Contents

Part 1
Preliminary

1	Title	3
2	Commencement	3
3	Objects	3
4	Interpretation	4
5	Act to bind Crown	6
6	Fundamental Principles for Applying this Act	6

Part 2
Island Government
Division 1- Composition

7	Island Government	6
8	Composition	7

Division 2 - Functions Duties Powers

9	Functions of Island Government	7
10	Duties of Island Government	7
11	Powers of Island Government	8
12	Conduct of affairs and Mayor's responsibilities	8
13	Delegation of powers by Island Government	9

Division 3 - Election of Elected Members

14	Elections	9
15	General requirements for the conduct of elections	10
16	Electoral Regulations	11

Division 4 - Appointed Members

17	Appointment of Aronga Mana or Mataiapo Representative	12
18	Notification of appointed members	12
19	Tenure of office	12

Division 5 - Disqualification of Members

20	Disqualification from membership of Island Government	12

Division 6 - Meetings

21	Meetings of Island Governments	14
22	Public notice of and submissions to meetings	15

Division 7 - Mayor and Deputy Mayor

23	Deputy Mayor	15
24	Suspension of Mayor and Deputy Mayor	16
25	Responsibility of Island Government during period of suspension	16

Price $15.00

Division 8 - Committees of an Island Government
26 Committees of Island Government 17
Division 9 - General validation and indemnity provisions
27 Proceedings not invalidated by vacancies or irregularities 17
28 Liability and privileges of members 18
Part 3
Staff of Island Governments
29 Executive Officer for Island Government 18
30 Responsibilities of the Executive Officer 19
31 Executive Officer's terms and mode of employment 19
32 Delegation of powers by Executive Officer 20
33 Employees of Island Government 20
34 Obligation to notify vacancies and appoint on merit 21
35 General employment principles 21
36 Head of Ministry to oversee and review administration of affairs 22
37 Employee discipline 22
38 Appeals 22
Part 4
Code of Conduct
39 Objects 22
40 Interpretation in this Part 23
41 Application of this Part 23
42 Principles of public office 23
43 Misconduct in office by a Mayor or member 23
44 Functions and Powers of the Head of Ministry 24
45 Complaints and investigation 25
46 Recommendations where no misconduct 26
47 Recommendations in event of misconduct 26
48 High Court action 26
49 Powers of the Court to deal with misconduct 27
50 Effect of action on other proceedings and offences 27
Part 5
Financial Accountability
Division 1 - Revenue and Expenditure
51 Annual financial plan and budget 28
52 Annual report concerning performance 29
53 Financial systems 30
54 Failure to comply with financial reporting requirements 31
55 General revenues 31
56 Banking and related matters 32
57 Expenditure 32
58 Remuneration of elected, appointed and committee members 33
59 Government not liable for debts 33
60 Ministry of Finance and Economic Management, monthly and quarterly reports 33
61 Office of the Public Expenditure Review Committee and Audit Act 1995-96 to apply 33
Division 2 - Contracts
62 General power to contract and borrow 34
63 Carrying out of works 34

64 Contracts and tenders 35

Part 6
Devolution of Crown Responsibilities

65 Transfer of Crown responsibilities to Island Government 35
66 Transfer of associated property 36
67 Transfer of responsibility to Island Government by agreement 36
68 Effect of transfer 36

Part 7
Bylaws

69 Bylaws 37
70 Making of bylaws 38
71 Penalties imposed by bylaws 39
72 Application of bylaws 39
73 Jurisdiction for offences against bylaws 39
74 Enforcement of bylaws 40

Part 8
Legal Proceedings

75 Conduct of legal proceedings by Island Governments 40
76 Service of legal proceedings 40
77 Recovery of debts 40

Part 9
Miscellaneous

78 Regulations 40
79 Repeals and Revocations 42
80 Savings and transitional 42
81 Mayor's Annual Conference 43
82 Association of Island Governments 43

Schedule 1
Constituencies and Number of Councillors
Schedule 2
Repeals

An Act to provide for the good governance of islands other than Rarotonga.

(22 February 2013

The Parliament of the Cook Islands enacts as follows—

Part 1
Preliminary

1 Title
This Act is the Island Government Act 2012-13.

2 Commencement
This Act comes into force on the day after the date on which it receives the Royal assent.

3 Objects
The objects of this Act are—

(a) to foster good governance by all Island Governments:

(b) to promote accountability of Island Governments to their island communities:

(c) to encourage community participation in the governance of each island through transparency and consultation:

(d) to encourage Island Governments and the island community to progressively assume responsibilities as and when they are able to do so:

(e) to enable Island Governments and their island communities to decide on how best to promote the social, economic, cultural and environmental well-being of the respective islands.

4 Interpretation

(1) In this Act, unless the context otherwise requires—

appointed member means a person referred to in section 8(1)(c) and (d):

Aronga Mana includes those persons invested with or having custody of a title in accordance with native custom and usage of the island upon which that person is a resident and which title is recognised by such native custom and usage as entitling the holder or custodian to be a member of the Aronga Mana of that island:

committee means any committee of an Island Government established in accordance with section 26;

constituency means a village of an island specified in Schedule 1:

Cook Islander means a person who is a member of the Polynesian race indigenous to the Cook Islands (including the descendant of such a person), and for the purposes of this Act includes a person who—

(a) has been granted the status of a permanent resident pursuant to section 5 of the Entry Residence and Departure Act 1971-72; and

(b) an honorary resident under section 5A of that Act:

corrupt practice has the meaning given to it in regulations made under section 16:

councillor means a person referred to in section 8(1)(b) and includes a person appointed to fill a vacancy in accordance with this Act:

elector means a person who is not disqualified from being an elector under this Act, and who is enrolled to vote in an Island Government election;

elected member means, any of the persons referred to in section 8(1)(a) and (b) and (2):

employee means an employee of an Island Government appointed under section 33:

enrolled means to be on a roll of electors compiled in accordance with any law for the purposes of an Island Government election:

Executive Officer means the person appointed in accordance with section 29, and includes any person lawfully acting in that position:

financial year means each period of 12 months ending on the 30th day of June each year:

Head of the Ministry means the Chief of Staff of the Office of the Prime Minister, or in the event of a change being made to the Ministry responsible for this Act, means the Head of that Ministry, and includes any person acting under any written delegation of powers given by the Head of the Ministry:

island means an island referred to in Schedule 1 and, where in conjunction with an island there is specified another island, includes that other island:

Island Government means a Council established under section 7, and composed of the elected members, appointed members and ex-officio members referred to in section 8(1):
Island Government election means Island Government elections held in accordance with section 14:
Mayor means the elected member referred to in section 8(1)(a):
member means any of the persons referred to in section 8(1):
Minister means the Prime Minister, or other Minister subsequently charged with the responsibility for the Ministry and the administration of this Act:
Ministry means the Office of the Prime Minister, or such other Ministry as may be lawfully charged with the responsibility for implementing this Act from time to time:
nominee means a person who is eligible to be an elector and who is nominated to be an elected member:
publicly notify in relation to an act, matter or thing, means to generally make known that act, matter or thing to interested persons by way of public notice board, publication or public announcement:
special consultative procedure means the procedure specified in subsection (3):
voting member means those members referred to in section 8(1)(a) and (b).

(2) For the purposes of this Act, Aronga Mana means the Ariki and the Ui Ariki, together with the Ui Mataiapo or Kavana, as the case may be.

(3) Subject to subsection (4) and section78(3), where this Act requires the special consultative procedure to be followed in relation to a matter or measure to be adopted by an Island Government, the Island Government—

(a) must give notice of that matter or measure before a meeting of the Island Government; and

(b) must publicly notify details of the matter or measure; and

(c) must, in the notice given under paragraph (b), specify a place time and date or dates (being not less than 14 days from the date of the first public notice) upon which a meeting will be convened at which interested persons are entitled to make oral or written submissions to—

(i) the Island Government; or

(ii) a committee of the Island Government; and

(d) must ensure that any person who wishes to make submissions on the matter or measure is given a reasonable opportunity to be heard by the body before which the submissions are made; and

(e) must ensure that every meeting at which the submissions are heard, or at which the Island Government or a committee of the Island Government deliberates on the matter or measure, are open to the public; and

(f) must make all written submissions on the matter or measure available to the public; and

(g) must ensure that the final decision in relation to the matter or measure is made at a meeting of the Island Government that is open to the public; and

(h) must not pursue the matter or adopt the measure unless the decision to do so is supported by an absolute majority of the voting members.

(4) Failure to comply with any requirement stated in subsection (3) does not invalidate any decision made or action taken by an Island Government, or by the Government in relation to an Island Government, unless the Minister determines with 60 days of the decision or action that the breach justifies declaring the decision or action to be invalid and unenforceable.

(5) Any challenge to the validity of a decision or action on the basis of non-compliance with the requirements of subsection (3) may only be made by the Minister acting on his or her own initiative, or by the Head of the Ministry or the Solicitor-General by making a written submission to the Minister giving particulars of the alleged breach and the reasons why the decision or action should be invalidated.

5 Act to bind Crown

This Act binds the Crown.

6 Fundamental Principles for Applying this Act

(1) This Act applies to the Islands referred to in Schedule 1.

(2) In applying the provisions of this Act, proper regard must be had to the status, position and authority of the Ui Ariki of each Island.

(3) The requirement of subsection (2) can be applied by—

(a) bylaws made in accordance with section 69(1)(d):

(b) regulations made under section 78(1)(a):

(c) any other means determined by the Ui Ariki and the Island Government to respect the customs, traditions and community values of the respective island.

(4) The regulations made under subsection (3)(b) may be applied to certain islands so as to reflect the customs and traditions of each island, and if necessary, may modify or adapt a requirement of this Act to properly reflect such customs and traditions.

Part 2
Island Government

Division 1- Composition

7 Island Government

(1) There is an Island Government for each island, and each Island Government has the composition, functions, duties, powers and responsibilities as set out in this Act, and any other law.

(2) Islands Governments may be known as Kavamani Enua, or any other term prescribed by regulations made under this Act.

(3) Each Island Government is a body corporate with perpetual succession and a common seal, and has authority and power to—

(a) enter into contracts:

(b) sue and be sued in its name, and otherwise take legal proceedings in accordance with this Act:

(c) acquire, hold and dispose of property, subject to any restrictions applying to the ownership or disposal of land under any law or agreement; and

(d) generally do all such acts and things that are necessary for or incidental to the performance of its functions under this Act or any other law.

