



ANALYSIS

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1969, No. 5

An Act to establish an Authority to provide for better housing and to administer a housing development programme, and to define the functions and powers of the Authority

(8 October 1969)

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

1. Short Title and Division into Parts - (1) This Act may be cited as the Housing Act 1969.

(2) This Act is divided into Parts as follows:

Part I - Administration	(Sections 3 to 12)
Part II - Functions and Powers	(Sections 13 to 19)
Part III - Financial Provisions	(Sections 20 to 25)
Part IV - Security for Advances	(Sections 26 to 36)
Part V - General	(Sections 37 to 44).

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

"Authority" means the Housing Authority established under this Act;

"Housing purpose" means any purpose specified in subsection (2) of section 14 of this Act;

"Minister" means the Minister responsible for housing;

"Society" means the Cook Islands Co-operative Thrift and Loan Society Limited (a body corporate constituted and registered under the Cook Islands Co-operative Societies Regulations 1955); and includes any other body corporate constituted and registered under those regulations.

PART I - ADMINISTRATION

3. Housing Authority - (1) There is hereby established for the purposes of this Act, an Authority to be called the Housing Authority.

(2) The Authority shall consist of not more than five members who shall be appointed by the High Commissioner on the recommendation of the Minister, one of whom shall be appointed as Chairman of the Authority.

(3) No person shall be deemed to be employed in the service of Her Majesty for the purpose of the Public Service Act 1968-69 by reason of his being a member of the Authority.

(4) The Authority shall be a body corporate with perpetual succession and a common seal and shall be capable of acquiring, holding, and disposing of real and personal property, of suing and being sued and of doing and suffering all such acts and things as bodies corporate may lawfully do and suffer.

(5) The powers of the Authority shall not be affected by any vacancy in its membership.

4. Term of office of members - (1) Except as otherwise provided in this Act every member of the Authority shall hold office for a term of five years but may from time to time be re-appointed.

(2) With respect to the first members of the Authority the following provisions shall apply:-

(a) Two of the members shall retire from office three years from the date of their appointment;

(b) The members so to retire shall be determined by agreement between the members to whom this section applies or failing such agreement shall be determined by lot.

(3) Notwithstanding anything in this Act every member whose office is terminated by effluxion of time shall continue to hold office until his successor comes into office.

5. Extraordinary vacancies - (1) Any member of the Authority may resign his office at any time by written notice given to the High Commissioner.

(2) Any member may at any time be removed from office by the High Commissioner for disability, bankruptcy, neglect of duty, or misconduct proved to the satisfaction of the High Commissioner.

(3) If any member dies or resigns his office by written notice given to the High Commissioner or is removed from office the vacancy shall be deemed to be an extraordinary vacancy.

(4) In the case of an extraordinary vacancy, the High Commissioner may appoint any person to fill the vacancy.

(5) Any member appointed to fill an extraordinary vacancy shall hold office only for the unexpired portion of the term of office of his predecessor.

(6) The powers of the Authority shall not be affected by the fact that at any time there may be less than five members in office.

6. Deputies of members - (1) In any case in which the Minister is satisfied that the Chairman or any other member of the Authority is incapacitated by illness, absence or other sufficient cause from performing the duties of his office, the Minister may appoint a deputy to act for the Chairman or other member during his incapacity. In the case of the Chairman the deputy may or may not be one of the other members; and if the deputy of the Chairman is one of the other members some other person may be appointed by the Minister to act as the deputy of that member.

(2) Any deputy appointed under this section shall while he acts as such be deemed to be a member of the Authority and the deputy Chairman shall have all the powers of the Chairman.

(3) No appointment of a deputy and no acts done by him as such and no acts done by the Authority while any deputy is acting as such shall be questioned in any proceedings on the ground that the reason for his appointment had not arisen or had ceased to exist.

7. Meetings of members - (1) The first meeting of the members shall be held on a day to be appointed by the Chairman.

(2) Subsequent meetings shall be held at such times and places as the members or the Chairman may from time to time appoint.

(3) The Chairman or any three members may at any time call a special meeting of the members.

