



ANALYSIS

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1990, No. 7

An Act to establish the Ministry of Cultural Development

(30 November 1990)

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

PART I
PRELIMINARY

1. Short Title - This Act may be cited as the Ministry of Cultural Development Act 1990.

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

"Chairman" means the Chair of the National Arts Council;

"Deputy Chairman" means the Deputy Chairman of the National Arts Council;
"Minister" means the Minister of Cultural Development;
"Ministry" means the Ministry of Cultural Development established by this Act;
"Secretary" means the Secretary of the Ministry;
"The Council" means the National Arts Council established under this Act.

PART II
ESTABLISHMENT

3. Ministry of Cultural Development - (1) There shall be a Ministry of State to be known as the Ministry of Cultural Development which, under the control of the Minister, shall be charged with the objectives and functions set out in Section 4 and such other objectives and functions as may be lawfully conferred on the Ministry.

(2) The Ministry shall comprise such divisions having such functions not inconsistent with this Act as may from time to time be prescribed by regulations.

4. Principal objectives and functions of the Ministry - (1) The principal objectives of the Ministry shall be to -

- (a) preserve, perpetuate and enhance the Cook Islands cultural heritage in order to uphold tradition and develop an appreciation for this important national resource;
 - (b) encourage the growth and expansion of productive economic, social and educational activities as may enhance cultural art forms;
 - (c) present where appropriate, the varied elements of ancient and contemporary Cook Islands art and cultural forms;
 - (d) to maintain the unique cultural national identity of the people of the Cook Islands.
- (2) The principal functions of the Ministry shall be -
- (a) encourage, promote, support and develop the standards in the arts;
 - (b) encourage, promote, and develop the practice and appreciation of the Cook Islands Arts and Culture;
 - (c) make accessible to every person in the Cook Islands as far as may be practicable, all forms of artistic activity;
 - (d) carry out or oversee as appropriate all activities of the Library and Museum, Archives, Anthropological Services, National Arts Council, Constitution Celebrations, Audio-Visual Recording Unit and such other related responsibilities as may be added from time to time and be prescribed in any enactment;
 - (e) carry out the Ministry's activities in co-operation with other relevant government departments and various national and international interest groups;

- (f) charge such fees as it thinks fit for admission to land or buildings vested in it or under its control, or in respect of any exhibition or performance arranged or undertaken by it;
- (g) collect, examine, disseminate, or publish any information relating to the arts or to any particular form of art;
- (h) advise the Minister on any matter relating to or affecting the objectives and functions of the Ministry;
- (i) with the written consent of the Minister establish trust accounts in such manner as may be recommended by the Council and approved by the Audit Officer.

5. Minister of Cultural Development - The Minister of Cultural Development shall be responsible for the policy of the Ministry and its control, and such other functions as may be conferred upon him by this or any other Act.

6. Advisory and Technical Committees - (1) The Minister may from time to time with the concurrence of Cabinet appoint, discharge, alter, continue or reconstitute advisory or technical committees to advise the Minister and Cabinet on matters concerning the functions of the Ministry.

(2) A person may be appointed to be a member of a committee under this section, notwithstanding that he is not an officer or employee of the Ministry or of the Council.

(3) Subject to any directions given by the Minister or Cabinet, every such committee shall determine its own procedure.

(4) There shall be paid to the members of any such committee (other than persons in the employ of the Government) travelling allowances and expenses as may from time to time be fixed by the Queen's Representative by Order in Executive Council.

7. Delegation of powers by Minister - (1) The Minister may from time to time, by writing under his hand, either generally or particularly, delegate to the Secretary all or any of the powers which are conferred on him as minister of Cultural Development by this Act or any other enactment, but not including the power to delegate under this section or the power to consent to a delegation under section 10 of this Act.

(2) Subject to any general or special direction given or conditions attached by the Minister, the Secretary may exercise any powers delegated to him under this section in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

(3) Where the Secretary purports to act pursuant to any delegation under this section, he shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(4) Every such delegation shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Minister.

(5) Unless and until any such delegation is revoked, it shall continue in force according to its tenor. In the event of the Minister by whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made by the person for the time being holding office as Minister and, in the event of the Secretary to whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding office as Secretary or, if there is no Secretary in office or if the Secretary is absent from duty, to the person for the time being directed to act in the place of the Secretary.