8 Composition

(1) The membership of an Island Government comprises—

(a) a Mayor elected by all persons who are electors of the island:

(b) such number of councillors for the island representing each constituency of the island as are set out in Schedule 1, who are to be elected by those persons who are electors of those councillors in accordance with this Act:

(c) the person and, if more than one, those persons (if any) invested with the office of Ariki for or for part of the island:

(d) one person (other than an Ariki) representing the Aronga Mana, and in the case of Aitutaki the Mataiapo, of the island appointed in accordance with section 17:

(e) the member, and if more than one, the Members of Parliament for the island.

(2) Despite subsection (1)(b), in the case of the island of Palmerston, the councillors consist of 2 members from each of the 3 families as those families are recognised under the customs of that island—

(a) one of whom is to be the senior member of the family who is deemed to have been elected by persons of the family who are electors and notwithstanding that the senior member may have been elected as mayor for the island; and

(b) the other is to be nominated and elected by persons of the family who are electors in accordance with the provisions of Division 3 of this Part.

(3) The members referred to in subsection (1)(c), (d) and (e) are ex-officio members of the Island Government.

Division 2 - Functions Duties Powers

9 Functions of Island Government

It is the function of an Island Government to provide good, efficient and effective governance for the island in relation to those responsibilities conferred upon it by or pursuant to this Act, and any other law.

10 Duties of Island Government

In the performance of its functions, it is the duty of an Island Government and each member to -

(a) act in the public interest:

(b) pursue policies that are not inconsistent with national Government policies:

(c) deliver public facilities and services in the best interests of the island's community, and on behalf of national Government:

(d) promote transparency by disseminating and providing access to information pertaining to local government and its administration:

(e) promote fiscal responsibility and financial accountability:

(f) promote natural justice:

(g) encourage effective participation of the island community in local government through regular and frequent consultation, and where appropriate referenda:

(h) encourage private sector development and inter island joint ventures:

(i) promote sustainable and environmentally friendly management practices in the management of island resources:

(j) encourage social and cultural development.

11 Powers of Island Government

An Island Government has all such powers as are conferred upon it by this Act and any other law, and such other powers as are necessary for the performance of its functions and duties, all of which are to be exercised subject to the provisions of this Act.

12 Conduct of affairs and Mayor's responsibilities

(1) An Island Government, and the Mayor in conducting the affairs of the Island Government, must ensure that—

(a) its business is conducted in a manner that is comprehensible and open to the public:

(b) clear objectives are established for each of its activities and policies:

(c) conflicting objectives and conflicts of interest are resolved in a clear and proper manner:

(d) its performance is regularly measured by it in relation to its stated objectives, and is capable of being so measured by persons and organisations interested in the performance and activities of the Island Government:

(e) the island's community and the national Government, are adequately informed about the activities of the Island Government.

(2) It is also the responsibility of the Mayor—

(a) to provide and demonstrate good leadership:

(b) to ensure that the resolutions of the Council are duly implemented and to act in accordance with any resolution of the Council which requires that action be taken by the Mayor:

(c) to otherwise ensure that the members of the Council are involved in the affairs of the Island Government to the fullest extent that is practicable:

(d) to ensure co-operation between the Island Government and national Government so as to establish policy directions that promote economic, social, environmental and cultural opportunities that are consistent with national outcomes:

(e) to encourage good governance, accountability, social equity and fairness:

(f) to enhance the prosperity of the island's community through partnerships in business enterprise, health, education and employment:

(g) to develop growth and investment strategies that encourage sustainable development for the island and the utilisation of resources in a manner that benefits the community and the island:

(h) to implement safety procedures and practices that minimise the risk to members of the community, infrastructure and the environment:

(i) to implement a system of administration that is capable of managing resources on behalf of the national Government and the donor community.

13 Delegation of powers by Island Government

(1) An Island Government may from time to time and either generally or particularly, delegate to a member or a committee of the Island Government or the Executive Officer, any of the powers of the Island Government under this Act, except that the Island Government must not delegate to a member, committee or the Executive Officer any power, the exercise of which requires the special consultative procedure under section 4(3) to be applied.

(2) Subject to any general or special directions given or conditions attached by the Island Government, the member, committee or Executive Officer to whom any power is delegated, may exercise those powers in the same manner and with the same effect as if the power had been conferred on the member, committee or Executive Officer directly by this Act, and not by delegation.

(3) A delegation under this section is subject to such conditions as the Island Government imposes from time to time.

(4) All delegations under this section must be recorded in a delegations register maintained by the Executive Officer on behalf of the Island Government.

(5) Until a delegation made under this section is revoked, it continues in force according to its tenor.

(6) If a person purports to act pursuant to a delegation made under this section, that person is presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.

(7) Every delegation made under this section is revocable at will, and no such delegation prevents the exercise of any power by the Island Government.

Division 3 - Election of Elected Members

14 Elections

(1) Responsibility for conducting elections under this Act is vested in the officer in charge of Island Government elections who is—

(a) the Chief Electoral Officer under the Electoral Act 2004; or

(b) any other duly appointed officer lawfully exercising such functions and powers under any Act or regulations made under this Act.

(2) The Minister must by written Order, determine the date of the first Island Government election to be held under this Act, and such date must be within 3 years from the commencement of this Act.

(3) Island Government elections may be scheduled to be conducted simultaneously with national elections.

(4) All Island Government elections held after the first election referred to in subsection (1) must be held every 4 years, within one month after the fourth anniversary of the preceding election.

(5) Despite the preceding subsections, if the month in which an Island Government election is to be held is within 3 months of a general Parliamentary election or by-election, Cabinet may postpone the Island Government elections (or any by-election), provided that any such postponement must not be for any period exceeding 3 months.

(6) The Minister may by written Order, validate an Island Government election held outside of the timeframe prescribed by this section, either before or after the actual holding of the election.

(7) All sums required to be expended by a person having authority in relation to the conduct of an Island Government election must be paid out of the Cook Islands Government Account without further appropriation than this section.

15 General requirements for the conduct of elections

(1) For each Island Government election, the Executive Officer must ensure that arrangements are made for the conduct of the election in accordance with any applicable Act or regulations made under this Act, and subject to the lawful directions given by the Head of the Ministry to ensure compliance with such requirements.

(2) The Executive Officer of an Island Government must assist the officer in charge of an Island Government election lawfully exercising his or her functions and powers.

(3) Each of the following requirements and procedures apply to the conduct of each Island Government election—

(a) electors who are Cook Islanders of the age of 18 years or older, and who have been ordinarily resident on the island and in the relevant constituency for a continuance period of not less than 3 months prior to registration for an election under this Act are entitled to vote in the election:

(b) only electors are entitled to nominate for any elected office:

(c) the following persons are not eligible to be a nominee in an Island Government election under this Act—

(i) a member of Parliament:

(ii) an Executive Officer of an Island Government:

(iii) a person who is not eligible to be an elector:

(d) any objection to the eligibility of an elector must be made no later than 7 days after the closing of that roll for an Island Government election or by-election:

(e) all voting must be by secret ballot:

(f) subject to section 16(1)(i), each elector is entitled to cast only one vote in each election for Mayor, and one vote for the relevant councillor of the elector's constituency:

(g) an elected member holds office from the date of public notification of his or her successful election until the date immediately before the public notification of the successfully elected member at the next election.

16 Electoral Regulations

(1) The Queen's Representative may, on the advice of the Minister, by Order in Executive Council make regulations for the purpose of giving better effect to any of the provisions of this Division and the manner in which an election is to be conducted in accordance with this Act, and without limiting the generality of this provision, regulations may be made to—

(a) clarify requirements for ordinary residence, including prescribing specific residency requirements for certain islands:

(b) extend the franchise to any other class of resident of any island in accordance with a request made by an Island Government after complying with the special consultative procedure:

(c) provide for appropriate exemptions to the period of ordinary residence required for electors:

(d) specify other grounds for the disqualification of electors:

(e) provide for the compiling and approving of rolls of electors:

(f) the functions, responsibilities, duties and powers of the officer in charge of Island Government elections:

(g) the appointment of returning officers, presiding officers, polling clerks and other electoral officials, and prescribing their functions, responsibilities, duties and powers:

(h) rights and procedures for objecting to the eligibility of electors or nominees:

(i) procedures for the conduct of the election:

(j) the rights of electors in Pukapuka, Penrhyn, Manihiki Rakahanga and Mitiaro to cast more than one vote in an election:

(k) procedures for the public notification of elected members:

(l) prescribe corrupt practices, procedures for dealing with corrupt practices, and the consequences of any proven corrupt practices:

(m) procedures and remedies for dealing with electoral disputes on the ground of an alleged corrupt practice:

(n) grounds for election petitions, procedures for conducting such petitions, and the action that may be taken, or the declaration or orders to be made, following a successful petition:

(o) procedures for voting by blind, illiterate or disabled electors, and electors requiring special arrangements for casting their votes:

(p) the conduct of by-elections:

(q) any other matter to facilitate the fair and orderly conduct of an election under this Act.

(2) The regulations made under this section may prescribe penalties for the breach of any requirement applying to Island Government election, and such penalties may be fines not exceeding $1,000 or terms of imprisonment of up to 6 months or both, and if any penalty is prescribed in excess of these limits then that penalty is deemed to be the maximum permissible penalty under this subsection.

Division 4 - Appointed Members

17 Appointment of Aronga Mana or Mataiapo Representative

(1) Within 7 days of public notification of the names of the successful nominees elected at the elections held under section 14, the Mayor for each island (other than Aitutaki), must convene a meeting of the Aronga Mana of the island at which meeting the members of the Aronga Mana are entitled to appoint one of their number (other than an Ariki) to be a member of the Island Government.

(2) In the event of a dispute, or if it is unclear as to who is appointed at the meeting convened under subsection (1), the Mayor must at that meeting or at a subsequent meeting convened for the purpose, arrange for the members of the Aronga Mana to appoint one of their number (other than an Ariki) in a manner consistent with custom and fairness, and if there is no such manner or the manner would result in unfairness, the appointment must be by secret ballot.

(3) In the case of Aitutaki, the Chairperson for the time being of the Executive Council of the Mataiapo is an appointed member of the Aitutaki Island Government representing the Mataiapo.

18 Notification of appointed members

(1) The Executive Officer must give public notification of the name of the person appointed under section 17 when instructed by the Mayor, and must forward the person's name to the Head of the Ministry.

(2) An appointment made under section 17 takes effect upon the signing of a Warrant of Appointment, prepared by the Head of the Ministry and signed by the Queen's Representative on the advice of the Minister.

