COOK ISLANDS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes miscellaneous amendments to the Cook Islands Act 1915.

Clause 2: The purpose of this amendment is to remove the requirement that all Island Ordinances that have been assented to by the Resident Commissioner must be submitted to the Governor-General.

Clause 3: Section 157 (a) of the principal Act enables a convicted person to appeal as of right to the Supreme Court of New Zealand from any conviction of the High Court of the Cook Islands whereby he has been sentenced to imprisonment for a term exceeding six months or a fine of £100 or more. There is no appeal as of right where he has been sentenced to death nor from any sentence imposed by the High Court. Any appeal in those cases may be made only with the special leave of the High Court under section 157 (c) or of the Supreme Court of New Zealand under section 162. This clause provides for an appeal as of right from a conviction whereby the appellant has been sentenced to death or to imprisonment for more than six months or a fine of £100 or more, and from a sentence of imprisonment for more than six months or a fine of £100 or more.

Clause 4 consequentially re-enacts section 158 of the principal Act, which prescribes the procedure for appealing, the time for appealing, and the security to be provided by the appellant. The clause contains a new provision authorising the High Court to dispense with security in any appeal from a judgment of the Court in its criminal jurisdiction.

Clause 5 confers on the Supreme Court hearing an appeal against sentence the same powers as are conferred on the Court of Appeal by section 4 (3) of the Criminal Appeal Act 1945 when hearing an appeal against sentence from the Supreme Court, that is, the Supreme Court may pass any other sentence warranted by law (whether more or less severe) or may confirm the sentence imposed by the High Court.

Clause 6: Section 165 of the principal Act provides that an appeal to the Supreme Court will not operate as a stay of execution unless the High Court or the Supreme Court otherwise orders. The effect of this clause is that an appeal will automatically operate as a stay of execution in every case where the appellant has been sentenced to death or to exile from the Cook Islands, and will operate as a stay of execution in other cases if the High Court or the Supreme Court so orders.

Clause 7 re-enacts in an amended form the provisions of section 275 of the principal Act relating to the transfer of prisoners to New Zealand. Under that section as at present worded persons sentenced to imprisonment, or committed to prison, for six months or more may be transferred to some prison in New Zealand to serve their sentence. In its form as now amended the section also provides that persons who are sentenced to death in the Cook Islands may be transferred to New Zealand. In addition, the new section contains a provision that, if after such a person has been transferred to New Zealand the sentence of death is commuted to a sentence of imprisonment, or the Supreme Court on appeal substitutes a conviction for some other offence in place of the offence for which the sentence of death was imposed and imposes a sentence of imprisonment for the substituted offence, the prisoner may be imprisoned in New Zealand as if he had been sentenced to imprisonment in New Zealand. The provisions of the Criminal Justice Act 1954 as to the release of prisoners on probation will not apply to any such prisoner unless the Governor-General directs that they shall apply, but no Native or Asiatic, unless he is under sentence of exile, may be released on probation in New Zealand, but must, immediately he is released, be sent back to the Cook Islands.

Clause 8 provides that any Warrant of the Governor-General in exercise of the prerogative of mercy of the Crown and any order of the Supreme Court on an appeal as a result of which a person in custody in the Cook Islands is entitled to be released may be transmitted by telegram. The purpose of this is to avoid any possibility of delay in such cases. At some times of the year, particularly during the hurricane season, it might take several weeks for the actual Warrant or order to be received in some places in the Cook Islands.

Clause 9: Section 445 (2) of the principal Act provides that no will made by a Native shall be valid unless at least one of the witnesses is a European officer of the Cook Islands Public Service. The effect of this clause is that at least one of the witnesses must be either a Resident Agent or a European officer of the Cook Islands Public Service. On some islands there are no European officers of the Cook Islands Public Service, and the purpose of this clause is to facilitate the making of wills in such cases.

Clause 10: The purpose of this clause is to ensure that only orders of adoption made by the Native Land Court shall have any effect in respect of succession to interests in Native land.

