



ANALYSIS

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1981, No. 15

An Act to provide for the making of a levy for development purposes on accommodation by Island Councils of the Outer Islands

BE-IT ENACTED by the Parliament of the Cook Islands in Session

(1 December 1981

assembled, and by the authority of the same, as follows:

1. Short Title and commencement - (1) This Act may be cited as the Outer Islands Development (Accommodation Levy) Act 1981.

(2) This Act shall come into force on the 1st day of January 1982.

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

"Accommodation" includes any room, rooms, unit, lodgings, or place of occupancy, being licensed or required to be licensed, used by tourists, visitors, or the travelling public;

"Chief Administration Officer", in relation to any island, means the Chief Administration Officer for that island;

"Court" shall mean the High Court of the Cook Islands;

"Inspector" means an inspector appointed pursuant to section 11 of this Act;

"Island Council" means an Island Council constituted under the Outer Islands Local Government Act 1976;

"Levy" means the accommodation levy imposed pursuant to section 4 of this Act;

"Manager" includes the owner, operator, or any other person charged with the responsibility of the administration or management of any premises used for accommodation.

3. Application - This Act shall apply to all Islands of the Cook Islands except Rarotonga.

PART I - IMPOSITION AND COLLECTION
OF ACCOMMODATION LEVY

4. Accommodation levy - Subject to this Act, an Island Council may by bylaw made pursuant to section 16 of the Outer Islands Government Act 1976, impose an accommodation levy of an amount or at a rate, not exceeding the maximum fixed by the High Commissioner by Order in Executive Council, on the value of accommodation provided to any person or persons on the Island, and the levy shall be collected by and paid to the Chief Administration Officer in accordance with the provisions of this Act.

(2) All accommodation levies received by the Chief Administration Officer shall be paid into and form part of the Island Council Fund, and shall be applied solely for development purposes on the island.

5. Liability for payment of levy - Every manager shall be liable for the payment of levy as provided for in this Act.

6. Value of accommodation for assessing levy - For the purposes of this Act, the value of accommodation shall be deemed to be the charge made for a room, rooms, unit, or other place of occupancy

(whether shared with any other person or not) in any hotel, motel, guesthouse, or other place of accommodation either licensed or required to be licensed under the provisions of the Tourist Authority Act 1968.

7. Payment of levy - (1) Subject to the provisions of this section, levy shall be payable to the Chief Administration Officer.

(2) Within 7 clear working days from the end of each calendar month, each person liable for the payment of the levy shall lodge with the Chief Administration Officer a return containing such details as the Chief Administration Officer may require in regard to the value of accommodation paid in the preceding calendar months together with payment of the levy due.

(3) Each return made under subsection (2) of this section shall include therein a written declaration as to the correctness of the return and the details therein.

8. Late payment surcharge - (1) Where payment of the levy has not been made by the due date, there shall be payable in addition to the levy a sum of 10 percent of the amount of levy due:

Provided that the late payment surcharge of 10 percent shall be increased to 20 percent where the levy and late payment surcharge are not paid within 14 clear working days from the end of the preceding calendar month.

(2) For the purposes of this Act, the late payment surcharges imposed by this section shall be deemed to be a levy and shall be payable and recoverable as if they were levy payable under this Act.

(3) The final date for the payment of levy and any late payment surcharges shall be within 21 clear working days from the end of the preceding calendar month.

(4) Every manager commits an offence against this Act who fails to furnish any return or fails to pay any levy as required of him under the provisions of this Act.

(5) Any person who commits an offence against subsection (4) of this section shall be liable to a fine not exceeding \$200 or an amount not exceeding 3 times the amount of levy outstanding, whichever is the greater sum, and in addition shall be directed by the Court to pay to the Chief Administration Officer forthwith the amount of levy unpaid.

9. Refunds of levy - Where the Chief Administration Officer is satisfied that an error has been made in the payment of any levy, he may refund the amount paid in error.

PART II - POWERS AND DUTIES

10. Appointment of inspectors - The Chief Administration Officer may, from time to time, appoint from officers of the Cook Islands Public Service such inspectors as he considers necessary to ensure that the provisions of this Act are carried out.