19 Tenure of office

A member appointed under section 17 holds office from the date of public notification of his or her successful appointment until the date immediately before the public notification of the name of the next duly appointed member.

Division 5 - Disqualification of Members

20 Disqualification from membership of Island Government

(1) The grounds for disqualifying an elected member or an appointed member of an Island Government, and for declaring the office held by the disqualified member to be vacant, are all or any of the following—

(a) the member becomes a Member of Parliament:

(b) the member takes an oath of allegiance to any foreign country:

(c) the member becomes mentally unstable as determined in accordance with relevant laws relating to mental health, or if certified as being mentally incompetent by 2 registered medical practitioners:

(d) the member is convicted of any offence punishable by imprisonment for a term of 3 months or more, or is convicted of a corrupt practice:

(e) the member dies:

(f) the member leaves the relevant Island for a period of one month or more without the prior approval of the Council (or if Council is not meeting at the relevant time, by the Mayor), but any such approval must not be granted if the absence exceeds 3 months (unless the absence is for the purposes of training or illness, or is related to official business of the Island Government):

(g) if the member is a councillor and is elected as the Mayor:

(h) the member resigns by notice in writing to the Head of the Ministry, and such resignation is accepted in writing by the Head of the Ministry.

(2) A disqualification under subsection (1) (except paragraph (f)) takes immediate effect, and the office is deemed to be vacant upon the happening of the event constituting the ground for disqualification.

(3) The following procedures and powers apply to a disqualification under subsection (1)(f), and the office is only deemed to be vacant when all of the following have been applied—

(a) written notice of the circumstances is given by the Council to the Head of the Ministry:

(b) the Head of the Ministry has obtained confirmation from the Solicitor-General that a breach of subsection (1)(f) appears to have occurred:

(c) the Council has voted to declare the member to be disqualified by a majority vote, after giving the member an opportunity to explain his or her absence and to otherwise provide any relevant information:

(d) the resolution of the Council has been sent to the Head of the Ministry.

(4) In addition to subsection (1), a member appointed to represent the Aronga Mana (or Mataiapo in the case of Aitutaki) is disqualified from membership of the Island Government, and his or her office is immediately vacated if he or she—

(a) becomes an Ariki; or

(b) is elected as the Mayor or a councillor; or

(c) he or she is guilty of misconduct in office and the High Court makes an order that the office be declared vacant.

(5) An elected member is disqualified from membership of an Island Government, and his or her seat immediately becomes vacant if—

(a) after conduct of a petition, his or her office is declared to be vacant; or

(b) he or she is guilty of misconduct in office and the High Court makes an order that the office be declared vacant.

(6) The Executive Officer must publicly notify any vacancy in the membership of the Island Government under subsections (1), (2) or (3), and state the reasons for that vacancy.

(7) For the avoidance of doubt and despite the provisions of section 8 of the Electoral Act 2004, nothing in this section or any other law requires an elected member or an appointed member to resign as a member of an Island Government because he or she has been nominated to contest an election for a member of Parliament.

Division 6 - Meetings

21 Meetings of Island Governments

(1) There must be at least 1 ordinary meeting of an Island Government in each calendar month.

(2) Notice of ordinary meetings of an Island Government must be given to each member nominating a time, date and place for the meeting as determined by the Mayor.

(3) A special meeting of the Island Government must be duly convened by the Mayor if requested to do so by—

(a) the Minister or the Head of the Ministry; or

(b) a Member of Parliament who is a member of the Island Government; or

(c) at least 2 councillors of the Island Government.

(4) A person who requires the convening of a special meeting in accordance with subsection (3) must give notice to members of the business to be considered at the meeting.

(5) The Mayor, or in his or her absence the Deputy Mayor, presides at and directs the business and proceedings of each meeting.

(6) Only voting members are entitled to vote on matters before a meeting, but all other members are entitled to speak and be heard.

(7) A written record of each meeting must be kept by the clerk of the Island Government, who may be appointed by the Mayor with the concurrence of the majority of the councillors.

(8) If a clerk has not been appointed under subsection (7), or if the clerk is absent, the record must be kept by the Executive Officer.

(9) All business of the Island Government is decided by a simple majority of all voting members, and in the event of an equality of votes, the Mayor has a casting vote.

(10) Decisions of an Island Government, and any item of business dealt with or decided by an Island Government is deemed to have been validly decided or done at a meeting if—

(a) the item of business and decision is recorded in writing:

(b) a majority of members cast an affirmative vote:

(c) if requested by the Mayor or a councillor, the record discloses—

(i) the names and signature of members who cast an affirmative vote:

(ii) the names of members who did not support the decision or who abstained:

(d) the record is signed by the Mayor and the Executive Officer.

(11) A member who casts an affirmative vote is not entitled to withdraw that vote.

(12) No member of an Island Government is entitled to vote or take part in the discussion on any business before a meeting in which the member has a direct or indirect pecuniary interest, other than an interest in common with the public.

(13) The Mayor must invite the appointed representative of the national Government on the Island (if any) to any meeting of the Island Government that is considering business which concerns matters or measures relevant to national policies of the Government, and in relation to such matters the appointed government representative is to be given an opportunity to address the meeting.

(14) Any failure on the part of the Mayor or the Island Government to comply with subsection (13) does not invalidate the meeting or any decisions of the meeting.

(15) Nothing in this Act restricts the right of a Council to schedule meetings to coordinate with other community and religious bodies on an island, and to conduct the business of Council in cooperation with such bodies, and an Island Government may make a bylaw to give effect to any such arrangements.

22 Public notice of and submissions to meetings

(1) The Executive Officer must, not less than 7 days before an ordinary meeting of the Island Government, cause to be publicly notified the date, time and place of the meeting and the business to be considered at the meeting.

(2) No ordinary meeting of the Island Government is invalidated because public notice of that meeting was not given, unless it is proved that the person responsible for giving notice of the meeting acted in bad faith.

(3) Any person interested in business before an ordinary meeting of the Island Government is entitled to deliver to the Executive Officer written submissions for the meeting, which must be circulated to members and laid before the meeting.

Division 7 - Mayor and Deputy Mayor

23 Deputy Mayor

(1) Prior to the first meeting of an Island Government following the Island Government elections, and from time to time as is later required, the Mayor may appoint a Councillor elected under section 8(1)(b) to be Deputy Mayor.

(2) If the Mayor is—

(a) prevented for any reason from attending a meeting of the Island Government; or

(b) absent from the island; or

(c) unable to perform his or her duties—

the Deputy Mayor has authority to act as the Mayor during that absence or period when the Mayor is unable to perform the duties of office.

(3) Subject to any particular or general directions that may be imposed, the Deputy Mayor has all the functions, powers and duties of the Mayor during the period of incapacity or absence of the Mayor.

24 Suspension of Mayor and Deputy Mayor

(1) The Queen's Representative may, upon the advice of Cabinet conveyed by the Minister, suspend a Mayor or Deputy Mayor (or both) from office for a period determined by Cabinet (not exceeding 3 months), if in the opinion of Cabinet—

(a) the Mayor or Deputy Mayor have acted in a manner which is contrary to this Act, or which has prevented the Island Government from performing its functions and complying with its obligations under this Act; and

(b) it is in the public interest to do so; and

(c) to suspend either or both of them will facilitate rectifying the circumstances giving rise to the reason for the suspension.

(2) A suspension under subsection (1) must be by written notice served upon the Mayor or Deputy Mayor (as the case may be), and must—

(a) set out the reasons for the suspension; and

(b) disclose the public interest affected; and

(c) set out the date from, and the period for, which the suspension has effect.

(3) A Mayor or Deputy Mayor who is dissatisfied with a suspension under this section is entitled, within 14 days of receiving the notice given under subsection (2), to apply to the High Court for a judicial review of the decision to suspend.

(4) The High Court may, in its discretion, and having regard to the reasons for the suspension and the public interest affected, confirm, vary or cancel the suspension, and in so doing may impose such terms and conditions as the Court in the circumstances deems fit.

25 Responsibility of Island Government during period of suspension

(1) A Mayor or Deputy Mayor who is suspended from office is not entitled to participate in the affairs of the Island Government for the duration of the suspension, but is entitled to continue to receive for that time the remuneration paid to him or her immediately before the suspension took effect, unless that remuneration is a reason for the suspension.

(2) If a Mayor is suspended from office and there is no Deputy Mayor or, if the Mayor and Deputy Mayor are both suspended from office under section 24, the Councillors of the Island Government are entitled to appoint a member to be chairperson for the duration of the period of suspension.

(3) For the duration of his or her appointment, the member appointed to be chairperson under subsection (2) has all the privileges, functions, powers and duties of the Mayor.

(4) To the extent that it is capable of doing so, it is the responsibility of the Island Government, in consultation with the Head of Ministry, to take all necessary and reasonable steps to rectify the circumstances giving rise to a suspension under section 24.

Division 8 - Committees of an Island Government

26 Committees of Island Government

(1) An Island Government has authority to appoint such standing committees, special committees and subcommittees, as it considers appropriate.

(2) A committee may appoint such sub-committees as it considers appropriate, unless prohibited from doing so by the Island Government.

(3) A committee appointed under this section is subject to the control of the Island Government, and must carry out all general or special directions of the Island Government given in relation to the committee or its affairs.

(4) Nothing in this section precludes an Island Government from reviewing, rescinding or amending a decision made by a committee, whether or not the making of the decision was authorised by the delegation to the committee.

(5) Every sub-committee is subject to the control of the Island Government and the committee that appointed it, and must carry out all general or special directions of the committee given in relation to the sub-committee or its affairs.

(6) The Island Government may at any time and from time to time, discharge or reconstitute any committee or sub-committee, and may appoint to or authorise the appointment by a committee or sub-committee of any person or office-holder as a member of the committee or sub-committee, whether or not the person is a member of the Island Government.

(7) For the purposes of assisting the Island Government of Pukapuka in its administration of the affairs of Nassau, there is a standing committee of the Island Government comprising—

(a) two members who are electors and ordinarily resident on Nassau, appointed from time to time by the Mayor with the concurrence of a majority of the members of the Pukapukan Island Government; and

(b) one member who is an elector and ordinarily resident on Nassau, appointed from time to time by the Aronga Mana of the island of Pukapuka.

Division 9 - General validation and indemnity provisions

27 Proceedings not invalidated by vacancies or irregularities

No decision, act or proceedings of an Island Government, or of any person lawfully acting for or on behalf of an Island Government, is invalid—

(a) as a consequence of there being any vacancy in the membership of the Island Government at the time of the decision, act or proceeding; or

(b) in the event of the subsequent discovery that there was some defect in the election or appointment of any person so acting; or

(c) by reason that any person was or is incapable of being a member of the Island Government.