(4) At all meetings three members shall form a quorum.

(5) The Chairman shall preside at all meetings at which he is present. In the absence of the Chairman from any meeting, the members present shall appoint one of their number to be Chairman of that meeting.

(6) At any meeting the Chairman shall have a deliberative vote and in the case of an equality of votes shall also have a casting vote.

(7) All questions arising at any meeting shall be decided by a majority of the valid votes of members recorded thereon.

(8) The Minister shall have the right to attend any meeting of members.

(9) Subject to the provisions of this Act and of any regulations made thereunder the members may regulate their procedure in such manner as they think fit.

8. Disqualification of members - (1) A member of the Authority shall not vote or take part in the discussion of any matter before the Authority or before any committee thereof in which he has directly or indirectly a pecuniary interest apart from any interest in common with the public provided that nothing in this section shall apply to any contract of insurance insuring members against personal accident.

(2) Any member who knowingly offends against this section shall be guilty of misconduct and a breach of this Act.

9. Remuneration and travelling allowances of members - The members of the Authority shall be paid out of the Cook Islands Government Account such remuneration and travelling allowances as shall be fixed from time to time by the High Commissioner on the recommendation of the Minister.

10. Officers and employees - (1) The Authority shall appoint a general manager who shall be the Chief Executive Officer of the Authority.

(2) The Authority may from time to time appoint such other officers and employees including acting or temporary or casual officers and employees as it thinks necessary for the efficient exercise of its functions and powers.

(3) Any person in the service of the Crown may be appointed to be an officer or employee of the Authority but no such person shall be entitled to hold office concurrently as an officer or employee of the Authority and as a servant of the Crown except -

(a) In the case of a person subject to the Public Service Act 1968-69 with the consent of the Public Service Commission; and

(b) In any other case with the consent of the Minister of the Crown to whose control he is subject.

(4) Subject to the provisions of this Act the Authority may with the prior approval of the Minister responsible for finance pay to its officers and employees such salaries and allowances as it thinks fit and may at any time remove any officer or employee from his office or employment.

11. Liability of members and officers - No member or officer of the Authority shall be personally liable for any act or default done or omitted to be done in good faith under the provisions of this Act and any sums of money, damages or costs which may be recovered against them or any one of them in respect of any such act or default shall be paid out of funds of the Authority.

12. Appointment of committees and delegation - (1) The Authority may from time to time appoint a Committee or Committees consisting of two or more persons being members or officers of the Authority and may from time to time delegate to any such Committee such of the powers or functions of the Authority including the power of delegation conferred by this section as it may think fit:

Provided that in no case shall any power -

- (i) to acquire land or buildings; or
- (ii) to sell land or buildings vested in the Authority, be delegated to such a Committee.

(2) The Authority may from time to time delegate any of its powers to any member, officer or employee of the Authority including the power of delegation conferred by this section.

(3) Subject to any general or special directions given or conditions imposed by the Authority or Committee or person to whom any powers are delegated as aforesaid the Committee or person to whom any powers are so delegated may exercise these powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) Every Committee or person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Any delegation under this section may be made to a specified person or to persons of a specified class or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a special class.

(6) Any delegation under this section may be revoked at any time.

(7) The delegation of any power by the Authority or by any Committee or person shall not prevent the exercise of that power by the Authority or as the case may require by that Committee or person.

PART II - FUNCTIONS AND POWERS

13. Functions and powers of Authority - The Authority is hereby authorised to provide dwellings and improved housing and living conditions in the Cook Islands, and for those purposes the Authority is authorised and shall have power -

- (a) with the prior approval of the Minister to acquire by lease or sub-lease any land or buildings and to develop the same as a building estate by the erection, construction, alteration, maintenance and improvement of dwelling-houses or flats, and gardens, recreation parks