11. Powers of inspectors - Every inspector appointed pursuant to section 11 of this Act -

- (a) Shall have access to any books, records, or other documents held by any person which would assist in determining whether any levy has been properly assessed; and
- (b) May take copies or extracts from any books, records, or other documents held by any person which relates to accommodation charges; and
- (c) May enter freely upon any accommodation premises at all reasonable hours to inspect any books, records, or other documents; and
- (d) May exercise such other powers and authorities as may be necessary for the carrying out of the provisions of this Act.

12. Chief Administration Officer may requisition books, records, or other documents - The Chief Administration Officer may by order in writing under his hand require any person liable to the levy to produce to him, or any person authorised by him in his requisition, any books, records, or other documents which may have information in regard to ascertaining the value of accommodation.

13. Chief Administration Officer to be advised of charges made for accommodation - Every person liable to payment of this levy shall, within 7 clear working days from the date of commencement of this Act, provide the Chief Administration Officer with a scale of charges made for accommodation in any premises used by him, and shall further advise the Chief Administration Officer, within 7 working days of the date on which there is any alteration in the charges, of particulars of that alteration.

14. Records to be kept - Every person liable to the payment of the levy shall cause to be kept such records as the Chief Administration Officer considers necessary to ensure that charges made for any accommodation are readily available and shall keep such records for a minimum period of 7 years.

PART III - AGENTS, LIQUIDATORS, AND DECEASED LEVYPAYERS

15. Liability of principal for acts of agent - (1) Every act done or declaration made by an agent in the course of his agency in relation to his operation of any accommodation premises subject to the payment of levy or otherwise in relation to this Act, shall be deemed to have been done or made by his principal also, and the principal shall be liable accordingly to all levies, fines, or penalties imposed by this Act.

(2) For the purpose of this section the knowledge and intent of the agent shall be imputed to the principal in addition to his own.

(3) For the purposes of this section, the agent of an agent shall be deemed to be also the agent of the principal.

16. Liability of agents - Where any person acts or assumes to act as the agent of any other person in relation to the operation of accommodation premises subject to the payment of levy, or otherwise

in relation to this Act, he shall be liable to the levy, fines, or penalties as if he were the principal for whom he so acts or assumes to act.

17. Liability of agent winding up business of absentee principal - (1) Where an agent for a principal operating on any island any accommodation premises who is absent from the Cook Islands has been required by the principal to wind up the business of his principal, he shall, before taking any steps to wind up the business, notify the Chief Administration Officer of his intention so to do, and shall set aside such sum out of the assets of the principal as appears to the Chief Administration Officer to be sufficient to provide for any levy that is then or will thereafter become payable to the Chief Administration Officer in respect of the business of the principal.

(2) Every agent commits an offence who fails to give notice to the Chief Administration Officer, or fails to provide for payment of levy as required by this section.

18. Payment of levy by executors or administrators - (1) Where at the time of a levypayer's death, he has not paid the whole of the levy theretofore owing by him, the Chief Administration Officer shall have the same powers and remedies for the assessment of recovery of levy from the executors or administrators of the levypayer as he would have had against the levypayer if he were alive.

(2) The amount of levy owing by the levypayer as aforesaid shall until payment be a charge on all the levypayer's estate in the hands of the executors or administrators.

(3) The executors or administrators shall furnish such of the returns required by this Act as have not been made by the levypayer, and such other returns and information as the Chief Administration Officer may require.

19. Recovery of levy where there are no executors or administrators - (1) Where administration of the estate of any deceased levypayer has not been granted within 12 months of his death, the Chief Administration Officer may assess the levy owing by the deceased at the time of his death at such sum as he thinks proper.

(2) At any time after the making of an assessment under this section, the Chief Administration Officer may issue a warrant of distress in the form in the Schedule to this Act authorizing and requiring any constable or any other person named therein to levy the amount of levy owing by the deceased, and also the expenses of the execution, by distress and sale of the goods and chattels of the deceased.

(3) Upon the issue of any such warrant, the person so authorised shall have power to levy such amount and expenses accordingly.

PART IV - OFFENCES AND PENALTIES

20. Attempts - Every attempt to commit an offence against this Act shall be an offence punishable in a like manner as if the offence so attempted had actually been committed.