28 Liability and privileges of members

(1) A member of an Island Government is not personally liable for any act or omission of the Island Government, or for any act or omission on the part of the member done or omitted to be done by him or her in good faith.

(2) A member of an Island Government is not liable to any legal proceedings in any court for anything said or any vote cast at a meeting of the Island Government, or in any committee of the Island Government.

(3) No person is liable to any legal proceedings in any court for the true and factual publication of any report, paper, vote or proceeding of an Island Government.

Part 3
Staff of Island Governments

29 Executive Officer for Island Government

(1) The Executive Officer for an Island Government, appointed in accordance with this Part, is the principal administrative officer of the Island Government, and is required to attend all meetings of the Council and any committee of the Council.

(2) Subject to subsections (3) and (4), an Executive Officer must be appointed in accordance with any process prescribed by regulations made under this Act, and any instructions given from time to time by the Public Service Commissioner.

(3) In making an appointment under this section, due and proper regard must be given to the need to appoint a person who is best suited to do all of the following—

(a) to discharge the specific responsibilities placed on the Executive Officer; and

(b) to imbue the employees of the Island Government with a spirit of service to the community; and

(c) to promote efficiency in the administration of the affairs of the Island Government, and implement performance measurement systems; and

(d) to be a responsible manager; and

(e) to maintain appropriate standards of integrity and conduct among the employees of the Island Government; and

(f) to ensure that the Island Government is a good employer; and

(g) to promote equal employment opportunities.

(4) Not less than 14 day's prior written notice of the proposed appointment of an Executive Officer must be given to the Public Service Commissioner and the Head of the Ministry, and if the Public Service Commissioner or Head of Ministry is not satisfied that the proposed appointee meets the requirements of subsection (3), either of them may disallow the appointment and require that an alternative appointment be made, or that specific terms and conditions be applied to the appointment of the proposed Executive Officer.

(5) If the office of Executive Officer becomes vacant, the Mayor may make a temporary appointment of an acting Executive Officer, who meets the requirements stated in subsection (3) which is valid for a period of not more than 3 months.

30 Responsibilities of the Executive Officer

(1) The Executive Officer is responsible to the Mayor and the Island Government for all of the following—

(a) implementing the decisions of the Island Government:

(b) ensuring that all funds of the Island Government are managed, expended, recorded and accounted for in accordance with the provisions of Part 5:

(c) providing advice to members of the Island Government and any committee of the Island Government:

(d) ensuring that all functions, duties and powers delegated to him or her, or to any person employed by the Island Government, or imposed or conferred by any Act, regulation or bylaw, are properly performed or exercised:

(e) ensuring the effective, efficient and proper management of the activities and planning of the Island Government:

(f) preparing and providing monthly financial reports to the Island Government:

(g) developing the annual business plan and budget in consultation with the Island Government:

(h) ensuring that all requirements applying under the Public Service Act 2009, the Ministry of Finance and Economic Management Act 1995-1996 and the Public Expenditure Review Committee and Audit Act 1995-1996 are complied with in relation to all aspects of the administration and management of the Island Government:

(i) otherwise ensuring and promoting the efficient management of the Island Government, and the effective performance of its functions and responsibilities.

(2) In the day-to-day performance of his or her responsibilities the Executive Officer is accountable to and subject to the lawful direction of the Mayor, which must be consistent with any resolution of the Council, and any policy or bylaw made by it.

31 Executive Officer's terms and mode of employment

(1) The appointment of the Executive Officer is for a term of up to 4 years, as determined by the Island Government and the Head of the Ministry.

(2) The Executive Officer is eligible for reappointment, and continues to hold office at the expiration of his or her term until a new appointment is made in accordance with section 29.

(3) Each Executive Officer is employed as a public servant, and is subject to the Public Service Act 2009, and his or her employment is in accordance with a written contract of employment which must—

(a) set out the terms and conditions of employment:

(b) include performance targets:

(c) set out the salary and allowances to be paid in accordance with the remuneration system approved from time to time in accordance with the Public Service Act 2009:

(d) be signed by the Appointee and the Mayor—

and which is subject to the provisions of any regulations made under this Act.

(4) The Head of the Ministry and the Mayor must, at regular intervals and in accordance with the requirements and approved procedures of the Public Service Commissioner, review the performance by the Executive Officer in relation to his or her duties under this Part.

(5) The Mayor and the Head of Ministry must consult with the Executive Officer on each review, and recommend to the Executive Officer and the Island Government any improvements in the application of the provisions of this Part.

32 Delegation of powers by Executive Officer

(1) Subject to prior consultation with the Mayor, the Executive Officer may from time to time, either generally or particularly, delegate to any other responsible officer or employee of the Island Government, all or any of his or her responsibilities and powers under this Act, except—

(a) the power to delegate under this section; and

(b) any power delegated to him or her by the Island Government pursuant to section 13, unless that delegation expressly authorises the Executive Officer to delegate that power to other officers or employees pursuant to this section.

(2) Subject to any general or special directions given or conditions attached by the Executive Officer, the person to whom any responsibilities or powers are delegated under this section is authorised to perform the responsibilities and exercise those powers in the same manner and with the same effect as if they had been directly conferred by this Act and not by delegation.

(3) Until a delegation made under this section is revoked, it continues in full force according to its tenor, and in the event of the Executive Officer ceasing to hold office, the delegation continues to have effect as if made by the person for the time being appointed as Executive Officer.

(4) Any delegation under this section may be applied to a specified officer or employee, or to the holder for the time being of any specified office or position.

(5) If a person purports to act pursuant to a delegation made under this section, he or she is presumed to be acting in accordance with the terms of the delegation, in the absence of proof to the contrary.

(6) Every delegation made under this section is revocable at will and no such delegation prevents the exercise of any power by the Executive Officer.

33 Employees of Island Government

(1) There may from time to time be appointed such employees of the Island Government as are necessary to assist in the performance of its functions and the exercise of its powers.

(2) The Executive Officer must ensure that employees of the Island Government are engaged in accordance with the staffing structure, staffing policy and budget approved from time to time by the Council and implemented as directed by the Mayor.

(3) In the performance of their duties all employees are subject to the directions of the Executive Officer, which must be in accordance with any requirements determined by the mayor or the Island Government in accordance with section 30(1).

(4) The Island Government may pay employees out of the funds of the Island Government—

(a) such remuneration as it thinks fit, but in accordance with any prescribed scale of remuneration or guidelines established pursuant to the Public Service Act 2009; and

(b) such allowances and expenses as it thinks fit, including travelling allowances and travelling expenses in respect of travel on the business of the Island Government and in respect of attendance at any conference or meeting or any course of study or training that in the opinion of the Island Government will render them better qualified to carry out their duties.

(5) Employees appointed under subsection (2) are deemed to be employees of the Public Service, and the provisions of the Public Service Act 2009, in so far as those provisions are not inconsistent with the provisions of this Part, apply to an employee appointed under this Part.

(6) The Executive Officer may, after consultation with the Mayor and the Island Government, engage independent contractors to provide specialist services on terms and conditions approved by the Island Government.

34 Obligation to notify vacancies and appoint on merit

(1) Where it is proposed to fill a position that is vacant or is to become vacant, the Executive Officer must publicly notify the vacancy or prospective vacancy to enable suitably qualified persons to apply for the position.

(2) The Executive Officer in making an appointment to any office or position with the Island Government must, after consultation with the Mayor, give preference to the person who is best suited to the position.

35 General employment principles

(1) An Executive Officer must apply a personnel policy that complies with all requirements and processes under the Public Service Act 2009, and with the principles of being a good employer.

(2) For the purposes of this section, a "good employer" is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions applying all of the following—

(a) good and safe working conditions:

(b) an equal employment opportunities programme:

(c) the impartial selection of suitably qualified persons for appointment:

(d) opportunities for the enhancement of the abilities of individual employees:

(e) recognition of the employment requirements of women:

(f) recognition of the employment requirements of persons with disabilities.

(3) In addition to the requirements specified in subsections (1) and (2), an Executive Officer and an Island Government must ensure that all employees maintain proper standards of integrity and conduct, and concern for the public interest.

(4) For the purposes of this section an equal employment opportunities programme means a programme that is aimed at the identification and elimination of all aspects of policies, procedures and other institutional barriers that cause or perpetuate (or tend to cause or perpetuate) inequality in respect to the employment of any persons or group of persons.

36 Head of Ministry to oversee and review administration of affairs

(1) The Head of the Ministry is responsible for overseeing the administration of the affairs of each Island Government, and may from time to time conduct reviews to determine if the outputs required of the Island Government, and its members and employees, are being delivered in a timely, efficient and cost-effective manner.

(2) The Head of the Ministry must consult with the Executive Officer in relation to a review, and recommend to the Executive Officer and the Island Government any administrative improvements that may have been identified from the review which should be implemented by the Island Government and the Executive Officer.

37 Employee discipline

(1) If disciplinary action is required to be taken against an employee for reasons of misconduct or unsatisfactory performance, or other wrongdoing on the part of the employee, then any action to be taken is at the discretion and direction of the Executive Officer, subject to the requirements and procedures applying under the Public Service Act 2009.

(2) Before any disciplinary action is taken under this section, the Executive Officer must notify the Mayor.

38 Appeals

Rights of appeals by employees of Island Government Councils, and the procedures for such appeals, are subject to the provisions of Part 6 of the Public Service Act 2009.

Part 4
Code of Conduct

39 Objects

The objects of this Part are to achieve all of the following—

(a) recognise that public duties are to be performed in the public interest:

(b) establish principles, which members and employees must observe in the performance of their public duties:

(c) establish a process through which recommendations can be made and guidelines set to promote best practice standards to avoid misconduct in office:

(d) provide for independent monitoring of the performance of public duties:

(e) establish procedures by which complaints of misconduct in office can be investigated, inquired into and determined.

40 Interpretation in this Part

In this Part, unless the context otherwise requires—

public duties means the duties of a public office and includes the functions and responsibilities of that office; and

public office means the office of the Mayor and all members of an Island Government, and includes any other office requiring the performance of public duties and to which a member is appointed by virtue of being a member of an Island Government.

41 Application of this Part

(1) The principles of public office stated in section 42 apply to a Mayor, other members of an Island Government, Executive Officers and all employees, in respect of their acts and omissions in the course of performing a public duty.

(2) The provisions of sections 43 – 50 (inclusive) apply to all Mayor and all members of an Island Government.