- and other works and buildings for or for the convenience of persons occupying such dwelling-houses or flats:
- (b) to accept donations of leases or subleases of any land, money or other property:
 - (c) to subdivide and develop any land acquired by or vested in it:
 - (d) to acquire any dwelling-houses or flats suitable for the purposes of this Act:
 - (e) to let or lease any land or building vested in it, including the leasing of any such land for the purpose of the erection of any factory, shop, workshop, or place of worship or recreation the erection of which would in the opinion of the Authority be to the convenience or benefit of persons occupying houses vested in the Authority, and to accept surrender of any lease:
 - (f) subject to the provisions of any enactment applicable to the Authority, to fix, regulate or make such charges as it determines from time to time for the use of any dwelling-house, flat, building or other facility provided, maintained, controlled or operated by the Authority:
 - (g) with the prior approval of the Minister to sell or exchange any interest in land other than the fee simple or buildings vested in it:
 - (h) with the prior approval of the Minister responsible for finance invest in any securities authorised by law for the time being for the investment of trust funds any moneys (whether capital or income) at any time at the disposal of the Authority and not immediately required by the Authority for the purchase of property or for the construction of buildings or making of advances or for other purposes authorised by this Act:
 - (i) to make advances from time to time in accordance with the provisions of this Act:
 - (j) to negotiate and enter into arrangements with and between private landowners and householders, and assist by advice and otherwise the development of private housing conditions:
 - (k) to purchase plant, vehicles, machinery, equipment, stores and building materials and accessories of any kind:
 - (l) to contract for the execution or provision by any person of any work or services authorised by this or any other enactment to be executed or provided by the Authority in such manner and subject to such terms and conditions as the Authority thinks fit.

14. Advances - (1) Advances may be made from time to time to -

- (a) Any permanent resident of the Cook Islands:
- (b) The Cook Islands Co-operative Thrift and Loan Society Limited (a body corporate constituted and registered under the Cook Islands Co-operative Societies Regulations 1953) under an agreement that the Society will make advances to such of the Society's registered members who are duly qualified from time to time under the Society's bylaws for loans from the Society:
- (c) Any other body corporate constituted and registered under those regulations and approved by the Minister for the purposes of this section -

for all or any of the purposes specified in subsection (2) of this section.

(2) Advances may be made under subsection (1) of this section for the following purposes:-

- (a) The erection, repair, alteration, or improvement of any dwelling and of all necessary outbuildings and appurtenances attached thereto:
- (b) The repair, alteration, improvement, or installation in or in respect of any dwelling of a system of lighting, sanitation, water supply, or other conveniences:
- (c) The purchase of any land or interest in land as a site for any dwelling:
- (d) The draining, cultivation, development, or general improvement of the land appurtenant to any dwelling or intended to be used as a site for any dwelling.

15. Rate of interest - The rate of interest to be charged upon any advances shall be fixed from time to time by the Minister responsible for finance.

16. Participation of Authority in undertaking - The Authority may with the approval of the Minister participate in any undertaking with any person, firm, company or local authority for the provision of housing and in connection with such a scheme may -

- (i) make advances from the funds of the Authority to any such person, firm, company or local authority upon such terms as to repayment of principal and interest and subject to such conditions as it may deem expedient:
- (ii) give, sell, lease or exchange any interest in land other than the fee simple vested in the Authority to any such person, firm, company or local authority:
- (iii) employ its funds and resources for the purpose of such an undertaking in such manner as it may think fit.

17. Authority to have regard to directions of Government - In the exercise of its functions and powers the Authority shall have regard to any representations that may be made by the Minister in respect of any function or business of the Authority and shall give effect to any decision of the Government in relation thereto conveyed to the Authority in writing by the Minister.

18. Vesting of property in Authority - (1) Her Majesty the Queen is hereby empowered to grant, transfer, assign or lease to the Authority or in the name of the Authority any land or interest in land (other than the fee simple in any land and land comprised in a Public Reserve) and any personal property, rights or privileges, vested in or held on behalf of the Crown and used or administered or to be used or administered for the purposes of or in connection with any housing or industrial projects or town planning schemes subject to any leases, rights, easements and interests subsisting in respect of the land or property at the date of the grant, transfer or assignment.

(2) Any lease by the Crown pursuant to subsection (1) of this section may be for such term and provide for such rent and other conditions as the Authority with the prior written approval of the Minister shall accept or approve.