21. Defrauding the revenue - Every person who commits any offence against this Act or does any other act, with intent,

in either case, to defraud the revenue by evading or enabling any other person to evade payment of any levy or who conspires with any other person (whether that other person is in the Cook Islands or not) so to defraud the revenue in relation to the levy shall be liable to a fine not exceeding \$500 or to a fine not exceeding 10 times the amount of levy unpaid arising from defrauding the revenue, whichever is the greater sum.

22. Erroneous returns - Every person commits an offence who for the purposes of this Act makes any return which is erroneous or defective in any material particular.

23. Erroneous declarations - Every person commits an offence who makes any declaration under this Act which is erroneous in any material particular.

24. False declarations - Every person commits an offence, and is liable to imprisonment for a term not exceeding 2 years, who makes any false declaration under this Act.

25. Obstruction, etc., of inspectors - (1) Every person commits an offence against this Act who -

(a) Without reasonable cause delays an inspector in the exercise of his functions under this Act; or

(b) Fails to produce any book, record, or other document that an inspector has requested.

(2) Any person who commits an offence against this section shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$500.

26. Failure to produce books, records, or other documents - Every person who fails to produce to the Chief Administration Officer or any other person authorised by him any book, record, or other document that has been requisitioned by order in writing by the Chief Administration Officer shall be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$500.

27. General penalty - Every person who commits an offence against this Act for which no other penalty is provided shall be liable to a fine not exceeding \$200.

28. Liability of officers of a company for offence by company - Where a person convicted of an offence against this Act is a company, every director and every officer concerned in the management of the company shall be guilty of the like offence, unless he proves that the act constituting the offence took place without his knowledge or consent.

29. Offences presumed to have been committed with intent to defraud the revenue - When any offence has been committed against this Act, it shall for all the purposes of this Act and in all proceedings thereunder be presumed to have been committed with intent to defraud the revenue, unless the contrary is proved; and this presumption shall not be excluded by the fact that evidence has been produced by the prosecution of the existence of such an intent.

PART V - MISCELLANEOUS

30. Persons liable to levy may add the levy to accounts -

(1) Any person liable to a levy may add the amount of the levy or any part thereof to the account or other charge made for accommodation and not to any other charge.

(2) No late penalty surcharge may be added to any charge made for accommodation.

31. Delegation of powers of the Chief Administration Officer -

(1) The Chief Administration Officer may, from time to time, delegate any or all of his powers under this Act, save the present power of delegation, to any officer of the Cook Islands Public Service.

(2) The delegation of any powers under this section shall not prevent the exercise of those powers by the Chief Administration Officer.

32. Regulations - (1) The High Commissioner may, by Order in Executive Council, make such regulations as are necessary for giving effect to this Act.

(2) Regulations made under this Act may prescribe for any breach thereof a fine not exceeding \$100, and all the provisions of this Act relating to fines shall apply to fines imposed by any such regulations.

(3) Every Order in Executive Council made under this Act shall be laid before Parliament within 28 days after the making thereof if Parliament is then in session, and if not, then within 14 days after the commencement of the next ensuing session.

This Act is administered in the Department of Trade, Labour and Transport

SCHEDULE

Section 19(1)

COOK ISLANDS

THE OUTER ISLANDS DEVELOPMENT (ACCOMMODATION LEVY) ACT 1981

WARRANT OF DISTRESS FOR ACCOMMODATION LEVY DUE BY DECEASED
LEVYPAYER

TO

WHEREAS _____ of _____ died on the _____ day
of _____ 19 _____, and administration of his estate has not been
granted; And whereas there is due and payable by said deceased to
the Chief Administration Officer for the Island of / Name /
for accommodation levy the sum of _____ dollars and _____ cents:

This is therefore to command you forthwith to levy the
said sum of \$ _____, and the expenses of this execution,
by distress and sale of the goods and chattels of the said deceased;
And you are hereby commanded to pay what you shall so levy forthwith
to the Chief Administration Officer at _____, and to make
return of what you shall do by virtue of this warrant immediately
upon the execution thereof.

GIVEN under my hand this _____ day of _____ 19 _____.

Chief Administration Officer