42 Principles of public office

Members and employees must recognise and observe all of the following principles whenever performing a public duty—

(a) they must be selfless by taking decisions solely in the public interest and not for his, her or another's personal benefit or advantage:

(b) they have a duty to be honest by declaring all private interests relating to the public duties that he or she performs, and to take all necessary steps to resolve any conflict between those interests and those duties:

(c) they must be objective by making choices based upon merit:

(d) they are accountable for their decisions and actions to the public, and are subject to scrutiny that is appropriate to their office:

(e) they must have integrity by not placing themselves under any obligation to others that might influence the performance of their public duties:

(f) they must be open and transparent in all the decisions and actions that they take by restricting information only when demanded by the wider public interest.

43 Misconduct in office by a Mayor or member

(1) Misconduct in office means—

(a) concealing information required to be disclosed under subsection (2) with the intention of avoiding the detection of misconduct in office:

(b) using a public office or position to obtain an improper personal benefit or advantage, or an improper benefit or advantage for another, or to force or induce a person to act unlawfully or in breach of any duty applying to that person:

(c) using information received by one's public office or position to obtain an improper personal benefit or advantage, or an improper benefit or advantage for another:

(d) failing to disclose a direct or indirect personal interest in a matter, in relation to which a public duty is or may be performed:

(e) having a direct or indirect interest in a matter in relation to which a public duty is or may be performed:

(f) holding a directorship or similar position, being employed or providing a service unrelated to one's public office in circumstances that are incompatible with the public duties of that office:

(g) accepting an improper payment or benefit in relation to the performance of a public duty:

(h) omitting to act with the knowledge that the omission will constitute misconduct in office:

(i) consenting to the act or omission of another with the knowledge that the act or omission will result in misconduct in office:

(j) misappropriation of money in the course of performing a public duty:

(k) conducting oneself in a manner that is offensive or immoral, whether the conduct occurs in the course of performing a public duty or otherwise.

(2) For the purposes of subsection (1)(a), a member must at the first meeting of the Island Government that the member attends, and at subsequent meetings as the member's circumstances require, disclose the directorships or other similar positions held by that member, together with assets and interests of the member insofar as those positions, assets or interests are relevant to the duties of the public office to which the member is elected or appointed.

(3) For the purposes of subsection (2), a position, asset or interest is relevant to the duties of the public office to which the member is elected or appointed, if the position, asset or interest is capable of affecting the performance of a public duty in a manner that gives rise to misconduct in office.

(4) For the purposes of this Part, it is not necessary to show that the conduct complained of actually resulted in the intended or desired result, and the conduct alone will be sufficient to constitute misconduct in office.

44 Functions and Powers of the Head of Ministry

(1) For the purposes of this Part, the Head of the Ministry may—

(a) prepare and publish guidelines and standards to promote best practice, and to assist members in the observance of the principles and the prevention of misconduct as provided under this Part:

(b) investigate or initiate the investigation of complaints of misconduct in office by a member:

(c) perform such other functions conferred on the Head of the Ministry by this Part.

(2) The Head of the Ministry has all the powers necessary to carry out the functions under this Part.

45 Complaints and investigation

(1) Any person may make a complaint of suspected misconduct in office by a member.

(2) A complaint must—

(a) be in writing; and

(b) be addressed and sent to the Head of the Ministry; and

(c) set out with sufficient particularity the facts and allegations relied upon so as that the member against whom the complaint is made can be properly informed of the nature of the alleged misconduct in office.

(3) The Head of the Ministry must cause a copy of the complaint to be delivered to the member against whom the complaint is made, who may within 14 days of receipt or such extended period as the member may reasonably require and the Head of the Ministry may agree, deliver to the Head of the Ministry a written answer to the complaint.

(4) The Head of the Ministry must investigate, or cause to be investigated, each complaint and answer to determine if—

(a) a recommendation should be made under section 46:

(b) action should be taken under section 47:

(c) no action should be taken under either sections 46 or 47 for the reason that any of the following apply—

(i) the complaint is trivial, frivolous, vexatious or not made in good faith:

(ii) the answer is sufficient so as to warrant that no further action is taken:

(iii) there has been a delay in making the complaint that makes further investigation impractical or unjust:

(iv) the subject matter of the complaint does not come within the scope of this Part.

(5) If the Head of the Ministry decides not to act under either sections 46 or 47, the Head of Ministry must inform the complainant in writing of that decision and the reasons for that decision.

(6) A decision by the Head of the Ministry under subsection (4)(c), does not preclude the Head of the Ministry from subsequent investigation of that complaint if further information that was not previously disclosed become available.

(7) If the Head of the Ministry determines, during or after an investigation conducted under this section, that circumstances exist which warrant the immediate suspension of the member from office, the Head of the Ministry may recommend to the Minister that the member be suspended until the conclusion of the processes under this Part.

(8) A member is suspended from office upon the signing of an Order to that effect by the Minister, and the suspension is effective until a decision is made under this Part which permits the member to resume his or her office.

(9) A member who is suspended from office is not entitled to participate in the affairs of the Island Government for the duration of the suspension, but is entitled to continue to receive for that time the remuneration paid to him or her immediately before the suspension took effect, unless that remuneration is a reason for the suspension.

46 Recommendations where no misconduct

(1) If after an investigation, the Head of the Ministry is of the opinion that there is sufficient reason not to take any action under section 47, but that circumstances exist which might reasonably be expected to give rise to a public perception of misconduct in office, the Head of the Ministry must—

(a) advise the member against whom the complaint is made of those circumstances:

(b) identify and inform the member of the perceived misconduct under section 43, and the principles under section 42 contrary to which the misconduct is perceived to arise:

(c) consult with and recommend what appropriate action the member should take to avoid that perception.

(2) It is the duty of a member to have regard to the recommendations of the Head of the Ministry under subsection (1).

47 Recommendations in event of misconduct

If after due inquiry, and after giving the member concerned adequate opportunity to state his or her defence to the complaint, the Head of the Ministry is of the opinion that the complaint is justified, the Head of the Ministry must report that fact together with the reasons for forming that opinion to the Minister who may, having regard to the misconduct of the member and the circumstances surrounding that misconduct, do one or more of the following—

(a) reprimand the member:

(b) refer the misconduct to the Commissioner of Police with the recommendation that the matter be investigated and that appropriate action be taken:

(c) recommend to the member that he or she surrender or transfer to the Island Government within a specified period of time, a specified sum of money representing the whole or part of the value of the improper payment benefit or advantage derived by him, her or another from the misconduct:

(d) recommend to the member that he or she surrender or transfer to the Island Government within a specified period of time all or part of any specified property acquired by him or her as a result of the misconduct:

(e) recommend to the Solicitor-General that an action be commenced in the High Court under section 48.

48 High Court action

(1) If the Minister recommends that an action be commenced in the High Court against a member for misconduct in office, the Solicitor-General becomes responsible for the commencement and prosecution of that action.

(2) An action shall not be commenced under this section if the recommendation to commence the action is subject to compliance with some other recommendation of the Minister, and the time for compliance has not expired.

(3) An action taken under this section is to be in the name of the Head of the Ministry as the applicant and the member as the respondent, and must be commenced by notice of motion and statement of claim setting out all of the following—

(a) the alleged misconduct in office:

(b) the alleged facts giving rise to the misconduct and the recommendations of the Minister (if any) as to the relief or orders sought.

(4) The High Court has all of the powers exercised by the Court in its original civil jurisdiction to hear the action, determine procedure, compel evidence, order costs and make any necessary declaration.

49 Powers of the Court to deal with misconduct

(1) In determining an action under this Part, and despite any recommendations made by the Minister, the High Court may make any one or more of the following declarations—

(a) that there be recovered from the member as a debt due to the Island Government a specified sum of money representing the whole or part of the value of the improper payment benefit or advantage derived by the member, or any other person, from the misconduct of the member:

(b) that all or part of any property acquired by the member as a result of the misconduct be forfeited to the Island Government or disposed of by private or public tender, and the proceeds forfeited to the Island Government (and for this purpose the Court may make any ancillary orders to give effect to the Court's declaration under this paragraph):

(c) that the member be dismissed from office and that his or her office be declared vacant:

(d) that the member be suspended from his or her public office until the member has taken all necessary and available steps as the Court may direct to divest himself or herself of the interest or circumstance out of which the misconduct arose.

(2) For the purposes of enforcing a declaration made either under subsection (1), there is implied into every election or appointment of a member to public office under this Act, a condition enabling the termination or suspension of that appointment consistent with the terms of the declaration.

(3) If the Court makes a declaration under subsection (1)(c) the Head of the Ministry must cause all necessary steps under this Act to disqualify the member from office and to conduct a by-election.

50 Effect of action on other proceedings and offences

(1) If the High Court is of the opinion that the misconduct in office of the member or the conduct of any other person warrants investigation under any other Act, the Court may refer the matter to the relevant authority for investigation, and for the taking of such other proceedings as that authority may determine.

(2) The imposition of a recommendation by the Minister under section 47 or the prosecution of an action under section 48 does not act as a bar to a proceeding in respect of the same conduct under any other law, or to the imposition of any penalty, sentence or determination in consequence of such proceeding.

(3) A proceeding under any other law does not act as a bar to a complaint or an action in respect of the same conduct under this Act.

Part 5
Financial Accountability

Division 1 - Revenue and Expenditure

51 Annual financial plan and budget

(1) An Island Government must, in accordance with the special consultative procedure and in consultation with the Head of the Ministry, prepare and adopt for the forthcoming financial year, a financial plan—

(a) in respect of the Island Government; and

(b) in respect of each trading enterprise controlled by the Island Government, or in which the Island Government has a financial interest.

(2) A financial plan prepared under subsection (1) must outline—

(a) for the forthcoming financial year—

(i) the intended significant policies and objectives of the Island Government and trading enterprise; and

(ii) the nature and scope of the significant activities to be undertaken; and

(iii) the performance targets and other measures by which performance may be judged in relation to the objectives; and

(b) for the forthcoming financial year and for each significant activity—

(i) the indicative costs, including an allowance for depreciation and a return on capital employed; and

(ii) the sources of funds.

(3) A financial plan prepared under subsection (1) must include an explanation of any significant changes between the policies, objectives, activities, and performance targets specified in the report for the forthcoming financial year and those specified in the report for the immediately preceding financial year.

(4) A financial plan prepared under subsection (1) must be adopted, 1 month before the commencement of the forthcoming financial year to which it relates, at a meeting of the Island Government and must be submitted to the Minister and to the Ministry of Finance and Economic Management.

