



# PARLIAMENT OF THE COOK ISLANDS

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## IMMIGRATION BILL

### EXPLANATORY NOTE

This Bill reforms and modernises immigration law in the Cook Islands.

This Bill takes account of extensive consultation in the Cook Islands about how to change the immigration system in a way which best suits the needs of the Cook Islands. The present Act (the Entry, Residence and Departure Act 1971-72) is outdated and difficult to read and apply.

**Clause 1** is the title clause.

**Clause 2** provides that the Act, apart from a few specified provisions, comes into force on a date to be appointed by the Queen's Representative by Executive Order in Council. 1 or more Orders may be made bringing different provisions into force on different dates and at different times.

### **Part 1** **Preliminary matters**

**Clause 3** states the purpose of the Bill. The purpose of the Bill is to manage immigration in a way that balances the national interest, as determined by the Crown, and the rights of individuals.

**Clause 4** relates to interpretation. Some of the key terms include "certificate of identity", "child", "Cook Islander", "course of study", "designated person", "education provider", "former Act (which means the Entry Residence and Departure Act 1971-1972)", "gang of concern", "immigration status", "in transit", "intern", "internship provider", "honorary permanent resident", "member of a gang of concern", "passenger", "permanent resident", "permit", "permit waiver", "person with continuing rights", "person without continuing rights", "prohibited person", "the regulations", "unlawfully in the Cook Islands", "visa", and "visa waiver".

**Clause 5** defines the meaning of "granted as a result of an administrative error".

**Clause 6** defines the meaning of "unlawfully in the Cook Islands".

**Clause 7** defines the meaning of “absolute discretion of the decision maker”.

**Clause 8** provides that the Act binds the Crown.

## **Part 2** **General provisions**

### Subpart 1—Persons unlawfully in the Cook Islands

**Clause 9** sets out the basic obligation of a person unlawfully in the Cook Islands to leave the Cook Islands.

**Clause 10** sets out the obligation of the principal immigration officer to communicate that obligation. A failure by the principal immigration officer to comply with that obligation does not relieve the obligation of a person unlawfully in the Cook Islands to leave the Cook Islands.

### Subpart 2—Immigration policy

**Clause 11** allows the Minister to issue immigration policy of any kind relating to the implementation of any provision of the Bill, or the regulations.

Immigration policy—

- may not be inconsistent with the Bill or the regulations;
- is a statement of Government policy and the rules and practice of the department, but is not a regulation.

**Clause 12** requires the principal immigration officer to take reasonable steps to publish immigration policy. However, this does not require the principal immigration officer to disclose policy that could be withheld on a request under the Official Information Act 2008.

**Clause 13** deals with the legal status of immigration policy and related matters.

### Subpart 3—Collection of biometric and other information

#### *Biometric information*

**Clause 14** sets out the uses that may be made of biometric information required from persons under the Bill. Biometric information may be used to—

- establish a record of person’s identity; or
- establish or verify a person’s identity; or
- assist in decision making under the Act; or
- be shared with other agencies in accordance with Part 14.

**Clause 15** sets out how biometric information may be collected.

### Subpart 4—Children generally

- Clause 16** enables the principal immigration officer to appoint an independent third party to represent the interests of children who are not Cook Islanders and have no parents or guardians living in the Cook Islands.
- Clause 17** provides that a responsible parent is responsible for meeting the immigration obligations of a child under this Bill (if the child is not a Cook Islander).
- Clause 18** impose an obligation on parents who are not Cook Islanders but who give birth to a child in the Cook Islands to register the birth of their child in the Cook Islands.

#### Subpart 5—Administrative matters

##### *Service of notices*

- Clause 19** specifies when a notice is served, and defines for the purposes of that description, what the last known email address, address, or telephone number of a person is.
- Clause 20** provides for the payment of fees and charges collected under this Act and the regulations to be paid into a public account or trust account established under, and operated in accordance with, the Ministry of Finance and Economic Management Act 1995-96.

### **Part 3 Cook Islanders**

- Clause 21** defines who a Cook Islander is.

#### *Cook Islanders may travel to, enter, and stay in Cook Islands at any time*

- Clause 22** sets out a basic right of all Cook Islanders; namely the right to travel to, enter into, and stay in the Cook Islands at any time. However, that right is subject to the need for a Cook Islander to have their passport endorsed, the need for that person to comply with the requirements of Part 9 of the Bill (as enacted) which relates to information requirements when people enter and depart from the Cook Islands, as well as any emergency regulations made to deal with epidemics.
- Clause 23** requires a Cook Islander to have their passport endorsed in order to exercise their right to enter and stay in the Cook Islands. If a Cook Islander does not have their passport endorsed, they may be treated as a person without continuing rights.
- Clause 24** sets out the process for a Cook Islander to have their passport endorsed. A Cook Islander must prove their status as a Cook Islander to the principal immigration officer. *Clause 24(2)* lists the documents that may be produced to the principal immigration officer in order to prove a person's status as a Cook Islander. If the principal immigration officer is satisfied that a person is a Cook Islander, the principal immigration

officer must endorse the person's passport to that effect. A subsequent passport issued to that person may be endorsed in the same way by the principal immigration officer without the need for any further enquiry.

**Clause 25** requires that the endorsement must take place at a place other than at a designated place (in other words, the endorsement must be carried out at a place other than Rarotonga International Airport or any port in the Cook Islands used for international arrivals or departures).

**Clause 26** requires the Registrar of the High Court to keep a record of certificates issued under *clause 24(2)(c)* (ie, a statement that a particular person is a Cook Islander). The Registrar must make available a copy of the register, or an extract from the register, to the department.