19. Authority may refer matters for investigation - The Authority may from time to time appoint one or more of its members or any other qualified person to investigate and report to the Authority on such matters as are referred to him or them by the Authority for the purpose of the proper exercise of its powers or functions under this Act.

PART III - FINANCIAL PROVISIONS

20. Transfer of assets and liabilities to Authority - All assets and liabilities held and owned by the Government of the Cook Islands for and under the housing improvement scheme operated pursuant to the provisions of the Cook Islands Amendment Act 1960 shall, on the coming into force of this Act, without further authority than this section, be vested in the Authority.

21. Appropriation by the Legislative Assembly - There shall be paid to the Authority such sums of money as may be appropriated by the Legislative Assembly from time to time for the purposes of the Authority.

22. Housing Authority Account - (1) For the purposes of this Act there is hereby established in the Cook Islands Government Account an account to be known as the Housing Authority Account.

(2) The receipts and payments of the Authority shall be public moneys within the meaning of the Public Monies Act 1969 which shall apply to the Authority subject to the provisions of this part of this Act.

(3) The Authority shall arrange with the Financial Secretary for the Housing Authority Account and such subsidiary accounts as may be necessary or desirable to be maintained by the Treasury.

23. Preparation of estimates - (1) The Authority shall prepare and submit to the Minister annual estimates of receipts and expenditure, in such form as the Minister responsible for finance directs, covering the operations of the Authority in the exercise of its powers and functions.

(2) The estimates may provide for finance by way of loan, the terms and conditions of which shall be subject to the approval of the Minister responsible for finance.

(3) The Minister shall submit the estimates, with such recommendations as he thinks fit to Cabinet for approval.

24. Authorization of expenditure - (1) The Chairman of the Authority may authorize expenditure in accordance with the estimates as approved by the Cabinet and as between items of expenditure in the approved estimates may exercise a

power of virement to an extent not exceeding twenty per cent of the item to which funds are transferred.

(2) The Minister may authorize expenditure in excess of the total provided for in the estimates to the extent that receipts of the Authority exceed the amount estimated.

(3) The Minister may from time to time authorize the expenditure of money for the preservation, protection and improvement of any property on the security of which or in respect of which any advance has been made, to the extent that the Minister considers necessary to prevent or minimise any loss on the realisation of the security.

25. Annual report and accounts - (1) The Authority shall as soon as practicable after the end of each financial year, furnish to the Minister a report covering its activities for the year and including financial statements showing estimated and actual receipts and expenditure together with such commercial accounts as are appropriate to the nature of its financial operations.

(2) The Treasury shall furnish the statements and accounts necessary for inclusion in the Annual Report of the Authority.

(3) The accounts and financial statements of the Authority's activities shall be presented for examination in conjunction with the audit required pursuant to Article 71 of the Constitution and a copy of the annual report shall be laid before the Legislative Assembly as soon as practicable after the presentation to the Legislative Assembly of the annual report of the Audit Office.

PART IV - SECURITY FOR ADVANCES

26. Security for advances other than to societies - (1) The Authority may make advances for any housing purpose upon any of the following classes of security, namely:-

- (a) A first charge on any freehold interest in Native freehold land or land owned by Natives or descendants of Natives;
- (b) A first charge on any leasehold interest in Native freehold land or land owned by Natives or descendants of Natives;
- (c) A first charge on any interest in land under any vesting order made under Part II of the Cook Islands Amendment Act 1960;
- (d) A first charge on any interest in land under any occupation order;
- (e) An assignment of the proceeds of the alienation of Native freehold land or land owned by Natives or descendants of Natives;
- (f) An assignment or other disposition of any money payable or to become payable, whether on account of the sale of fruit or vegetables or other produce of land or otherwise howsoever;

Provided that the Authority may in its discretion make an advance not exceeding eight hundred dollars without any such security.

(2) For the purposes of determining whether an application for an advance should be granted, the Authority shall not be bound to insist upon any fixed or definite margin of security.

27. Advances to societies - (1) As security for the repayment of any advance made to any society, the Authority may require the society to execute a mortgage or other charge or an agreement to the satisfaction of the Authority.