(5) In determining and recommending the amount of public money to be received by an Island Government by way of appropriation from Parliament or subsidy or grant from the Government, the Minister and the Financial Secretary must disregard other revenue derived or to be derived by the Island Government if that other revenue is committed to policies and objectives for the island consistent with sound development strategies and good business practice.

(6) After the revenues for each financial year have been appropriated for that year, the Island Government must approve a budget which must—

(a) be consistent with the financial plan prepared and approved under this section; and

(b) provide for the expenditure of the actual revenues appropriated to the Island Government.

(7) Regulations may be made under this Act to provide for any matter or requirement applying to a financial report or budget prepared and approved in accordance with this section, including—

(a) the implications of failing to approve a budget:

(b) interim measures to authorise expenditure, to be applied if no plan or budget has been approved in a timely manner.

52 Annual report concerning performance

(1) At the end of each financial year, an Island Government must prepare and adopt in respect of that financial year, a report assessing the performance of the Island Government against the policies, objectives, activities, performance targets, indicative costs and sources of funds specified in the report required for that financial year under section 51(1).

(2) A report adopted under subsection (1) must contain audited financial statements for the Island Government for the financial year, and the financial statement must consist of all of the following—

(a) a statement of financial position:

(b) an overall operating statement:

(c) one operating statement in respect of each significant activity:

(d) a statement of cash flows:

(e) such other statements as are necessary to fairly reflect the financial position of the Island Government, the resources available to it, and the financial results of its operations.

(3) The report adopted under subsection (1) must contain audited consolidated financial statements for the financial year in respect of—

(a) the Island Government; and

(b) each trading enterprise controlled by or in which the Island Government holds equity, securities or has a financial interest.

(4) The audited consolidated financial statements under subsection (3) must consist of all of the following—

(a) a statement of financial position:

(b) one operating statement in respect of each significant activity:

(c) a statement of cash flows:

(d) such other statements as are necessary to fairly reflect their financial position, the resources available, and the financial results of the operations of the Island Government and each trading enterprise.

(5) The report adopted under subsection (1) must contain—

(a) the auditor's report—

(i) on the financial statements specified in subsections (2), (3) and (4); and

(ii) on the performance targets and other measures by which performance has been judged in relation to the objectives; and

(b) such other information as is necessary to enable an informed assessment of the operations of each entity reported on, including—

(i) a comparison between the actual performance of the Island Government for the financial year and the projected performance of the Island Government for the financial year as set out in the financial plan and approved budget required for the financial year under section 51(1); and

(ii) a comparison between the actual performance of each trading enterprise for the financial year and the relevant statement of corporate intent for the financial year.

(6) A report required under this section must include information on the remuneration being received by the Mayor, each councillor, the Executive Officer and any other executive officer, and any employee engaged under section 33.

(7) A report required under this section must be adopted, subject to any regulations and instructions made pursuant to the Ministry of Finance and Economic Management Act 1995-96, before the end of the third month after the close of the financial year to which it relates.

(8) A report adopted under subsection (1) must be provided to the Ministry of Finance and Economic Management, and to the Minister who must lay it before Parliament within 14 sitting days of receiving it.

(9) The Island Government—

(a) must make a report prepared under this section available for public inspection; and

(b) must make copies of that report available to the public if requested, at a charge to recover the reasonable costs of copying.

53 Financial systems

(1) Each Island Government must adopt financial systems and reporting and record keeping procedures that are consistent with generally accepted accounting practices and relevant for the reporting of financial information in the public sector.

(2) The systems and procedures adopted by an Island Government under this Part must—

(a) identify the costs, revenues and financial performance of the various activities of the Island Government and of each of its significant activities, and include for each significant activity, a separate allowance for depreciation and provision for a return on the capital involved; and

(b) correctly record and correctly explain the transactions of the Island Government; and

(c) at any time enable the financial position of the Island Government to be determined with reasonable accuracy; and

(d) enable a true and fair view of the state of affairs of the Island Government to be presented at the end of the financial year; and

(e) enable the accounts of the Island Government to be readily and properly audited; and

(f) clearly distinguish between revenue appropriated by Parliament or received by way of subsidy or grant from the Government and other revenue of the Island Government, and in the case of other revenue the source from which it was derived; and

(g) show in a full and complete manner—

(i) all income and expenditure:

(ii) all assets and liabilities, including contingent liabilities and guarantees:

(iii) the application of all funds held or received for any particular purpose, and the amount and location of such funds while held by the Island Government:

(iv) a statement of cash flow:

(v) a statement of appropriations; and

(vi) all changes in taxpayers' funds during the financial period.

54 Failure to comply with financial reporting requirements

(1) If an Island Government fails to prepare and adopt a report required under section 52, the Head of the Ministry may appoint a person or firm to prepare, publish and present that report.

(2) A person or firm appointed under subsection (1), has all such authority and powers as are necessary to enable that person or that firm to carry out its functions under this section.

(3) All expenditure incurred by and fees payable to any person or firm appointed by the Head of the Ministry in respect of the exercise of any powers or functions conferred by or under subsections (1) or (2) are recoverable by that person or firm from the Island Government as a debt due by the Island Government.

55 General revenues

(1) The general revenues of an Island Government are deemed to be public money for the purposes of the Ministry of Finance and Economic Management Act 1995-96, and comprise all of the following—

(a) all money received by the Island Government—

(i) by way of subsidy or grant from the Government:

(ii) by appropriation of Parliament:

(iii) pursuant to any Act; or

(iv) pursuant to any lawful contract or arrangement entered into by the Island Government:

(b) the proceeds of all rates or charges or assessments made or levied by the Island Government under a bylaw:

(c) all fees, fines, forfeitures, tolls, levies and other like sums payable to an Island Government under a bylaw:

(d) all rents and profits received from property of any kind vested in the Island Government:

(e) all money received on account of undertakings of the Island Government that the Island Government is lawfully authorised to carry on:

(f) all money received by way of loan, as approved under this Part:

(g) all money received by way of donation, subscription or voluntary contribution:

(h) all money received and held by the Island Government by way of deposit, or in trust for any person or for any special purpose:

(i) all other money which may become the property of the Island Government.

(2) Despite the provision of any other law, Island Governments are entitled to retain control over any revenues collected by them under subsection (1)(b), (c), (d), (g) and (h), and such revenues generated directly by Island Government must not be set off against monies due or paid to them under subsection (1)(a) in accordance with any approved funding formula or policy.

56 Banking and related matters

(1) An Island Government has authority, subject to the prior written approval of the Financial Secretary, to establish such bank accounts and other funds and procedures for operating them as will ensure that its funds and the funds under its control are properly administered, managed and accounted for.

(2) Subject to any specific requirements relating to any fund, the Island Government may invest its funds, and the funds under its control, in a bank in the Cook Islands licensed as a domestic bank pursuant to the Banking Act 2003.

(3) No funds are to be withdrawn from a bank account except in accordance with a resolution of the Island Government, which resolution may have particular or general effect.

(4) Despite subsection (3), the Executive Officer may without a resolution of the Island Government withdraw and expend money for the purposes for which it was appropriated by Parliament, and in the case of a Government subsidy or grant, for the purpose for which the subsidy or grant was made.

57 Expenditure

(1) Every Government subsidy and every appropriation by Parliament to an Island Government must be expended in accordance with the purpose for which the subsidy was given or the appropriation made.

(2) All other expenditure by an Island Government must be authorised and incurred in accordance with the annual report and budget adopted under section 51.

(3) Expenditure by an Island Government under subsections (1) and (2) must be separately and clearly identified in the accounts of the Island Government required under this Part.

(4) In any financial year, an Island Government is authorised, out of its general revenues, to expend money for purposes not authorised, sums of not more than one-fifth of the previous year's total expenditure.

(5) Expenditure under subsection (4) must be separately and clearly identified in the accounts of the Island Government.

58 Remuneration of elected, appointed and committee members

(1) Elected and appointed members are entitled to receive such annual remuneration and allowances (including meeting allowances), as are prescribed from time to time, and which are to be paid out of funds of the Island Government.

(2) A general cost of living adjustment applied to employees of the public service, also applies to the annual remuneration paid in accordance with subsection (1).

(3) A member of a committee established under section 26 is entitled to receive such allowances as are approved from time to time by the Island Government, which will be paid out of funds of the Island Government.

59 Government not liable for debts

(1) Subject to subsection (2), the Government is not liable for any debt incurred, or monies owed by an Island Government.

(2) Subsection (1) does not apply if the Government on behalf of the Crown has given a written guarantee for any debt or liability of an Island Government.

60 Ministry of Finance and Economic Management, monthly and quarterly reports

(1) Subject to the provisions of this Part, the Ministry of Finance and Economic Management Act 1995-96 applies to the management of the finances and all revenues of an Island Government as if the Island Government were a Government department.

(2) In addition to complying with subsection (1), an Island Government must on or before the 10th day of each month, cause a report to be prepared and considered for the immediately proceeding month, providing full and accurate details of all of the following—

(a) all income and expenditure:

(b) all assets and liabilities, including contingent liabilities and guarantees:

(c) the application of all funds held or received for any particular purpose and the amount and location of such funds while held by the Island Government.

(3) An Island Government must within 21 days after the end of each quarter, cause a report to be prepared consolidating the monthly reports prepared for that quarter under subsection (2), and must publicly notify each such report.

61 Office of the Public Expenditure Review Committee and Audit Act 1995-96 to apply

(1) The Office of the Public Expenditure Review Committee and Audit is the auditor of the financial affairs of an Island Government, and for that purpose has and may exercise the functions, duties and powers that office has under the Public Expenditure Review Committee and Audit Act 1995-96.

(2) Despite subsection (1), an Island Government may, with the approval of the Director of Audit, appoint a qualified person or a firm to be the auditor of an Island Government.

(3) The objectives, functions, duties and powers of the Public Expenditure Review Committee and Audit Office under the Public Expenditure Review Committee and Audit Act 1995-96 extend to and are exercisable in relation to the affairs and activities of an Island Government.

(4) A report of the Public Expenditure Review Committee or the Audit Office in relation to the affairs and activities of an Island Government, in addition to the requirements of that Act, must be publicly notified and tabled at the next ordinary meeting of the Island Government.

Division 2 - Contracts

62 General power to contract and borrow

(1) With the prior written approval of the Minister of Finance acting in consultation with the Financial Secretary, and despite any provision of the Ministry of Finance and Economic Management Act 1995-96 to the contrary, an Island Government may be authorised to borrow money, whether by way of bank overdraft or otherwise, and with or without security being given.