8. Secretary of Cultural Development - There shall from time to time be appointed under the Public Service Act 1975 a Secretary of Cultural Development who shall be the administrative head of the Ministry.

9. Duties of Secretary - The principal duties of the Secretary shall be -

- (a) to exercise those powers vested in him by this Act and any regulations made under it, and those powers delegated to him by the Minister;
- (b) to ensure that the functions of the Ministry, as set out in Section 4, are effectively carried out;
- (c) to administer the provision of this Act and any regulations made under it;
- (d) to issue such instructions to officers, and employees of the Ministry as may be required to give full effect to this Act and any regulations made under it;
- (e) to plan for cultural development in the Cook Islands for such period and in such detail as the Minister may from time to time require;
- (f) to regularly advise the Minister on cultural development requirements in the Cook Islands;
- (g) to implement policies referred to him by the Minister.

10. Delegation of powers by the Secretary - (1) The Secretary may from time to time, by writing under his hand either generally or particularly, delegate to such officer or officers, employee or employees of the Ministry as he thinks fit all or any of the powers exercisable by him under any enactment, but not including this present power of delegation; provided that the Secretary shall not delegate any power delegated to him by the Minister without the written consent of the Minister, or any power delegated to him under the Public Service Act 1975 without the written consent of the Public Service Commissioner.

(2) Every 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.

(3) Any delegation under this section may be made to a specified officer or employee or to officers or employees of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.

(4) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Secretary.

(5) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Secretary by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Secretary.

(6) Subject to any general or special directions given or conditions attached by the Secretary, the officer or employee to whom any powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.

11. Officers and employees of the Ministry - There shall from time to time be appointed under the Public Service Act 1975 such other officers and employees of the Ministry as may be necessary.

12. Officers to act under direction of Secretary - All officers and employees of the Ministry shall act under the direction of the Secretary in the exercise and performance of the powers, duties, and functions conferred or imposed on them by any enactment the administration of which the Ministry or the Secretary is charged by this Act or any other enactment.

PART III NATIONAL ARTS COUNCIL

13. National Arts Council - (1) There is hereby established a Council, to be called the National Arts Council, which shall be responsible to the Ministry of Cultural Development in an advisory capacity on matters relating to cultural development in the Cook Islands and in particular matters of the kind referred to in Section 4 of this Act.

- (2) The Council shall consist of -
- (a) one person who shall be appointed by the Minister and that person shall be appointed as Chairman;
 - (b) one person who shall be appointed by the Minister taking into account the recommendations of the House of Ariki;
 - (c) one person who shall be appointed by the Minister from non-Government organisations such as Library and Museum Society;
 - (d) one person being an officer responsible for cultural development of the Department of Education who is for the time being approved for that purpose by the Minister of Education;
 - (e) one person who shall be appointed by the Minister taking into account the recommendation of the Koutu Nui.

14. Terms of office of Chairman and members - (1) Except as otherwise provided by this Act, the Chairman and all other appointed members shall hold office for a term of 2 years from the dates of their respective appointments but may from time to time be re-appointed.

(2) The Chairman and other appointed members, unless they sooner vacate their offices under Section 25 of this Act, shall continue in office until their respective successors come into force.

15. Extraordinary vacancies - (1) The Chairman or any appointed member may at any time resign his office by giving written notice to that effect to the Minister.

(2) The Chairman or any appointed member may at any time be removed from office by the Minister for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of the Minister.

(3) The Chairman or any appointed member shall be deemed to have vacated his office if he is absent from 3 consecutive meetings of the Council without leave.

(4) If the Chairman or any appointed member dies or resigns, or is removed from office, or is deemed to have vacated his office, the vacancy thereby occurring shall be deemed to be an extraordinary vacancy.

(5) Every extraordinary vacancy shall be filled by an appointment made in the same manner as that of the person whose office has become vacant.

(6) Every person who is appointed to fill an extraordinary vacancy shall be appointed for the remainder of the term of which his predecessor was appointed.

16. Deputy Chairman of Council - (1) At the first meeting of the Council after the coming into force of this Act and thereafter at the first meeting of the Council held after the 1st day of April in each year and also at the first meeting of the Council held after the occurrence of a vacancy in the office of the Deputy Chairman, the Council shall elect one of its members to be the Deputy Chairman. Any person so elected shall hold office while he continues to be a member of the Council until the appointment of his successor in accordance with this section and may be re-appointed.