(2) The Authority may, in its own name, enter into any agreement with any society to which an advance is made in order to give effect to the provisions of section 14 of this Act.

(3) Any society to which an advance is made shall undertake with the Authority -

- (a) To use and apply any amounts advanced to it exclusively in making loans for housing purposes; and
- (b) Not to charge interest on any such loans at a rate in excess of a rate fixed from time to time by the Minister with the concurrence of the Minister responsible for finance.

28. Repayment of advances - All advances (including any reasonable charge for supervision which may be approved by the Authority), with interest at the rate fixed under section 15 of this Act shall be a charge against the land in respect of which the advance is made, and shall be repayable at such time or times and in such manner as the Authority from time to time determines, subject to any regulations made under this Act.

29. Securities to be taken in name of Authority - Every security for an advance shall be taken in the name of the Authority.

30. Assignment of money as security may be irrevocable - (1) The Authority may require any order on or assignment of money given as security for the repayment of any advance to be expressed to be irrevocable, notwithstanding the death of the person giving the order or assignment, and the order or assignment shall be irrevocable accordingly except with the consent in writing of the Authority.

(2) Notwithstanding anything in any enactment to the contrary, any company, corporate body, or person upon whom any notice of any such order or assignment has been served shall be bound to accept and to act upon the order or assignment and to pay to the person nominated in that behalf in the order or assignment all money from time to time payable thereunder.

31. Alienation and assignment as security for advance - (1) Notwithstanding anything in section 470 or section 471 or section 473 of the Cook Islands Act 1915, it shall be competent for any Native or descendant of a Native to alienate any Native freehold land or things growing on or attached to any such land or the rents and profits from any such land as security for any advance made by the Authority or made by any society for any housing purpose.

(2) Notwithstanding anything in the Property Law Act 1952 of the New Zealand Parliament, no power of sale shall be contained or implied in any charge given on any interest in land (not being a leasehold interest) to secure the repayment of any advance, whether made by the Authority or made by any society for any housing purpose.

32. Assignments of money from land vested in trustees - (1) For the purpose of securing the repayment of any advance made by the Authority or made by any society for any housing purpose, it shall be competent for any Native or descendant

of a Native to give an order on or an assignment of the proceeds of the alienation of any land (including compensation money for land taken) whether the land is vested in a trustee or not.

(2) Any such order or assignment shall be valid and enforceable for all purposes, notwithstanding the provisions of section 464 of the Cook Islands Act 1915 or of any other enactment.

33. Advances to be paid as Authority directs - Every advance (not being an advance to a society) shall be expended or applied by the Authority, or at its direction, for any one or more housing purposes for the benefit or on behalf of the applicant, and, unless the Authority otherwise determines, shall not be paid direct to the applicant.

34. Charging order may be made - (1) Notwithstanding anything in section 470 of the Cook Islands Act 1915, where a charge on any interest in land has been given as security for the repayment of any advance (whether made by the Authority or made by a society), the Land Court, on proof to its satisfaction that the advance has been made, may make an order charging the land or any interest therein or any part thereof or any undivided or partial interest therein with repayment of the amount advanced with interest, in the case of an advance by the Authority, at the rate fixed under section 15 of this Act and, in the case of an advance by a society, at the rate fixed in the charge, and by such instalments and with such directions for giving effect to the charge as the Court thinks expedient.

(2) In the case of an advance by the Authority, the certificate of the Authority shall for all purposes be prima facie proof of the amount of the advance and of the rate of interest payable, and may be accepted by the Court accordingly.

(3) The Court may make a further order varying any former order in respect of any additional advance or by way of apportioning charges in such manner as it thinks expedient or for any other purpose it thinks fit, and every subsequent order shall supersede all prior charging orders so far as it is inconsistent therewith. Where any charge is apportioned, each portion shall be deemed to be a separate charge.

(4) Every order made under the provisions of this section shall be registered or recorded, as the case may require, in such manner as the Court directs.

35. Discharging of charging orders - The Land Court may at any time, on the application of the Authority or, as the case may be, of the society by which the advance was made wholly or partially discharge any charging order made under section 34 of this Act, whether or not the money secured by the charge has been repaid.