(2) The Minister must not grant approval under subsection (1) unless the Minister is satisfied that—

(a) Parliament has made adequate provision in an Appropriation Act; or

(b) other funds exist and are lawfully available to the Island Government—

for the repayment of any such borrowing or overdraft, and any interest applying to the loan or overdraft.

(3) Subject to section 63 and with the consent in writing of the Minister of Finance acting in consultation with the Financial Secretary, an Island Government may be authorised to do any of the following for the purpose of achieving an objective, performing a function or duty, or exercising a power relating to a responsibility conferred on it by or under this Act or any other law—

(a) form or participate in the formation and operation of a company, trust, partnership or joint venture:

(b) acquire, hold and dispose of an interest in, or membership of, a company, trust, partnership or joint venture:

(c) enter into any agreement for sharing of profits, union of interest, co-operation, joint venture, reciprocal concession or otherwise with any person carrying on or engaged in, or about to carry on or engage in any business or transaction capable of being conducted so as to directly or indirectly benefit the Island Government.

(4) If by virtue of any participation, subscription, or acquisition under subsection (3) an Island Government has the right to appoint a person to be a director of or hold office in or under a company, joint venture, trust, partnership or other body, the Island Government may appoint any person to that office (whether or not that person is a member or employee of the Island Government).

63 Carrying out of works

(1) An Island Government has authority to carry out its works and perform its functions—

(a) by using its employees; or

(b) by entering into an contract, arrangement or understanding with—

(i) the Crown; or

(ii) any department of State, statutory body, Crown trading enterprise, or other Island Government; or

(iii) any other person or organisation not referred to in sub-paragraphs (i) or (ii).

(2) An Island Government must not enter into an arrangement or contract with a person or organisation referred to in subsection (1)(b)(iii) without the consent of the Minister acting in consultation with the Financial Secretary, if the arrangement or contract requires the Island Government to pay in excess of $50,000.

(3) A contract or arrangement entered into pursuant to this section may include provision for sharing of control, management or profits, or joint venture activity, reciprocal concessions or other commercial arrangement.

(4) For the avoidance of doubt, it is hereby declared that the Crown, every Island Government, and every department of State has authority to enter into any contract or arrangement with an Island Government in accordance with this section.

64 Contracts and tenders

(1) If an Island Government proposes to enter into any contract for the supply of goods or services, the Island Government must conduct a tender in accordance with any instructions issued from time to time under the Ministry of Finance and Economic Management Act 1995-96, or any other provision of a law dealing with government procurement.

(2) In considering whether or not to accept any tender, the Island Government must have regard to its objectives as stated in its annual report to the public under section 51.

Part 6
Devolution of Crown Responsibilities

65 Transfer of Crown responsibilities to Island Government

(1) Despite any Act to the contrary, the Queen's Representative acting on behalf of the Crown and upon the advice of the Minister, may by regulations made in Executive Council, for such consideration (if any) and on terms and conditions as are determined by Cabinet—

(a) identify a subject matter for which the Crown has responsibility:

(b) transfer or assign that subject matter to an Island Government in whole or part:

(c) vest in the Island Government responsibility for that subject matter to the extent and subject to restrictions, limitations or conditions that are prescribed:

(d) empower the Island Government to perform any functions and exercise any powers, and to make bylaws to effectively carry out its responsibilities in respect of the subject matter to the extent prescribed, including the power to levy tolls, fees, rates, charges, tariffs, assessments and the like, and despite any Act to the contrary, to impose fines and penalties under bylaws authorised by this devolution process.

(2) Regulations must not be made under subsection (1) unless—

(a) the Crown has consulted with the Island Government:

(b) it has been determined by the Crown that the Island Government has the capacity and resources necessary to assume responsibility for the subject matter intended to be transferred or assigned:

(c) the Island Government has in accordance with the special consultative procedure consented to the regulations and the transfer or assignment of the subject matter, and to the extent of its responsibility for that subject matter.

66 Transfer of associated property

(1) The transfer or assignment of a subject matter by the Crown to an Island Government under section 65 may also include transfer or assignment of property associated with that subject matter.

(2) For the purposes of any provision of this Part, "associated property" includes any or all of the following—

(a) assets:

(b) liabilities:

(c) land or interests in land:

(d) licenses, permits or any other right or authority.

67 Transfer of responsibility to Island Government by agreement

(1) A Minister may, with the prior approval of Cabinet and in relation to a subject matter for which that Minister is responsible, enter into a contract or memorandum of understanding with an Island Government to transfer or assign to the Island Government responsibility for that subject matter and associated property to the extent and on the terms, conditions and restrictions set out in the contract or memorandum of understanding.

(2) No contract or memorandum of understanding is of any effect unless it is consented to by the Island Government in accordance with the special consultative procedure.

68 Effect of transfer

(1) Assets that are fixed to, or which are under or over any land, may be transferred or assigned to an Island Government, whether or not any interest in the land is also transferred or assigned, and when any such asset is so transferred or assigned, the asset and the land are to be regarded as separate assets, each capable of separate ownership.

(2) Any associated property transferred or assigned to an Island Government by regulations made under section 65 or by a contract or memorandum of understanding under section 67, is deemed to be the property of the Island Government without the need for any other formality to effect the transfer.

(3) Any asset or liability of the Crown may be transferred or assigned to an Island Government whether or not any Act, contract or agreement relating to the asset or liability permits such transfer or assignment, or requires any consent to the transfer or assignment.

(4) If a transfer or assignment of the kind described in subsection (2) takes place—

(a) the transfer or assignment does not entitle any person under any contract or agreement to terminate, alter or in any way affect the rights or liabilities of the Crown or the Island Government as the transferee or assignee:

(b) if the transfer or assignment is capable of being registered, the person responsible for keeping the register must register the transfer or assignment immediately after written notice of the transfer or assignment is received by him or her from any person authorised for this purpose by the Minister:

(c) any satisfaction or performance by the Island Government as transferee or assignee of the asset or liability is deemed to also be satisfaction or performance by the Crown:

(d) any satisfaction or performance in respect of the asset or liability by any third party to the benefit of the Island Government as transferee or assignee is deemed to be also to the benefit of the Crown.

(5) Regulations made under this Act may provide for any matter related to the transfer of associated property in accordance with this Part, and without the limiting the generality of this regulation making power, such regulations may provide for determining and dealing with the nature, extent or affect of any rights over such property at the time it is transferred.

Part 7
Bylaws

69 Bylaws

(1) Bylaws may be made for the purposes of giving better effect to any or all of the following—

(a) the objects of regulations made under this Act conferring responsibility for a subject matter upon an Island Government, or in accordance with any other regulations made under this Act:

(b) the intention of a contract or memorandum of understanding entered into pursuant to this Act conferring responsibility for a subject matter upon an Island Government:

(c) the performance of the powers, duties and responsibilities of an Island Government under this Act or any other law:

(d) recognising the status, position and authority of the Ui Ariki, and the role of the Ui Ariki in applying and implementing this Act:

(e) the imposition and collection of fees or charges for goods or services provided by an Island Government:

(f) licensing and regulating any activity or matter affecting the island:

(g) protecting Island Governments, and their staff, by the provision of additional indemnities and protections when lawfully performing their functions and exercising their powers:

(h) the proceedings of meetings of the Island Government:

(i) the roles, responsibilities, powers and duties of any committee appointed under section 26.

(2) A bylaw is invalid to the extent that any of the following apply—

(a) that it is repugnant to the regulations made under this Act empowering the Island Government to make the bylaw:

(b) that it is inconsistent with the intention of a contract or memorandum of understanding conferring responsibility for the subject matter of the bylaw upon the Island Government:

(c) that it is repugnant to an Act of Parliament or regulations made pursuant to an Act of Parliament.

(3) All bylaws must be consistent with the provisions of the Environment Act 2003, and must have regard to the importance of conserving and sustaining the environment on the island.

(4) All bylaws made under this Act are presumed to have been validly made in accordance with the provisions of this Act unless determined to the contrary by a court, and all courts must take judicial notice of any bylaw sealed by the Island Government and certified by its Mayor and Executive Officer has having been duly made in accordance with this Act.

70 Making of bylaws

(1) The making, revoking or amending of bylaws by an Island Government must be consistent with the provisions of this Part, and in accordance with the process stated in this section.

(2) A bylaw must not be promulgated by an Island Government, and has no legal effect unless—

(a) the bylaw has passed through the Island Government in accordance with the special consultative procedure, and if necessary the Island Government has recommended to the Minister that regulations be prescribed to give effect to the bylaw:

(b) the Solicitor-General has certified that the bylaw is not invalid for the reasons set out in this Part, or for any other reason, and the Solicitor-General may retrospectively validate a bylaw previously made without such certification.

(3) Any bylaw made under this section—

(a) must be delivered to the Head of the Ministry as soon as practicable after it is made:

(b) must be laid before Parliament by the Minister within 14 sitting days of the date the bylaw was received by the Head of the Ministry:

(c) takes effect 30 days after the date the bylaw was delivered to the Head of the Ministry, unless the bylaw (or any of them) is disallowed by a vote of the Parliament, or suspended from taking effect by a written order of the Minister to allow Parliament further time to consider the bylaw, which suspension must not be for a period in excess of 60 days.

(4) Despite any provision in any other law, an Island Government is empowered to levy and collect fees under by laws for—

(a) licensing of motor vehicles, shops, businesses and animals:

(b) the sale of alcohol and liquor:

(c) such other things or activities as the Minister may from time to time approve.

(5) Despite the provision of any other law, an Island Government is empowered to make bylaws for the protection and promotion of the culture, traditions and community values of the island, and such bylaws may protect intellectual property in any traditional knowledge or practice and regulate research into the culture and traditions of the island.

(6) Despite the requirements of the preceding subsections, an Island Government has authority to make an order which has effect as if it were a bylaw made in accordance with this section if all of the following exist or are applied—

(a) circumstances arise which require the order to be prescribed urgently, and there is insufficient time to have a bylaw promulgated in accordance with this section:

(b) the order is in the public interest:

(c) the resolution prescribing the order is supported by not less than two thirds of voting members (including vacancies in that membership):

(d) the Minister has been notified of the order in writing.

(7) No order under subsection (6) has any effect beyond the period of 3 months from the date of the resolution by which it was made, unless it is made as a bylaw in accordance with this Part prior to the expiration of the 3 month period.

71 Penalties imposed by bylaws

Unless the Attorney-General has otherwise approved in writing, penalties imposed by a bylaw must not exceed a fine of $2,000 or a period of imprisonment for 3 months, or both, and any penalty imposed by a bylaw in excess of these restrictions is deemed to apply the maximum permissible penalties under this section.