(2) Except as otherwise provided in this Act the Deputy Chairman shall perform all the duties and may exercise all the powers of the Chairman during the absence or incapacity of the Chairman or while there is a vacancy in the office of the Chairman.

(3) No Act done by the Deputy Chairman while he is acting as Chairman shall in any proceedings be questioned on the grounds that the occasion for this so acting had not arisen or had ceased.

17. Meetings of the Council - (1) The Council shall meet at least 4 times in each year.

(2) The first meeting of the Council after the commencement of this Act shall be held at a time and place to be determined by the Minister.

(3) Subsequent meetings shall be held at such times and places as the Council determines.

(4) The Chairman may at any time call a special meeting of the Council, and in any event shall call a special meeting of the Council whenever requested in writing by any 2 members to do so.

(5) The Chairman shall cause not less than 7 clear days' notice of every special meeting and of the business to be transacted at that meeting to be given to each member of the Council who is for the time being in the Cook Islands. No business shall be transacted at the meeting unless it has been specified in the notice.

(6) At any meeting of the Council, 3 members shall be a quorum.

(7) The Chairman shall preside at every meeting of the Council at which he is present.

(8) Where the Chairman is absent from a meeting of the Council -

- (a) the Deputy Chairman shall preside if he is present;
or
- (b) if the Deputy Chairman is absent, the members present shall appoint one of their members to preside.

(9) Every question before the Council shall be decided by a majority of the votes cast by the members present at the meeting.

(10) At any meeting of the Council, the Chairman or other person presiding shall have a deliberative vote, and in the case of an equality of votes he shall also have a casting vote.

(11) Notwithstanding subsection (9) of this section, a resolution signed or assented to by letter or telegram by all of the members of the Council who are for the time being present in the Cook Islands shall have the same effect as a resolution duly passed at a meeting of the Council.

(12) Subject to the other provisions of this Act and to any regulations made thereunder, the Council may regulate its own procedure in such manner as it thinks fit.

18. Ministry to assist Council - The Ministry shall assist the Council or any Committee thereof by the provision of such secretarial and other services of an administrative nature as the Secretary may deem appropriate.

19. Rules - (1) The Ministry may from time to time, by resolution, make rules not inconsistent with this Act for all or any of the following purposes -

- (a) regulating the proceedings, including the conduct of meetings, of Council and its committees;
- (b) providing for such other matters as may be necessary or expedient for assisting the carrying out of the functions of the Ministry.

(2) Notice of every resolution to be submitted to any meeting for the making, amendment, or revocation of any rules shall be given, not less than 14 clear days before the day fixed for the meeting, to every member of the Council who is for the time being in the Cook Islands.

PART IV CULTURAL DEVELOPMENT FUND

20. Cultural Development Fund - The Cultural Development Fund of the Ministry shall consist of the following money -

- (a) all money paid to the Ministry under Section 12 of the Entertainment Tax Act 1975;
- (b) all money lawfully contributed or donated to the Ministry or otherwise lawfully payable to the Ministry;
- (c) all money received by the Ministry by way of fees, rent, or otherwise in respect of any real or personal property owned or controlled by the Ministry or in respect of the exercise of any of the functions or powers of the Ministry;
- (d) all accumulations of money belonging to the Cultural Development fund.

21. Disbursement of funds - (1) The funds referred to in Section 20 shall be disbursed by the Ministry in the following manner -

- (a) make grants, on such conditions as it thinks fit, to any persons to assist them to undertake studies, assignments, or commissions, or to make investigations, or to gain further experience, in respect of matters recommended by the Council whether within or beyond the Cook Islands;

- (b) make grants or pay subsidies, on such conditions as it thinks fit, to Island Councils, Village Committees, and to organisations engaged in the execution, creation, publication, or presentation of any of the arts or in the preservation and display of articles and things relating to the arts on the recommendation of the Council;
- (c) make awards to persons for outstanding accomplishment in the arts, whether within or beyond the Cook Islands;
- (d) commission the creation or execution of any artistic works, whether within or beyond the Cook Islands;
- (e) acquire or accept, by purchase, exchange, gift, or bailment, or by any other means, either permanently or temporarily, any artistic work and, if so desired, deliver it for safe custody and control to any local authority, museum, art gallery, library, association, society, or body, on such conditions as the Ministry thinks fit.
- (f) arrange for or undertake any artistic exhibition or performance, whether within or beyond the Cook Islands.