#### **Part 4** **Honorary permanent residents**

**Clause 27** sets out how a person may become an honorary permanent resident. This status may be conferred by the Queen's Representative, by Order in Executive Council, on a person as an award in recognition of outstanding service. The power to make such an award may be exercised only on the recommendation of the Minister, acting in the Minister's absolute discretion, after being satisfied that—

- the person has by their work or service been of outstanding benefit to the people of the Cook Islands, or to the national interests of the Cook Islands, or has contributed substantially to the economic or social or cultural development of the Cook Islands; and
- public recognition of that work or service is appropriate; and
- it would be unreasonable in all the circumstances to require the person to become a permanent resident.

**Clause 28** confers on every honorary permanent resident the right to travel to, enter into, and stay in the Cook Islands at any time. However, that right is subject to the need for an honorary permanent resident to have their passport endorsed, the need to comply with the requirements of Part 9 of the Bill (as enacted) which relates to information requirements when people enter or depart the Cook Islands, as well as any emergency regulations made to deal with epidemics.

**Clause 29** requires an honorary permanent resident to have their passport endorsed in order to recognise their right to travel to, enter into, and stay in the Cook Islands. If an honorary permanent resident does not have their passport endorsed they may be treated as a person without continuing rights.

**Clause 30** sets out the process for an honorary permanent resident to have their passport endorsed. An honorary permanent resident must prove their status as an honorary permanent resident to the principal immigration officer. *Clause 30(2)* lists the documents that may be produced to the

principal immigration officer in order to prove a person's status as an honorary permanent resident. If the principal immigration officer is satisfied that a person is an honorary permanent resident, the principal immigration officer must endorse the person's passport to state that they are an honorary permanent resident. Any subsequent passport issued to that person may be endorsed in the same way by the principal immigration officer without the need for any further enquiry.

- Clause 31** requires that the endorsement take place at a place other than designated place (in other words, the endorsement must take place outside the Rarotonga International Airport or a port in the Cook Islands at which there are international departures or arrivals).
- Clause 32** provides that a grant of honorary permanent residence may be revoked under *clause 33*.
- Clause 33** provides that a grant of honorary permanent residence may be revoked by the Queen's Representative by Order in Executive Council on the joint recommendation of the Minister and the Solicitor-General. A joint recommendation may be made only if the Minister and the Solicitor-General each believe on reasonable grounds that—
- the holder of honorary permanent residence status has gained their honorary permanent residence by fraud; or
  - the holder is a threat to security, defence, or public order; or
  - the holder has engaged in, or claimed responsibility for, an act of terrorism; or
  - the holder is or was a member of, or is an adherent of, any organisation or group that has engaged in, or has claimed responsibility for, an act of terrorism; or
  - the holder is, or will become, the subject of immigration-based sanctions imposed by the United Nations; or
  - the holder has by their conduct brought their status as an honorary permanent resident into public disrepute.

## **Part 5 Permanent residents**

- Clause 34** defines who a permanent resident is. A permanent resident of the Cook Islands is—
- a permanent resident by descent; or
  - a person granted residence under *clause 38* by the issue of a certificate of the Minister, and if 18 years or over, has taken the oath required by *clause 44*; or
  - a person granted permanent residence under *clause 42* (at the absolute discretion of the Minister), and if 18 years or over, has taken the oath required by *clause 44*; or
- Clause 35** describes who is a permanent resident by descent.

**Clause 36** requires persons born outside the Cook Islands with at least 1 parent with permanent residence, in circumstances where the person would have been born inside the Cook Islands if there had not been a medical evacuation of the mother in order to give birth or receive medical treatment, to be treated as if they had been born inside the Cook Islands.

*Total number of permitted permanent residents*

**Clause 37** sets out a basic rule about the total number of permitted permanent residents in the Cook Islands. The total number of persons who may be permanent residents of the Cook Islands at any one time is 650. This number does not include persons who are—

- permanent residents by descent; or
- granted permanent residence as a consequence of being a spouse of a Cook Islander or a permanent resident, or an eligible child; or
- granted residence under *clause 42* (at the Minister’s absolute discretion); or
- known to be 75 years or older (these persons are treated as deceased for the purpose of calculating the maximum permissible number of permanent residents).

**Clause 38** describes a person’s eligibility to apply for permanent residence by certificate. If (at the 3-yearly review required under *clause 40* of the number of permanent residents) there are available positions for persons to be granted permanent residence, applicants must be assessed in accordance with the prescribed criteria. If they satisfy those criteria, they must be granted permanent residence, or if over 18 years of age, advised that they will be granted permanent residence if they take the oath required by *clause 44*.

**Clause 39** provides that the process that must be followed to apply for permanent residence (other than by descent) is the process set out in—

- this Act; and
- the regulations; and
- immigration policy.

The required process can include providing for—

- the lodging of expressions of interest to become permanent residents:
- providing mechanisms to enable the assessment of expressions of interest to be assessed and applications for permanent residence invited:
- providing for the ranking of applicants and setting out criteria governing how applications are to be ranked:
- providing mechanisms for consultation on applications with a wide variety of people:
- providing for the lapse of applications.

**Clause 40** requires the Minister, at least once every 3 years, to invite from the public expressions of interest from persons who wish to apply for permanent residence. This requirement does not apply if no permanent

residence certificates can be granted because the maximum number of persons with permanent residence is at or above the maximum number allowed by *clause 37*. *Clause 40* also requires the Minister, at least once every 3 years, to invite expressions of interest from the public from persons who wish to be considered for permanent residence as a consequence of being a spouse of a Cook Islander or permanent resident. The Minister does not need to seek expressions of interests if he or she considers there are exceptional circumstances arising from a public health emergency, natural disaster, or public disorder that justify not seeking expressions of interest within the relevant period.