72 Application of bylaws

(1) A bylaw is deemed to apply to the whole island, unless its application is expressly limited to any specified part of an island.

(2) A bylaw may be stated to apply to all persons, or any specified category of persons.

73 Jurisdiction for offences against bylaws

(1) Every offence against any bylaw or ordinance is punishable in the High Court of the Cook Islands.

(2) A Justice of the Peace has jurisdiction in respect of offences against a bylaw or ordinance, without any limitation applying under any other law.

74 Enforcement of bylaws

(1) The Police have responsibility and authority to ensure that any bylaw or regulation made under this Act is enforced, and a bylaw or regulation may empower any other appropriate person to enforce its requirements in accordance with prescribed powers and procedures.

(2) A complaint concerning the breach of any bylaw or regulation made under this Act may be made to the office of the Mayor, who must refer the complaint to the senior member of the Police on the island for action by the Police, or to any other authorised officer, who is responsible for investigating the complaint and taking any prosecution or other appropriate enforcement action.

Part 8
Legal Proceedings

75 Conduct of legal proceedings by Island Governments

All applications and appeals to the High Court under this Act must be made in accordance with the rules of that Court.

76 Service of legal proceedings

Any summons or other legal proceeding required to be served on the Island Government may be duly served by any of the following means—

(a) by being left at the public office of the Island Government during normal working office of the office:

(b) if it is given personally to the Mayor or the Executive Officer of that Island Government during the normal working hours of the Island Government.

77 Recovery of debts

(1) All sums payable by any person to an Island Government in respect of any works, material or things executed, provided or done by it are recoverable as a debt due to the Island Government.

(2) All sums payable to any person by the Island Government in respect of any works, material, or things executed, provided, or done by the person are recoverable as a debt due by the Island Government to the person.

Part 9
Miscellaneous

78 Regulations

(1) The Queen's Representative may by Order in Executive Council make all such regulations as are necessary for giving better effect to, the provisions of this Act and for its due administration, and without limiting the generality of this provision, regulations may be made—

(a) to recognise the status, position and authority of the Ui Ariki on each island, taking proper account of the traditions and customs of each island:

(b) to define or add to the responsibilities, functions, roles and powers of Mayor, Deputy Mayor, Executive Officers, or any other person or office relevant to the application of this Act:

(c) to set the entitlements, sitting fees and allowances of members of an Island Government, and ensure that they keep pace with inflation and promote the effective performance of the functions and roles under this Act:

(d) to provide for aspects of the procedure for the appointment of Executive Officers and the processes under section 29:

(e) to make further provision in relation to the appointment and management of the staff of the Island Government:

(f) to apply further requirements in relation to the revenues of Island Governments, and to the planning, budgeting, expenditure, reporting and accounting of such revenues, and any other matter, process or requirement to ensure sound financial management and accountability by Island Governments:

(g) to ensure that Island Governments have an effective role to play in relation to procurement of assets and equipment for the islands, the development of infrastructure on the islands, and the implementation of projects, programmes and initiatives on or affecting the islands:

(h) to control research activities on the islands which may affect or interfere with the customs and traditions of the islands:

(i) to protect the rights of island communities relating to their traditional knowledge and practices:

(j) to control access to and use of the resources of the islands used in relation to the islands' customs and traditions:

(k) to regulate and control the impacts of tourism and other specific industries on the islands, and to ensure that the islands derive a fair and equitable share of the benefits of such commercial activities.

(2) If Regulations made under this Act expressly state that the special consultative procedure is to be modified or dispensed with, then the special consultative procedure is not to be applied to those regulations, or is to be applied in the modified manner specified, as the case may be.

(3) Regulations made under this section may come into force on a date to be specified in the regulations, which date may be before or after the date on which they are made.

(4) If no commencement date is specified under subsection (2), the regulations take effect on the date of assent.

(5) Regulations made under this section may prescribe offences against the regulations punishable by imprisonment for a term not exceeding 3 months or a fine not exceeding $2,000, or both.

(6) All regulations made under this section must be laid before Parliament within 14 sitting days after promulgation, but this requirement does not affect their commencement on the date appointed under subsection (2).

79 Repeals and Revocations

(1) The Acts set out in Part 1 of Schedule 2 are repealed.

(2) Subject to subsection (4), the Regulations set out in Part 2 of Schedule 2 are revoked.

(3) The Cook Islands Amendment Act 1957 is amended by repealing sections 51 and 52.

(4) If no regulations have been made under section 16, the Minister may, by written Order, authorise the use of the repealed regulations in any Island Government election.

80 Savings and transitional

(1) Despite the repeal of the enactments set out in Schedule 2, on the coming into force of this Act, each Island Council and its membership shall until the date of the next Island Government elections to be held as provided by section 14 this Act, continue in existence subject to the provisions of this Act as if each Island Council were constituted under this Act and as if each member were duly elected, appointed or entitled to be hold the corresponding office in the Island Government in accordance with this Act.

(2) On the coming into force of this Act, each Island Council is to be known by the title "Island Government" of the respective island, and all references to the titles of Outer Island Councils under the repealed laws, and in any law, instrument or document is deemed to be a reference to the title of the applicable Island Government in accordance with this Act.

(3) Every—

(a) ordinance and bylaw made by an Island Council and which is valid and current when this Act comes into force:

(b) resolution validly passed by an Island Council prior to this Act coming into force:

(c) act, matter, or thing lawfully done by an Island Council or a committee or member of a Council prior to this Act coming into force:

(d) interest in any property or right lawfully acquired by an Island Council prior to this Act coming into force; and

(e) liability lawfully incurred by an Island Council prior to this Act coming into force—

continues to have full force and effect as if passed, done, acquired or incurred by the applicable Island Government under this Act.

(4) Every person who is an employee of an Island Council on the coming into force of this Act continues to be an employee of the applicable Island Government as if that person's appointment (and the terms and conditions applying to the appointment) were made in accordance with and subject to the provisions of this Act.

(5) All Island Secretaries appointed under the repealed Act and holding that office on the coming into force of this Act, continue to hold office as Executive Officer of the respective Island Government in accordance with this Act, and all references to the office of "Island Secretary" in any law, instrument or document is deemed to be a reference to the office of Executive Officer, either generally or to the specific Island Government, as the case may be.

81 Mayor's Annual Conference

(1) For the purposes of establishing a forum through which Island Governments may exchange views on matters of mutual interest, and to raise and resolve issues with the national Government, a conference of Mayors may be convened at the direction of the Minister.

(2) A date and venue for the conference will be determined and notified by the Head of the Ministry after consulting each Mayor.

(3) The Ministry shall be responsible for the coordination of the conference, and the respective Island Governments are responsible for facilitating the attendance of the Mayor.

82 Association of Island Governments

(1) An Association of Island Governments comprising each Island Government under this Act is established for the following purposes—

(a) collectively representing the interests of all Island Governments:

(b) working with regional and international bodies involved with local governance issues and other interests relevant to the Island Government, and participating in projects, programmes and initiatives undertaken by or with such bodies:

(c) otherwise pursuing the objectives of this Act and promoting good governance in the islands of the Cook Islands.

(2) The Association recognised under this section may be registered under the Incorporated Societies Act 1994 despite the requirements of sections 3 and 8 of that Act.

(3) Despite the provisions of the Incorporated Societies Act 1994 and any other law, the Association recognised under this section may be registered as an incorporated society upon application by the Head of the Ministry made on behalf of the Island Governments, and the Head of the Ministry may sign the Rules of Association on behalf of the Island Governments.

(4) In all other respects the Association established under this section is bound by the provisions of the Incorporated Societies Act 1994.

[Sections 4(1), 6(1), 8(1)(b)]

Schedule 1
Constituencies and Number of Councillors

First Column Name of Island		Second Column Constituencies	Third Column Number of Councillors
Mangaia	(1)	The Village of Ivirua	1
	(2)	The Village of Tamarua	1
	(3)	The Village of Karanga	1
	(4)	The Village of Tavaenga	1
	(5)	The Village of Veitatei	1
	(6)	The Village of Keia	1
		Total for the Island	6
Aitutaki	(1)	The Village of Amuri	1
	(2)	The Village of Ureia	1
	(3)	The Village of Arutanga	1
	(4)	The Village of Reureu	1
	(5)	The Village of Nikaupara	1
	(6)	The Village of Vaipae	1
	(7)	The Village of Tautu	1
	(8)	The Village of Vaipeka	1
		Total for the Island	8
Atiu	(1)	The Village of Ngatiarua	1
	(2)	The Village of Tengatangi	1
	(3)	The Village of Mapumai	1
	(4)	The Village of Areora	1
	(5)	The Village of Teenui	1
		Total for the Island	5
Mauke	(1)	The Village of Avaavaroa	1
	(2)	The Village of Parai	1
	(3)	The Village of Makatea	1
	(4)	The Village of Areora	1

	(5)	The Village of Ngatiarua	1
		Total for the Island	5
Mitiaro	(1)	The Village of Atai	1
	(2)	The Village of Takaue	1
	(3)	The Village of Mangarei	1
	(4)	The Village of Auta	1
		Total for the Island	4
Penrhyn	(1)	The Village of Omoka	3
	(2)	The Village of Tetautua	2
		Total for the Island	5
Manihiki	(1)	The Village of Tauhunu	3
	(2)	The Village of Tukao	3
		Total for the Island	6
Rakahanga	(1)	The Village of Purapoto	1
	(2)	The Village of Niteiri	1
	(3)	The Village of Numahanga	1
	(4)	The Village of Teruakiore	1
	(5)	The Village of Matara	1
		Total for the Island	5
Palmerston		Total for the Island	6
Pukapuka and Nassau	(1)	The Village of Ngake	2
	(2)	The Village of Roto	2
	(3)	The Village of Yato	2
		Total for the Island	6

[Section 79(1) and 80(1)]

Schedule 2
Repeals

Part 1

Outer Islands Local Government Act 1987

Outer Islands Local Government Amendment Act 1989

Outer Islands Local Government Amendment Act 1990

Outer Islands Local Government Amendment Act 1993

Outer Islands Local Government Amendment Act 1994-95

Outer Islands Local Government Amendment Act 1995

Outer Islands Local Government Amendment Act 2001

Outer Islands Local Government Amendment Act 2004

Palmerston Island Local Government Act 1993

[Section 79(2)]

Part 2

Local Government Electoral Regulations 1968

This Act is administered by the Office of the Prime Minister.
Printed under the authority of the Cook Islands Parliament— 2012-13