



## ANALYSIS

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1995-96, No. 21

An Act -

- (a) **To establish effective economic, fiscal, and financial management and responsibility by Government;**
- (b) **To provide accompanying accountability arrangements, together with compliance with those requirements;**
- (c) **To require the Government to produce:**
- (i) **statements of economic policy;**
  - (ii) **confirmation of adherence to fiscal disciplines prescribed under this Act;**
  - (iii) **budget policy statements;**
  - (iv) **economic and fiscal forecasts and updates;**
  - (v) **financial management information**
  - (vi) **comprehensive annual reports.**

(26 July

1996

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

1. Short Title and commencement - (1) This Act may be cited as the Ministry of Finance and Economic Management Act 1995-96.  
(2) This Act shall be deemed to have come into force on 1 July 1996.

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

"Cost" means the full cost of producing outputs measured in accrual accounting terms; and includes the full allocation of overhead and non-cash costs;

"Crown" means the Crown in right of the Government of the Cook Islands, and includes every department, instrument and agent of the Government, and any body corporate or organisation that is wholly owned or controlled by or has significant financial inter-dependence with any such department, instrument, agent, body corporate or organisation, and any local authority;

"Crown Agency" means any instrument or agent of the Crown; and includes a body corporate or organisation that is wholly owned or controlled by or has significant financial inter-dependence with the

Crown or any such department, instrument, agent, body corporate or organisation; but does not include any Government Department, or any entity or organisation excluded by the Minister from time to time by notice in the Gazette;

"Estimates" means the statements of the Crown's proposed expenditure of public money during any financial year;

"Financial Secretary" means the Financial Secretary appointed under section 4,

"Financial year" means a period of 12 months ending with the 30th day of June;

"Generally accepted accounting practice" means -

- (a) financial reporting standards approved by the International Federation of Accountants or apply in relevant jurisdictions, as applicable to Governments and their agencies;
- (b) in relation to matters for which no provision or no sufficient provision is made, then such standards, accounting policies or principles having the authoritative support of the accounting profession;

"Government" means the Executive Government of the Cook Islands established pursuant to Part II of the Constitution;

"Government Department" means any department, or instrument of the Government, or any branch or division thereof, that has money appropriated to it by Parliament for the purposes of its expenditure;

"Minister" means the Minister of Finance, and includes any member of the Cabinet or Minister of the Cook Islands Government acting for him or in his place;

"Ministry" means the Ministry of Finance and Economic Management established by this Act;

"Outputs" means the production of goods and/or services by a Government Department;

"Public Money" means all the resources and entitlements owned by, owed to, or held by the Crown, or held by any Government Department or Crown Agency or any other person for or on behalf of the Government, a Government Department or Crown Agency.

**PART I**  
**MINISTRY OF FINANCE AND ECONOMIC MANAGEMENT**

3. Ministry of Finance and Economic Management - There is hereby established a department of state to be called the Ministry of Finance and Economic Management which shall be charged with the general administration of this Act, and with such other functions as may from time to time be lawfully conferred on it.

4. Financial Secretary - (1) There shall be from time to time appointed as a member of the Public Service, a Financial Secretary who shall be the Executive Head of the Ministry and who shall be the principal Financial and Economic Advisor to the Government.

(2) The Financial Secretary shall be appointed pursuant to the Public Service Act 1995-96.

5. Responsible Minister – The Financial Secretary shall report and be responsible to the Minister for compliance by the Ministry with the Ministry's obligations under this Act.

6. The Financial Secretary may delegate powers - The Financial Secretary may from time to time in writing either generally or particularly, delegate to any employee of the Ministry as he thinks fit all or any of the powers exercisable by him under this or any other Act, including the powers delegated to him under this or any other Act, including this present power of delegation.

7. Reporting responsibilities of Financial Secretary - The Financial Secretary shall be responsible for providing to the Minister the reports and associated information required in accordance with this Act.

8. Generally accepted accounting practice - All reports, associated information and practices required shall be prepared and carried out in accordance with generally accepted accounting practice.

## **PART II** **ECONOMIC FINANCIAL AND FISCAL POLICY**

9. Reporting responsibilities of Government - The Government shall ensure that all of the information required under Part II of this Act is provided to those to whom such information is required to be provided under this Act.

10. Economic and financial policy - The Government shall specify in a statement the economic and financial policy that will determine the decisions the Government will make in all of its economic and financial dealings, and disciplines that it will adhere to, and will lay that statement, or an update of that statement, before Parliament at the same time as, or prior to, the time it publishes a budget policy statement pursuant to section 11 of this Act. The statement shall include all significant economic and financial policies including policies affecting the key variables stated in sections 18 and 19 of this Act.