- Clause 41** allows eligible children wishing to be granted permanent residence and persons wishing to be recognised as permanent residents by descent to apply at any time for that grant or recognition, as the case may be.
- Clause 42** empowers the Minister to grant non-Cook Islanders permanent residence at any time, in the Minister’s absolute discretion. This provision overrides other provisions in this Bill and any limitations on the number of permanent residents or procedures to be followed for the grant of permanent residence set out in the Act or the regulations.
- Clause 43** describes when permanent residence is taken to be granted under *clause 38 or 42*.
- Clause 44** requires adults who are eligible for permanent residence under *clause 38* are to be granted permanent residence under *clause 42* to take an oath in the prescribed form, within a year of being advised that they are to be granted permanent residence.
- Clause 45** confers on every permanent resident the right to travel to, enter into, and stay in the Cook Islands at any time. However, that right is subject to the need for a permanent resident to have their passport endorsed, the need to comply with the requirements in Part 9 of the Bill (as enacted) which relate to information requirements on entering or departing from the Cook Islands, and also the requirements of any emergency regulations made to deal with epidemics.
- Clause 46** requires a permanent resident to have their passport endorsed in order to exercise their right to travel to, enter into, and stay in the Cook Islands. If a permanent resident does not have their passport endorsed, they may be treated as a person without continuing rights.
- Clause 47** sets out the process for a permanent resident to have their passport endorsed. A permanent resident must prove their status as a permanent resident to the satisfaction of the principal immigration officer, *clause 47(2)* lists the documents that may be produced to the principal immigration officer to prove their status as a permanent resident. If the principal immigration officer is satisfied that a person is a permanent resident, any subsequent passport issued to that person may be endorsed

in the same way by the principal immigration officer without the need for any further enquiry.

**Clause 48** requires that the endorsement take place at a place other than a designated place (in other words, the endorsement must take place outside the Rarotonga International Airport or a port in the Cook Islands at which there are international departures or arrivals).

**Clause 49** provides that permanent residents may have their status as a permanent resident revoked in the circumstances set out in *clauses 50 and 51*.

**Clause 50** set out the grounds on which a Judge of the High Court may, on the application of the Minister, revoke the permanent residence status of any person. The High Court may revoke a person's permanent residence status under *clause 54* if the Judge is satisfied that—

- there are reasonable grounds to believe that the person has ceased to make their home in the Cook Islands; or
- the person has been found, on conviction (in the Cook Islands, or elsewhere) to have gained their permanent residence by fraud; or
- within the first 10 years of the grant of their permanent residence, the person has been convicted of a serious criminal offence and sentenced to a term of imprisonment of 1 year or more, regardless of the term of the sentence actually served; or
- there are reasonable grounds to believe that the person is a threat to the security, defence, or public order of the Cook Islands; or
- there are reasonable grounds to believe that the person has engaged in, or claimed responsibility for, an act of terrorism; or
- there are reasonable grounds to believe that the person is or was a member of, or is an adherent of, any organisation or group of people that has engaged in, or claimed responsibility for, an act of terrorism; or
- there are reasonable grounds to believe that the person is, or will become, subject to immigration-related sanctions imposed by the United Nations.

**Clause 51** empowers the Minister to revoke a person's permanent residence status where the person has been outside the Cook Islands continuously for more than 3 years, if the Minister is satisfied that the person has ceased to make their home in the Cook Islands.

**Clause 52** enables the High Court or the Minister, as the case requires, to consider the following when deciding whether a person has ceased to make their home in the Cook Islands:

- the tax status of the person and whether they pay any tax in the Cook Islands;
- the amount of time the person spends in the Cook Islands and any reasons for their absence;
- the primary place of residence of the person;
- whether the person has a home in the Cook Islands;

- the extent of any assets owned by the person that are located in the Cook Islands;
- the extent of the person’s business interests and investments that are located in the Cook Islands;
- any other matters the High Court or the Minister, as the case requires, considers relevant.

**Part 6**  
**Persons without continuing rights**

Subpart 1—Fundamental requirements

*Part 6* applies to persons without continuing rights. Persons without continuing rights are persons who are not Cook Islanders, permanent residents, or honorary permanent residents (in other words, they are persons without a permanent right to travel to, enter into, or stay in the Cook Islands).

**Clauses 53 and 54** sets out 2 fundamental rules that govern the ability of persons without continuing rights to travel to, enter into, or stay in the Cook Islands. A person without continuing rights may travel to, and enter into, the Cook Islands only if the person is the holder of a visa granted under the Act and the travel is consistent with the conditions of the visa or the person is a person exempt from holding a visa or is a person to whom a visa waiver applies. A person without continuing rights may stay in the Cook Islands only if the person is the holder of a permit granted under the Act or a person to whom an exemption or waiver applies.

Subpart 2—Exceptions and exemptions

**Clause 55** sets out a lengthy list of persons exempt from the requirement to hold a visa for travel to, and entry into, the Cook Islands and a permit to stay in the Cook Islands.

**Clause 56** requires those persons to give a list of personal details and travel information to the principal immigration officer.

Subpart 3—Prohibited persons

**Clause 57** sets out a list of persons to whom a visa or permit may not be granted (prohibited persons).

*Notices prohibiting entry*

**Clause 58** enables the Minister to give a notice prohibiting the entry into the Cook Islands of certain classes of prohibited persons.

**Clause 59** requires prohibited persons who wish to enter the Cook Islands to contact the principal immigration officer to indicate their travel intentions at least 7 days before the person proposes to enter the Cook Islands.

**Clause 60** sets out rules about the method of delivery of notices given under *clause 58*.

## **Part 7**

### **Administrative provisions: applications, visas, and permits**

#### *Forms*

**Clause 61** empowers the principal immigration officer to approve forms for the purposes of applications made under this Act.