Clause 11: The effect of this clause is that an instrument of alienation of Native land by a Native or descendant of a Native may be attested by a solicitor of the Supreme Court of New Zealand. This will facilitate the execution of instruments by Natives and descendants of Natives who are in New Zealand. At present the only practical method of executing the instrument where the person concerned is in New Zealand is before a Collector of Customs or by giving a power of attorney enabling the instrument to be executed in the Cook Islands by the attorney.

Clause 12: Under the present law a certificate by one Medical Officer is required before the High Court may make an order committing any person to medical custody on the ground of unsoundness of mind. The effect of this clause is that, in the case of an order made in any place in the Cook Islands other than Niue, the certificate must be given by two Medical Officers or by one Medical Officer and one graduate of the Central Medical School at Suva, Fiji. The certificate of one Medical Officer will be sufficient in the case of an order made in the Island of Niue, as it is unlikely that two Medical Officers would be available at Niue or that there would be a graduate of the Central Medical School at Suva, Fiji, available to act with the Medical Officer.

Clause 13: Section 589 of the principal Act provides that any person believed to be of unsound mind and to be dangerous to himself or to others may be arrested and an order may be made for his custody pending the making of an order for medical custody. This clause provides that any such order for interim custody may direct his removal to Rarotonga.

Clause 14: The purpose of this clause is to give effect to a recommendation of the Public Petitions M to Z Committee on a petition to the House of Representatives No. 9 of 1953 relating to the ownership of the Islet of Te-Au-O-Tu. The clause extends until one year after the passing of the Bill the time for applying to the Native Appellate Court under section 32 of the Cook Islands Amendment Act 1946 for a rehearing of the matters relating to the ownership of that islet.

Hon. Mr Macdonald

COOK ISLANDS AMENDMENT

ANALYSIS

A BILL INTITULED

An Act to amend the Cook Islands Act 1915

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Cook Islands Amendment Act 1956, and shall be read together with and deemed part of the Cook Islands Act 1915 (hereinafter referred to as the principal Act).

2. Transmission of Island Ordinances after assent of Resident Commissioner—Section eighty-seven of the principal Act is hereby amended by omitting the words "for submission to the Governor-General".

3. Appeals from High Court—Section one hundred and fifty-seven of the principal Act is hereby amended by repealing paragraph (a), and substituting the following paragraph:

"(a) As of right, from any conviction by the High Court in the exercise of its criminal jurisdiction whereby the appellant has been sentenced to death or to imprisonment for a term exceeding six months or to a fine of not less than one hundred pounds, and from any such sentence (not being a sentence fixed by law);".

4. Order granting leave to appeal—The principal Act is hereby amended by repealing section one hundred and fifty-eight, and substituting the following section:

"158. (1) No such appeal, whether as of right or not, shall be brought except in pursuance of an order of the High Court granting leave to appeal:

"Provided that, subject to the provisions of subsections *three* and *four* of this section, the High Court shall grant such leave in every case where the appellant is entitled to appeal as of right.

"(2) Application to the Court for leave to appeal shall be made at the time when judgment is given or within twenty-one days thereafter or, if the appellant is not sentenced on the date of conviction, at any time after the conviction but not later than twenty-one days after the date of sentence.

"(3) Leave to appeal shall be granted only on condition that the appellant within a period to be fixed by the Court, not exceeding two months from the date of the hearing of the application, gives security to the satisfaction of the Court or the Registrar thereof in a sum to be fixed by the Court, not exceeding one hundred pounds, for the payment of the costs of the appeal:

"Provided that, in the case of any appeal from a judgment of the Court in the exercise of its criminal jurisdiction, the Court may grant leave to appeal without requiring the appellant to give security for costs.

"(4) Where the Court grants leave to appeal on condition that the appellant gives security for costs, the order granting leave to appeal shall not be sealed until that security has been duly given."

5. Powers of Supreme Court on appeal—Section one hundred and sixty-three of the principal Act is hereby amended by adding the following subsection as subsection two thereof:

"(2) Without limiting the general powers conferred by subsection one of this section, the Supreme Court on any appeal against sentence shall, if it thinks that a different sentence should have been passed, quash the sentence passed and pass such other sentence warranted by law (whether more or less severe) in substitution therefor as the Court thinks ought to have been passed, and in any other case shall dismiss the appeal."