22. Bank accounts - (1) Pursuant to Section 20 of this Act, the Ministry shall open and maintain such bank account or accounts as it thinks fit.

(2) No money shall be paid out of any bank account of the Cultural Development Fund except with the authority, and in accordance with any general or special direction, of the Ministry.

(3) A bank account of the Ministry may only be operated on by cheque or other instrument (not being a promissory note or bill) signed by any member or officer of the Ministry who is authorised by it to sign cheques drawn on that account, and countersigned by the Secretary of the Ministry who is authorised to sign such cheques.

23. Money to be banked - All money forming part of the funds of the Cultural Development Fund shall, as soon as practicable after it is received by any member or authorised officer of the Ministry, be paid into one of its bank accounts established under Section 22 of this Act.

24. Investment of funds - Subject to the terms of any trust or endowment, the Ministry may invest, in accordance with the provisions of the Trustees Act 1956, an enactment of the Parliament of New Zealand, as to the investment of funds, any money belonging to the Cultural Development Fund that is not immediately required by it for expenditure.

25. Accounts - (1) The Ministry shall keep full and correct accounts of all money received and expended by it.

(2) The Ministry shall, as soon as possible after the end of every financial year, cause its accounts for that financial year to be balanced and cause to be prepared a statement of the assets and liabilities of the Ministry as at the end of that financial year, together with an account of income and expenditure showing the financial transactions of the Ministry for that financial year.

(3) The balance sheet, statement, and other accounts of the Ministry shall be submitted to and audited by the Treasury, which shall for that purpose have the same powers as it has under the Public Moneys Act 1987 in respect of public money.

(4) The obligations imposed on the Ministry under this section, shall, with regard to the accounts of trustees appointed in respect of a trust established pursuant to subsection (1) of Section 11 of this Act, be complied with by those trustees and the provision of this section shall, with the necessary modifications apply accordingly to those trustees.

26. Exemption from income tax - The Cultural Development Fund shall be exempt from income tax.

PART V ADMINISTRATION

27. Funds of the Ministry - There shall be paid out of the moneys from time to time appropriated by Parliament such moneys as are required by the Ministry to give effect to the provisions of this Act.

28. Annual Report - (1) The Secretary shall as soon as practicable after the end of each financial year furnish to the Minister a report on the finances and operations of the Ministry for that year.

(2) A copy of the report shall be laid before Parliament within 14 days after it has been furnished to the Minister if Parliament is then in session, and, if not, shall be laid before Parliament within 14 days after the commencement of the next ensuing Session.

29. Regulations - (1) The Queen's Representative may from time to time, by Order in Executive Council, make all such regulations as may be necessary or expedient for the purpose of giving full effect to the provisions of this Act and for the due administration thereof.

(2) All regulations made under this section shall be laid before Parliament within 14 days after the date of the making thereof if Parliament is then in session, and, if Parliament is not then in session, shall be laid before Parliament within 14 days after the commencement of the next ensuing session.

30. Transitional - (1) In this section, "the former Ministry" means the National Arts Council established by the National Arts Council Act 1981-82.

(2) Upon the date of coming into force of this Act, -
(a) all assets and liabilities of the former Ministry shall be transferred to and vest in the Crown without further assurance than this section and the Secretary shall have all powers necessary to take possession of, recover and deal with such assets and discharged such liabilities;

(b) Every agreement, whether in writing or not and every deed, bond or other instrument to which the former Ministry was a party or which affected the former Ministry and whether or not of such a nature that the rights, liabilities and obligations thereunder could be assigned, shall have effect as if the Crown were a party thereto or affected thereby instead of the former Ministry, as if for every reference (however worded and whether express or implied) therein to the former Ministry, there were substituted in respect of anything to be done on or after such date of coming into force a reference to the Crown.

31. Savings - Notwithstanding the repeal of the National Arts Council Act 1981-82, any document or declaration made or anything whatsoever done pursuant to that Act shall, so far as it is subsisting or in force at the date of commencement of this Act shall be deemed to have been made under this Act.

32. Repeals - The National Arts Council Act 1981-82 is hereby repealed.

This Act is administered by the Ministry of Cultural Development