*Certain restrictions on right to apply for visa or permit*

**Clause 62** states that a person unlawfully in the Cook Islands has no right to apply for a visa or permit.

**Clause 63** provides that a person unlawfully in the Cook Islands has no right to work or study in the Cook Islands.

**Clause 64** empowers the Minister to waive the prohibition in *clause 62* on a person unlawfully in the Cook Islands from applying for a visa or permit. A decision by the Minister under this clause on whether to waive the prohibition in *clause 62* is at the absolute discretion of the Minister.

*Exception to ordinary rules about grant of visa or permit*

**Clause 65** authorises the Minister to grant a visa or permit of any type to a person who is unlawfully in the Cook Islands. A decision made under *clause 65* is at the Minister's absolute discretion. If the Minister grants a visa or permit under *clause 65* the Minister may impose conditions on the grant of that visa or permit.

*Exception to ordinary rules about working while unlawfully in Cook Islands*

**Clause 66** enables the Minister to permit a person unlawfully in the Cook Islands to work in the Cook Islands until—

- their removal or deportation from the Cook Islands; or
- they earlier leave the Cook Islands.

A decision to grant permission under this clause—

- is in the Minister's absolute discretion and subject to any conditions the Minister considers appropriate; and
- does not change the status of the person as being unlawfully in the Cook Islands.

#### *Applications*

**Clause 67** gives the principal immigration officer a broad discretion to decide how applications for visas, permits, permanent residence, exemptions, waivers, or other matters are made. However, this discretion is subject to specific rules in **clauses 68 and 69** about how minors apply for

permanent residence or visas or permits, and conditions that apply if minors make separate applications from their parents or guardians.

**Clause 70** provides that an application for a visa, permit, permanent residence, exemption, waiver, or any other matter lapses in the prescribed circumstances. If an application lapses no further processing of it is required.

**Clause 71** confers the power to decide whether to grant applications for visas or permits on the principal immigration officer, an immigration officer, or a designated officer.

**Clause 72** lists the circumstances in which an application for a visa or permit or permanent residence must be declined.

#### *Automated decisions*

**Clauses 73 to 75** make provision for decisions on the issue of visas or permits and the imposition of conditions to be granted by an automated process applying criteria pre-determined by a principal immigration officer in accordance with immigration policy. Such decisions have the same legal status as if made by an immigration officer.

#### *Reasons for decisions*

**Clause 76** requires applicants for a residence, work, or study class visa or permit whose applications are declined, to be supplied with a short summary of reasons why their application was declined at the time that, or as soon as practicable after, the application is declined. Other classes of unsuccessful applicant must be supplied with a short summary of reasons for the decline, on request and payment of the prescribed fee. However, no reason need be given for a decision if it is made in the absolute discretion of the decision maker.

#### *Conditions*

**Clause 77** provides that the grant of a visa or permit or visa or permit waiver may be made the subject of prescribed conditions or any other conditions imposed by the decision maker for good reason. The principal immigration officer is given the power to vary or remove conditions, or impose additional conditions.

**Clause 78** requires persons who have been granted a waiver to comply with the conditions imposed on the grant of the waiver.

#### *Sponsorship and bonds*

**Clauses 79 to 85** set out rules about when applicants for, or holders of, visas or permits or visa or permit waivers may be required—

- to have sponsors; or
- pay bonds.

The clauses go on to provide for—

- the effect of a failure to comply with sponsorship obligations (*clause 81*):
- the permissible use of bond monies (*clause 82*):
- rules that apply when a bond is paid by a third party (*clause 83*):
- the circumstances in which a bond is forfeited (*clause 84*):
- the limitation of proceedings (*clause 85*).

*Cancellation of visas, permits, and visa or permit waivers*

**Clause 86** sets out the circumstances where visas or permits and visa or permit waivers are cancelled by operation of law.

**Clause 87** sets out the circumstances where a visa or permit or visa or permit waiver may be cancelled by the Minister, the principal immigration officer, or an immigration officer.

*Miscellaneous*

**Clause 88** provides for the way in which the grant of a visa or permit is recorded in the records of the department.

**Clause 89** provides for the extension or suspension of visas or permits in situations of emergency.

**Part 8**  
**Visa and permit framework**

**Clause 90(1)** lists the classes of visa that may be granted. They are:

- transit visas:
- residence visas:
- work visas:
- study visas:
- visitors visas:
- special visas.

**Clause 90(2)** likewise sets out the classes of permit that may be granted. They are:

- residence permits:
- work permits:
- study permits:
- visitors permits:
- special permits.

**Clause 91** sets out rules about the requirements to have a transit visa, procedures for granting transit visas, and the duration of transit visas.

**Clause 92** gives the principal immigration officer the authority, in his or her absolute discretion, to allow a person in transit to apply for a permit and to grant a permit.

- Clause 93** sets out the rules governing whether applications can be made from outside or inside the Cook Islands for residence visas and permits.
- Clause 94** specifies the entitlements provided to holders of residence visas and residence permits.
- Clause 95** likewise sets out the rules governing whether applications can be made from outside or inside the Cook Islands for work visas and permits.
- Clause 96** specifies the entitlements provided to holders of work visas and work permits.
- Clause 97** sets out the rules governing whether applications can be made from outside or inside the Cook Islands for study visas or study permits.
- Clause 98** specifies the entitlements provided to holders of study visas and study permits.
- Clause 99** sets out the rules governing whether applications can be made from outside or inside the Cook Islands for visitors visas or permits.
- Clause 100** specifies the entitlements provided to holders of visitors visas and visitors permits.
- Clause 101** sets out the rules governing whether applications can be made from outside or inside the Cook Islands for special visas or permits.
- Clause 102** sets out the entitlements of holders of special visas and special permits.