36. Appointment of receiver to enforce charges - (1) When by section 34 of this Act any charging order has been made in respect of any land or any interest therein, or upon the revenues thereof or the proceeds of the alienation thereof, the Land Court may at any time and from time to time, for the purpose of enforcing that charge, appoint a receiver in respect of the property so charged.

(2) A receiver appointed under this section shall have all such rights, powers, duties, and liabilities as may be expressly conferred or imposed on him by the Court and such other incidental powers as may be reasonably necessary for the exercise of the powers so conferred.

Provided that a receiver appointed under this section shall not have power to sell any Native land, or to lease any such land otherwise than as provided in subsection (3) of this section.

(3) Notwithstanding any of the provisions of the Cook Islands Act 1915 as to the alienation of Native land, a receiver appointed under this section for the purpose of enforcing a charge may, in his own name and with the leave of the Court, grant leases of any land so charged for any term not exceeding twenty-one years, on such conditions and for such rent or other consideration as he thinks fit.

PART V - GENERAL

37. Contracts of Authority - (1) Any contract which, if made between private persons, must be by deed shall, if made by the Authority, be in writing under the common seal of the Authority.

(2) Any contract which, if made between private persons, must be in writing signed by the parties to be charged therewith shall, if made by the Authority, be either under the common seal of the Authority or signed on behalf of the Authority by the Chairman of the Authority or by any member of the Authority authorised in that behalf by the Chairman.

(3) Any contract which, if made between private persons, may be made orally may be similarly made by or on behalf of the Authority by any person acting under its authority, express or implied.

38. Execution of documents - (1) Every document to which the common seal of the Authority is affixed shall be signed by the Chairman of the Authority and shall be countersigned by another member of the Authority.

(2) Any document which, if executed by a private person, would not require to be executed as a deed may be signed on behalf of the Authority by the Chairman or by any member of the Authority authorised in that behalf by the Chairman.

39. Evidence of documents - Every document purporting to be a document executed by or on behalf of the Authority in a manner provided in section 38 of this Act shall be received in evidence and be deemed to be so executed in the absence of proof to the contrary.

40. Penalty for misapplication of loan - Any person who knowingly applies any loan or part thereof made to him under the provisions of this Act to any purpose other than that authorised by the Authority shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment.

41. False statements - Any applicant for assistance from the Authority by way of loan or otherwise who wilfully fails to disclose any material information within his knowledge, or who wilfully makes any statement which he knows to be false or does not believe to be true shall be guilty of an offence and on conviction shall be liable to a fine not exceeding two hundred dollars or to imprisonment for a term not exceeding six months, or to both such fine or imprisonment.

42. Breach of Act or regulations - Every person who commits or attempts to commit or is concerned in committing or attempting to commit a breach or violation of the provisions of this Act or of any regulations made under this Act for which no special penalty is provided is liable for every offence to a fine not exceeding one hundred dollars.

43. Regulations - (1) The High Commissioner may from time to time by Order in Executive Council, after consideration of any recommendations thereon made to him by the Authority, make all such regulations as may, in his opinion, be deemed necessary or expedient for giving full effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power hereinbefore conferred it is hereby declared that regulations may be made under this section relating to the following matters:-

- (a) fixing and from time to time varying the number of persons who may occupy any dwelling-house or flat which is let by the Authority;
- (b) the use of the dwelling-houses and flats let by the Authority with a view to the prevention of nuisances and sanitary defects;
- (c) the inspection of buildings and land vested in the Authority;
- (d) prescribing the forms of mortgages, charges, leases and other instruments.

(3) All regulations made under this section shall be laid before the Legislative Assembly within twenty-eight days after the date of the making thereof if the Legislative Assembly is then in session and, if not, shall be laid before the Legislative Assembly within twenty-eight days after the commencement of the next ensuing session.

44. Repeal - Sections 3 to 19 (both inclusive) of the Cook Islands Amendment Act 1960 are hereby repealed.

This Act is administered in the Department of Internal Affairs.