6. Stay of execution—Section one hundred and sixty-five of the principal Act is hereby amended by adding the words "or unless the appellant has been sentenced to death or to exile from the Cook Islands".

7. Transfer of convicted persons to New Zealand—The principal Act is hereby amended by repealing section two hundred and seventy-five, and substituting the following section:

"275. (1) Every person condemned to death and every person sentenced to imprisonment, or committed to prison, for six months or more may, by warrant under the hand of a Resident Commissioner and the Seal of the Cook Islands, be transferred to some prison in New Zealand named or described in the warrant.

"(2) On the issue of any such warrant the person named therein shall thereupon be taken in custody from the Cook Islands to New Zealand, and there forthwith delivered to the Superintendent of the prison named or described in the warrant.

"(3) The warrant shall be delivered to the said Superintendent together with a certificate under the hand of a Judge of the High Court and the seal of that Court setting forth the fact of the conviction or commitment of the person named in the warrant, the offence of which he was convicted or the reason of the commitment, and the sentence of the Court condemning him to death or, as the case may be, the term for which he has been so sentenced or committed.

"(4) Where, after any person condemned to death has been brought to New Zealand under the foregoing provisions of this section,—

"(a) The sentence of death has been commuted to a sentence of imprisonment; or

"(b) The Supreme Court has on appeal substituted for the conviction for the offence in respect of which that person was condemned to death a conviction for some other offence and has imposed a sentence of imprisonment in respect thereof,—

the sentence of imprisonment may, by further warrant under the hand of a Resident Commissioner and the Seal of the Cook Islands, be carried into effect in some prison in New Zealand under the provisions of subsection *five* of this section.

"(5) Where any person brought to New Zealand under the provisions of this section is imprisoned in New Zealand under any of the foregoing provisions of this section,—

"(a) The period during which he has been in custody since the sentence was imposed in the Cook Islands until his delivery to the Superintendent in New Zealand shall for all purposes be computed as part of the term of his imprisonment:

"(b) He shall be imprisoned in New Zealand in the same manner in all respects and shall be subject in all respects to the same laws, as far as applicable, as if he had been sentenced by the Supreme Court of New Zealand to imprisonment for the like offence, or committed to prison by that Court on the like grounds:

"Provided that the provisions of the Criminal Justice Act 1954 relating to the release of an offender on probation shall not apply unless in any specified case the Governor-General directs that those provisions shall apply, but no such direction shall be given in respect of any such person who is a Native or an Asiatic, unless he is under sentence of exile from the Cook Islands.

"(6) Where pursuant to a direction given by the Governor-General under subsection *five* of this section any person brought to New Zealand is released in New Zealand on probation, the provisions of sections thirty-five to thirty-nine of the Criminal Justice Act 1954 shall apply as if that person had been so released before the expiry of a term of imprisonment imposed by the Supreme Court of New Zealand.

"(7) Every person referred to in subsection *five* of this section, if he is a Native or an Asiatic, shall as soon as he is entitled to his discharge or as soon thereafter as may be, unless he is under sentence of exile therefrom, be deported to the Cook Islands in pursuance of a warrant signed by the Minister of Justice, and in the meantime shall be detained in custody in some prison in New Zealand appointed by the last-mentioned warrant."

8. Transmission of certain Warrants and orders by telegram—The principal Act is hereby amended by inserting, after section three hundred and fourteen, the following new section:

"314A. (1) Where, as a result of the exercise by the Governor-General of the prerogative of mercy of the Crown or of a judgment by the Supreme Court of New Zealand on an appeal from the High Court or of a judgment of the Privy Council on an appeal from the Supreme Court of New Zealand, any person held in custody in the Cook Islands is entitled to be released from custody, the Warrant signed by the Governor-General or, as the case may be, the order of the Supreme Court or of the Privy Council may be transmitted to the Cook Islands by telegram, and the telegraphic copy shall be sufficient authority to all persons concerned to release that person accordingly.

"(2) In this section the term 'telegram' has the same meaning as in section one hundred and forty-six of the Post and Telegraph Act 1928."