*General limitation on rights conferred by visas and permits*

- Clause 103** sets out a general rule that rights provided by visas and permits are subject to the requirements in the regulations and other enactments.

**Part 9**  
**Arrivals and departures**

Subpart 1—Passenger responsibilities

- Clause 104** imposes a requirement on every person who arrives in the Cook Islands to report to a designated place or to a designated officer within 48 hours of arrival and provide the prescribed arrival information (unless *clause 113* applies).
- Clause 105** requires any person arriving in the Cook Islands to provide biometric information if required to do so by an immigration officer or a designated officer.

*Person leaving Cook Islands*

**Clause 106** in similar terms to clause 104, requires every person leaving the Cook Islands to present themselves at a designated place or to a designated officer, and to provide the prescribed departure information to an immigration officer or a designated officer.

**Clause 107** provides that a person may be required to pay outstanding fines, charges, or fees before being allowed to leave the Cook Islands.

Subpart 2—Duties of carriers and persons in charge of ship or aircraft

**Clause 108** requires a carrier and the person in charge of a ship to provide prescribed information about all persons on board to the principal immigration officer no later than 48 hours before the ship arrives in the Cook Islands.

**Clause 109** deals with the duties of carriers and persons in charge of aircraft arriving in the Cook Islands. The carrier and the person in charge of an aircraft are required to provide the principal immigration officer with certain information at the following intervals:

- no later than 76 hours before an aircraft departs for the Cook Islands from another country; and
- no later than 1 hour before departure to the Cook Islands; and
- as soon as practical after the aircraft departs for the Cook Islands.

**Clause 110** requires a carrier and the person in charge of a ship and aircraft to—

- ensure that all persons boarding the craft (including crew) have with them the information required by the regulations; and
- prevent the boarding or disembarking of persons without the required information.

**Clause 111** imposes a duty on a person who is in charge of a ship or aircraft to prevent a person subject to a notice under *clause 58* (a prohibited person) from entering into the Cook Islands.

**Clause 112** sets out the general duties of a carrier or person in charge of a ship or aircraft to ensure that—

- passengers and crew are cleared for immigration purposes at a designated place or by an appropriate person; and
- persons are prevented from disembarking into an inappropriate place; and
- stowaways are reported to the authorities.

**Clause 113** deals with the unusual situation that arises, if because of weather or other unforeseen circumstances, immigration clearance cannot be completed within 48 hours of arrival in the Cook Islands.

- Clause 114** provides that there is no obligation to grant a visa or permit to any person just because they arrive in irregular circumstances (for example the circumstances described in *clause 113*).
- Clause 115** sets out the general obligations of the carrier and the person in charge of a ship or aircraft departing from the Cook Islands to—
- ensure that all passengers and crew depart at a designated place; and
  - provide any prescribed information about the ship’s or aircraft’s departure to a designated officer or immigration officer; and
  - permit any non-Cook Islander being removed or deported to board the ship or aircraft; and
  - detain certain persons pending deportation; and
  - report to the principal immigration officer any missing passengers or crew members; and
  - obtain immigration clearance from the principal immigration officer before the ship or aircraft departs.
- Clause 116** gives protection from civil or criminal liability to persons who, in good faith, use or impose reasonable measures, including restraint or reasonable force, to carry out their responsibilities under *clauses 108 to 115*.

## **Part 10**

### **Removal and deportation**

- Clause 117** provides that this Part applies to persons without continuing rights (ie persons who are not Cook Islanders, honorary permanent residents, or permanent residents).
- Clause 118** lists categories of persons who may not be deported or removed from the Cook Islands.

#### *Removal*

- Clause 119** sets out the fundamental rule that a person without continuing rights may be arrested, detained, and removed from the Cook Islands if the person is unlawfully in the Cook Islands.
- Clause 120** provides that a person to whom *clause 119* applies may, but need not be, served with a deportation order.

#### *Deportation and removal*

- Clause 121** sets out the grounds on which a person to whom this Part applies may be deported from the Cook Islands.
- Clause 122** specifies the required contents of a deportation order.

- Clause 123** provides that a person's liability to removal or deportation continues indefinitely unless the person's liability to removal or their deportation order is suspended.
- Clause 124** describes when a person may be deported from the Cook Islands.
- Clause 125** gives the Minister the power, in the Minister's absolute discretion, to suspend a person's liability to removal or deportation and to impose any conditions of that suspension that the Minister considers appropriate.

*Removal and deportation costs*

- Clause 126** sets out the obligations of a carrier or the person in charge of a craft to meet the costs of removal or deportation and to pay the Crown's costs in detaining and maintaining any person pending their removal or deportation from the Cook Islands.
- Clause 127** provides that the person removed or deported is liable to pay the costs referred to in *clause 126* if the carrier or person in charge of the craft is not liable to pay those costs.
- Clause 128** provides how the cost of deportation or removal may be recovered if the person removed or deported is unable to pay their costs and the costs are not met by another person. The costs are met from public funds but proceedings may be brought to recover the costs from other persons.

*Prohibited period of re-entry following removal or deportation*

- Clause 129** states that certain persons who are removed or deported from the Cook Islands may not be granted a visa or permit or return to the Cook Islands for a period of 5 years.
- Clause 130** sets out the circumstances where persons who are liable to deportation or removal can leave the Cook Islands without being liable to a prohibition on the granting of a visa or permit allowing re-entry for a period of 5 years.
- Clause 131** provides that a voluntary departure, that has the effect under *clause 130* of cancelling the prohibition for 5 years on re-entry, or the grant of a visa or permit, does not alter the effect of any other prohibition on the grant of a visa or permit or a re-entry, or limit the ability of an immigration officer to subsequently decline an application for a visa or permit.
- Clause 132** sets out the circumstances where there is a permanent prohibition on an adult re-entering the Cook Islands after removal or deportation.

