicable at the commencement of this Act.

This Act is administered by the Ministry of Finance and Economic Management

SCHEDULE 1
[Section 13(1)(a)]

Salaries and allowances to be fixed by this Act:

Queen's Representative
Speaker of Parliament
Prime Minister
Deputy Prime Minister
Ministers
Parliamentary Under-secretary
Leader of the Opposition
Deputy Leader of the Opposition
Members of Parliament

SCHEDULE 2
[Section 26]

Enactments amended:

Higher Salaries Commission Act 1989:

The Schedule of the Higher Salaries Commission Act 1989 is hereby amended by deleting from the left hand column "Civil List Act 1984" and by deleting from the right hand column the following positions -

Queen's Representative
Speaker of Parliament
Prime Minister
Deputy Prime Minister
Ministers
Leader of the House
Parliamentary Under-secretary
Leader of the Opposition
Deputy Leader of the Opposition
Members of Parliament