9. Wills of Natives—Section four hundred and forty-five of the principal Act is hereby amended as follows:

(a) By inserting in subsection two, after the words "witnesses thereof is", the words "a Resident Agent or":

(b) By inserting in subsection three, after the words "Every such", the words "Resident Agent or".

10. Effect of orders of adoption on interests in Native land—(1) The principal Act is hereby amended by inserting, after section four hundred and sixty-five, the following new section:

"465A. No order of adoption, other than an order made under this Part of this Act or under section nine of the Cook Islands Amendment Act 1921, shall have any force or effect in respect of succession to any interest in Native land."

(2) This section shall be deemed to have come into force on the twenty-seventh day of October, nineteen hundred and fifty-five (being the date of the passing of the Adoption Act 1955).

11. Attestation of instruments of alienation of Native land— Section four hundred and seventy-five of the principal Act is hereby amended by adding to subsection two the words "or by a solicitor of the Supreme Court of New Zealand".

12. Medical certificates as to persons of unsound mind— (1) The principal Act is hereby amended by repealing section five hundred and seventy-five, and substituting the following section:

"575. No such order shall be made except on examination of the person alleged to be of unsound mind, and upon production to the Court of a certificate—

"(a) In the case of an application made in the Island of Niue, by a Medical Officer:

"(b) In the case of an application made in any other part of the Cook Islands, by two Medical Officers or by one Medical Officer and a graduate of the Central Medical School at Suva, Fiji,—

that the person in respect of whom the order is to be made is of unsound mind and that his detention in medical custody is necessary in his own interest or for the safety of other persons."

(2) The principal Act is hereby further amended by repealing section five hundred and eighty-three, and substituting the following section:

"583. No such warrant shall be issued unless the Court is satisfied, on the certificate,—

"(a) Where the order of medical custody is made in the Island of Niue, by a Medical Officer:

"(b) Where the order is made in any other place in the Cook Islands, by two Medical Officers or by one Medical Officer and a graduate of the Central Medical School at Suva, Fiji,—

and on the examination of the person alleged to be of unsound mind, that his removal from the Cook Islands to New Zealand is necessary in his own interest or for the safety of other persons."

(3) The principal Act is hereby further amended by repealing section five hundred and eighty-five, and substituting the following section:

"585. On the arrival in New Zealand of any such person he shall be forthwith brought before a Magistrate, together with the warrant for his removal to New Zealand and a certificate, authenticated by the seal of the High Court,—

"(a) In the case of a warrant issued in the Island of Niue, by a Medical Officer; or

"(b) In the case of a warrant issued in any other part of the Cook Islands, by two Medical Officers or by one Medical Officer and a graduate of the Central Medical School at Suva, Fiji,—

certifying that the person so committed is of unsound mind, and setting forth such particulars as to the physical and mental condition of that person as the person or persons giving the certificate think necessary."

(4) Section five of the Cook Islands Amendment Act 1923 is hereby amended by repealing subsections two, three, and five.

13. Removal to Rarotonga of arrested persons of unsound mind—Section five hundred and eighty-nine of the principal Act is hereby amended by adding the following subsection as subsection two thereof:

"(2) Where any such person has been arrested in any island other than the Island of Rarotonga, the order for his custody made under subsection one of this section may provide for his removal in custody to the Island of Rarotonga."

14. Rehearing of order made relating to Islet of Te-Au-O-Tu—(1) Notwithstanding anything in subsection one of section thirty-two of the Cook Islands Amendment Act 1946 or in any other enactment, the Native Appellate Court is hereby authorised and empowered, on application in writing being made to it in that behalf by or on behalf of any of the petitioners within one year from the passing of this Act, to inquire into the matters set forth in the petition to the House of Representatives numbered 9 of 1953 relating to the ownership of the Islet of Te-Au-O-Tu.

(2) Where on any such application the Native Appellate Court grants or directs a rehearing of any matter set forth in that petition, the provisions of subsections two to eight of section thirty-two of the Cook Islands Amendment Act 1946 shall apply as if application for a rehearing of the matter had been made within the time specified in subsection one of that section.

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