## **Part 11**

### **Arrest and detention**

- Clause 133** provides that Part 11 applies to a person without continuing rights who is—
- liable to be removed; or
  - in respect of whom a deportation order has been made.
- Clause 134** sets out powers to arrest and detain a person to whom *Part 11* applies.
- Clause 135** limits an initial period of detention to a maximum period of 144 hours, unless the detention is authorised by a warrant of commitment issued under *clause 137 or 138*.
- Clause 136** authorises an immigration officer to apply for a warrant of commitment for up to 28 days to detain a person liable to be removed or in respect of whom a deportation order has been made, and sets out the criteria that must be satisfied before such an application can be made.
- Clause 137** sets out the criteria that must be applied by a High Court Judge in deciding whether to—
- direct the immediate release of a person; or
  - direct the issue of a warrant of commitment authorising the person’s detention for up to 28 days; or
  - order the person’s release from custody on conditions under *clause 143*.
- Clause 138** sets out the criteria that must be applied by a High Court Judge in deciding whether to order a further warrant of commitment or the persons release on conditions in circumstances where, if a further warrant of commitment was issued, the person would be detained on consecutive warrants of commitment for a continuous period of more than 6 months.
- Clause 139** describes the information and evidence that must be supplied in support of an application for a warrant of commitment to be issued under *clause 138*.
- Clause 140** enables a Justice of the Peace to exercise the powers of a Judge under *clause 137* if no High Court Judge is available (either in person or by video link). However, a warrant of commitment that a Justice of the Peace may issue is limited to a maximum period of detention of 72 hours.
- Clause 141** describes the form in which a warrant of commitment must be issued.
- Clause 142** requires a copy of the warrant to be given or shown to the person detained, except in certain specified circumstances.

- Clause 143** describes the conditions that may be imposed if a person is released on conditions under this Part. One or more of the following conditions may be imposed:
- the person must reside at a specified place:
  - the person must report to a specified place at specified times:
  - the person must provide a guarantor who is responsible for ensuring that the person complies with the conditions:
  - the person must attend any specified interview:
  - the person must undertake any specified action to facilitate their departure from the Cook Islands.
- Clause 143* also provides for the variation of conditions of release.
- Clause 144** specifies when physical force may be used to arrest or detain a person under this Act.
- Clause 145** sets out the duties of a person arresting or detaining a person under this Part to provide them with certain information.
- Clause 146** provides that an immigration officer or designated officer may call on any person to assist them in arresting or detaining a person under this Act.

## **Part 12**

### **Reviews and appeals**

#### Subpart 1—Decisions that can be reviewed

- Clause 147** defines the term “decision” for the purposes of this Part.
- Clause 148** gives an unsuccessful applicant for a study permit or work permit the right to apply to the principal immigration officer for a review of that decision. *Clause 148* sets out details of how the review is to be conducted.
- Clause 149** sets out the rights of an unsuccessful applicant for a residence visa or permit to apply to the Minister for a review of the decision to refuse or grant the applicant that permit. *Clause 149* sets out details of how the review is to be conducted.
- Clause 150** provides that a review under *clause 148 or 149* may only be sought on the ground that—
- the decision was contrary to the Act or the regulations; or
  - was otherwise wrong in law.
- Clause 151** provides that the only rights of review under this Bill are the rights of review provided for in *clauses 148 and 149*. This does not affect a person’s ability to seek judicial review of decision made under the Act. However, the only remedies that may be granted on a judicial review under the Act are 1 or more of the following:

- a declaration that 1 or more defendants acted unlawfully;
- an order that 1 or more defendants reconsider the matter at issue, in accordance with the law;
- an award of costs against the defendant.

**Clause 152** provides that the procedures to be adopted on a review conducted under *clauses 148 or 149* are set out in *Schedule 3*.

#### Subpart 2—Decisions that may be appealed

**Clause 153 and 154** provide that the person who is the subject of a deportation order may appeal to the High Court only on the grounds that the decision to make the order—

- was contrary to this Act or the regulations; or
- was otherwise wrong in law; or
- involved certain specified mistakes of fact.

No appeal to the Court may be made on humanitarian grounds.

**Clause 155** provides a special procedure for appeals involving sensitive information.

**Clause 156** provides that the Court may confirm or reverse a decision to make a deportation order, on appeal under *clause 153*.

**Clause 157** states that the only rights of appeal against decisions made under this Act are those in *clause 153*.

### Part 13

#### Responsibilities of employers and education providers

##### *Employer responsibilities*

**Clause 158** sets out the fundamental rule that every employer must take reasonable steps to ensure that a person without continuing rights is entitled to work in the Cook Islands before that person commences work for that employer.

**Clause 159** lists various changes of circumstances which a person who employs a person without continuing rights must inform an immigration officer of.

**Clause 160** requires employers to make wage and time and other records available for inspection by an immigration officer for certain specified purposes.

**Clause 161** requires employers who employ persons without continuing rights to have written contracts with those persons that comply with the Employment Relations Act 2012 and meet certain other specified requirements.

- Clause 162** sets out other duties of persons wishing to recruit for, or who are sponsoring, employees without continuing rights.
- Clause 163** imposes a particular duty on employers to make genuine and reasonable attempts to fill positions with persons with continuing rights (Cook Islanders, honorary permanent residents, and permanent residents) before filling those positions with people who don't have continuing rights.

**Clause 164** lists other things employers must not do.

*Education provider and internship provider responsibilities*

- Clause 165** requires every person to take reasonable steps to ensure that a person without continuing rights is entitled to study in the Cook Islands before—
- enrolling that person in a course of study in the Cook Islands; or
  - granting the person an internship in the Cook Islands.

There is an exception to this rule that allows an education provider to enrol any person aged under 19 who does not have a right to study in the Cook Islands in a primary or secondary school, if the education provider notifies the principal immigration officer of the person's details as soon as practicable after the enrolment.

**Clause 166** lists certain changes of circumstances affecting a person without continuing rights who is enrolled in a course of study or engaged as an intern that the education provider or internship provider must advise an immigration officer of.

**Clause 167** requires an education provider or internship provider to make enrolment, attendance, and other relevant records available for inspection by an immigration officer for certain specified purposes.

**Clause 168** requires intern providers who engage persons without continuing rights as interns to have written internship agreements with those interns that specify certain key matters.

**Clause 169** lists other duties of education providers and internship providers.

**Clause 170** lists other things that education providers and internship providers must not do.

**Clause 171** provides that an education provider who enrolls a person aged under 19 without the right to study in the Cook Islands in a primary or secondary school does not commit an offence against this Act, if the provider notifies the principal immigration officer of the name and address of the person enrolled as soon as practicable after the person is enrolled.

## **Part 14** **Information sharing and data protection**

### *Information sharing within Cook Islands*

**Clauses 172 to 174** deal with the sharing and receiving of information relevant to immigration issues in the Cook Islands, and in particular—

- the supply of information by the Department to employers or education providers or internship providers to indicate whether individuals can lawfully be employed, enrolled in a course of study, or engaged as an intern:
- the receipt and supply of birth and deaths information by the principal immigration officer:
- the receipt and supply of other information for more general (but specified) purposes by the principal immigration officer.

### *Information sharing with overseas agencies*

**Clauses 175 to 178** regulate information sharing between the principal immigration officer and overseas crime agencies. *Clause 178* requires such disclosure to be in accordance with a written agreement that specifies the criteria for the disclosure of information, the use that may be made of disclosed information, and the rules about ongoing disclosure by the person or body who receives the information.

**Clause 177** enables the disclosure of information to overseas crime agencies to be made the subject of conditions.

### *General*

**Clause 178** provide that this Part does not affect any other authorised information disclosure or the ability of the principal immigration officer to disclose information to officers of the Cook Islands Police or employees of the Cook Islands public service.

## **Part 15** **Immigration powers**

### *Collection of information and questioning*

*Part 15* confers a range of powers on immigration officers and designated officers, including:

- the power to request information and documents (as specified in **clause 179**):
- the power to question persons about the location of other persons whom Cook Islands immigration has an interest in locating (**clause 180**):
- the power to copy and record documents and details supplied under *clause 179 and 180* (**clause 181**):
- the power to require certain persons to supply biometric information (**clause 182**).

*Part 15* confers some powers only on immigration officers, including:

- the power of an immigration officer to apply to the High Court for an order authorising the collection of biometric information from a person who has refused to supply it (**clause 183**):
- a power to seize and retain passports, other identity documents, and travel documents from certain persons (**clause 187**).

Under **clause 184**, the Court may authorise the collection of biometric information and special biometric information and make an order to that effect (a compulsion order).

Under **clause 185**, if a compulsion order is served on a person, but the person still refuses to supply the required biometric information, a police officer may arrest the person, and collect the information, using reasonable force if necessary.

**Clause 186** authorises the making of further applications for compulsion orders requiring the supply of biometric material.

**Clause 187** confers on immigration officers a power to seize and retain passports, other identity documents, and travel documents from certain persons.

**Clause 188** authorises the principal immigration officer to designate places where ships and aircraft may arrive in and depart from the Cook Islands, and where powers and functions that need to be carried out at the border can be exercised.

#### *Entry powers at border*

**Clause 189** authorises immigration officers and designated officers to enter a designated place at any time for the purpose of carrying out their functions under the Act.

#### *Entry powers anywhere in Cook Islands*

**Clause 190** confers on an immigration officer, or a designated officer who is working in a designated place, the power to enter and search without warrant—

- any ship or aircraft (and any vehicle or other thing in or on that ship or aircraft) in, or that is about to enter, the Cook Islands:
- any place, building, or premises within a designated place:
- any baggage accompanying a passenger or arriving on a ship or an aircraft.

**Clause 191** describes the circumstances where an immigration officer, or a designated officer who is working in a designated area, may search a person who arrives in the Cook Islands from another country or is about to depart from the Cook Islands to another country.

- Clause 192** enables an immigration officer to search any vehicle, building, or premises where the officer believes on reasonable grounds that there is a person without continuing rights who—
- is unlawfully in the Cook Islands; or
  - is liable to be removed or deported from the Cook Islands; or
  - is in breach of the conditions of their visa or permit or visa and permit waiver.
- Clause 193** provides for the issue of a search warrant for the purpose of investigating immigration offences.
- Clause 194** empowers immigration officers to secure buildings for search by the police or any other government department or agency that has search powers.
- Clause 195** provides immigration officers with a further power of search of a person suspected of being a person without continuing rights who refuses on demand to produce evidence of their identity.
- Clause 196** empowers an immigration officer to require a person unlawfully in the Cook Islands to surrender any travel tickets, or any other goods of security, in place of the travel tickets.
- Clause 197** empowers the High Court to order that a person’s passport or other identity documents and any travel tickets or other documents be surrendered in certain specified circumstances.
- Clause 198** lists the things that a search power conferred on an immigration officer or a designated officer authorises the person exercising the power to do.
- Clause 199** authorises the seizure of items of uncertain status.
- Clause 200** lists the powers of a person assisting an immigration officer or a designated officer who is exercising a search power.

## **Part 16**

### **Appointments, delegations, and designations**

*Part 16* provides for—

- the appointment of a principal immigration officer (**clause 201**):
- the delegation by the Minister of his or her powers (**clause 202**):
- the delegation by the principal immigration officer of his or her powers (**clause 203**):
- general provisions about delegation (**clause 204**):
- the subdelegation of powers delegated by the Minister to the principal immigration officer (**clause 205**):
- the disqualification of the principal immigration officer, an immigration officer, designated officer, or police officer if convicted of an

immigration offence, from carrying out functions or exercising powers under the Act or the regulations **clause 206**):

- the designation by the principal immigration officer of immigration officers and designated officers (**clause 207**):
- the functions and powers of immigration officers and designated officers (**clause 208**):
- the revocation or lapsing of designations (**clause 209**).

## **Part 17**

### **Evidence and offences**

#### Subpart 1—Evidence

- Clause 210** modifies existing legal requirements about the admissibility of documents, for the purpose of proceedings under this Act by—
- allowing any immigration document to be produced by an immigration officer; and
  - preventing the cross examination of decision makers about the reasons for their decisions, if they set out those reasons in a sworn document.

#### Subpart 2—Offences and administrative fines

##### *Offences generally*

The Bill creates offences as follows:

- an offence of failing to comply with requirements imposed by or under the Act or the regulations, which is punishable by a maximum fine of \$10,000 or by imprisonment for a term not exceeding 3 months, or by both (**clause 211**):
- an offence of altering or destroying a visa or permit without authority, which is punishable by a fine not exceeding \$100,000 or by imprisonment for a term not exceeding 7 years, or by both (**clause 212**):
- an offence of providing false or misleading information, which is punishable by a maximum fine not exceeding \$100,000 or imprisonment for a term of 7 years, or by both (**clause 213**):
- an offence of improperly altering forms, which is punishable by a fine not exceeding \$100,000 or by imprisonment for a term not exceeding 7 years, or both (**clause 214**):
- an offence of publishing false or misleading information, which is punishable by a fine not exceeding \$100,000 or by imprisonment for a term not exceeding 7 years, or by both (**clause 215**):
- an offence of improper dealing with immigration or identity documents, which is punishable by a fine not exceeding \$100,000 or by imprisonment for a term not exceeding 7 years, or by both (**clause 216**):
- the offence of impersonation, which is punishable by a fine not exceeding \$100,000 or by imprisonment for a term not exceeding 7 years, or by both (**clause 217**).

**Clause 218** creates a range of other offences with lesser penalties.

#### *Administrative fines*

**Clauses 219 to 226** create a number of less serious offences that are punishable either as criminal offences, or by the payment of administrative fines. **Clause 220** specifies the procedure to be followed by an immigration officer in imposing an administrative fine and *Schedule 4* sets out the amounts of these fines.

**Clause 221** provides mechanisms for enforcing administrative fines and described various penalties that may be imposed for non-payment.

### **Part 18 Miscellaneous**

**Clause 227** sets out regulation making powers for the Act.

**Clause 228** enables the making of regulations that empower the principal immigration officer to regulate or prohibit the travel of persons with continuing rights during epidemics.

**Clause 229** provides for the making of transitional regulations that may supplement or displace the transitional provisions set out in *Part 19* of the Bill.

**Clause 230** provides that if an immigration officer or a designated officer believes that they may be harmed while exercising powers or carrying out functions under this Act, they may require assistance from the Police.

**Clause 231** provides that every person is immune from civil and criminal liability in relation to the carrying out of functions under the Act or regulations unless it is established that the person acted in bad faith.

**Clause 232** repeals the former Act.

**Clause 233** inserts *Schedules 1 and 2* which amend other Acts and regulations.

### **Part 19 Transitional provisions**

**Clause 234** provides that an endorsement in a passport that a person is a Cook Islander continues to have effect on and after the commencement of this clause.

**Clause 235** provides that a person unlawfully in the Cook Islands at the commencement of this clause continues to be unlawfully in the Cook Islands on and after the commencement of this section. This clause is subject to *clause 236*.

- Clause 236** provides for a transitional period of 3 months in which people can apply to the principal immigration officer in order to legitimise their status.
- Clause 237** provides that where any application for a visa or permit has been lodged but not determined before the commencement of this clause, the application may be determined in accordance with the new Act and the regulations.
- Clauses 238 and 239** preserve the status of existing honorary permanent residents and permanent residents.
- Clause 240** provides that people who were liable to be removed or deported under the former Act continue to be liable to be removed or deported under this Act. This clause is subject to *clauses 234 and 241*.
- Clause 241** provides that permit holders under the former Act are deemed, on the commencement of this clause, to be the holder of a special permit which has the same effect as the former permit and expires at the same time. A person can apply to the principal immigration officer to convert their special permit into a new permit.
- Clause 242** enables existing holders of permits in force at the time that this clause comes into force to apply for a new permit under the new Act (whether of the same or a different kind).
- Clause 243** provides that orders for removal and orders for deportation under the former Act can continue to be given effect to under the provisions of the former Act, even though the new Act is in force.
- Clause 244** provides that persons in detention under the former Act continue to be detained under that Act until their first appearance in Court, at which point the provisions of the new Act begin to apply.
- Clause 245** provides that existing debts to the Crown continue to be owed and may be recovered in accordance with the new Act.
- Clause 246** provides that offences under the former Act may be prosecuted under that Act.
- Clause 247** provides that the existing principal immigration officer continues in office.
- Clause 248** provides that existing immigration officers continue in office.
- Clause 249** provides that existing designated officers continue to hold their designations.
- Clause 250** provides that existing references to provisions in the former Act are to be read as references to the equivalent provision in the new Act.

**Part 20**  
**Amendments to the Judicature Act 1980-81**

**Clauses 251 and 252** amend the Judicature Act 1980-81 to enable the making of Court rules for proceedings in the High Court dealing with immigration matters.

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