11. Budget policy statement - (1) The Minister shall, not later than the 31st

day of March in each year, cause to be published a budget policy statement which shall be for the financial year commencing on the 1st day of July after it is published, and the 2 years following that financial year which shall -

- (a) state or reaffirm Government's long-term objectives for fiscal policy, and in particular for the key variables specified in sections 18 and 19 of this Act; and
- (b) specify the broad strategic priorities by which the Government will be guided in preparing the estimates for that financial year;
- (c) indicate by the use of ranges, ratios, or other means, the Government's intentions regarding each of the variables specified in sections 18 and 19 of this Act;
- (d) indicate the outputs and other expenditure that the Government anticipates will be in the estimates.

(2) The budget policy statement shall -

- (a) assess the extent to which the objectives, priorities and intentions referred to under subsection (1) of this section are consistent with the principles of responsible fiscal management specified in section 23 of this Act; and
- (b) assess the consistency of the objectives, priorities and intentions, referred to under subsection (1) of this section with the objectives, priorities and intentions, indicated in the immediately preceding budget policy statement; or if amended that amendment, and where these are not consistent justify the departure.

(3) Any member of the public may, within 14 days of the notice of the budget policy statement being published deliver in writing to the Public Expenditure Review Committee any submission that person may have in respect of the budget policy statement.

12. Fiscal strategy report - (1) The Minister shall, no later than the day of the introduction of the first Appropriation Bill in each financial year, lay before Parliament a report on the Government's fiscal strategy

(2) The fiscal strategy report shall include -

- (a) an assessment of the extent to which the economic and fiscal update required under section 15 of this Act is consistent with the budget policy statement required under section 11 of this Act;
- (b) an explanation of the reasons for any significant differences in the consistency between the current economic and fiscal situation and the information and intentions presented previously in the Budget policy statement, and present an amended set of intentions where circumstances have changed;
- (c) projections of trends in the variables specified in sections 18 and 19 of this Act, which illustrate, for stated significant assumptions, likely future progress towards achieving the longer-term fiscal strategy and objectives specified in the budget policy statement most recently published under section 11 of this Act,

13. Estimates - (1) The Minister shall table in Parliament a statement of the estimates providing all the information required under Parts V and VI of this Act.

(2) The statement of the estimates shall accompany the Appropriation Bill.

14. Current year fiscal updates - (1) The Minister shall, on the introduction of the first Appropriation Bill for any financial year lay before Parliament a fiscal update.

(2) The update shall contain fiscal forecasts for that financial year and a statement of all significant assumptions underlying them.

(3) The fiscal forecasts shall include forecast financial statements for the Crown for that financial year including all the information required under section 25 of this Act.

15. Economic and fiscal updated - The Minister shall for each financial year, after the introduction of the first Appropriation Bill relating to that financial year, but on the day of the introduction of that Bill, lay before the Parliament a report containing an economic and fiscal update, which shall contain -

(a) an economic and fiscal update for the financial year to which the Appropriation Bill relates and each of the following 2 financial years containing the information specified in sections 18 and 19 of this Act;

(b) a statement of the date on which the contents of the update was finalised.

16. Half-year economic and fiscal update - (1) The Minister shall not earlier than the 1st day of December nor later than the 31st day of December in each financial year, cause to be published a report containing an economic and fiscal update prepared by the Ministry.

(2) The half-year economic and fiscal update shall contain revisions of forecasts required under section 15 of this Act,

(3) The Minister shall, not later than 14 sitting days after the publication of a report under subsection (1) of this section, lay a copy of the report before Parliament.

17. Pre-election economic and fiscal update - (1) Not later than 14 days after the appointment of the polling day in relation to any general election of members of Parliament pursuant to the Electoral Act 1966, the Minister shall cause to be prepared a report containing an economic and fiscal update as at the date of the appointment of the polling date which includes the information referred to in sections 18 and 19 of this Act.

(2) Copies of the report shall be made available to the public at the office of the Minister as soon as it is prepared and a summary of the report shall be made available to any newspaper circulating in Rarotonga.

18. Economic forecasts data - (1) Economic forecasts required under this Act shall include forecasts depicting movements in the Cook Islands of -

- (a) gross domestic product including the major components of gross domestic product;
- (b) consumer prices;
- (c) employment;
- (d) balance of payments and
- (e) such other information deemed necessary by the Minister to provide a comprehensive economic forecast.

(2) The economic forecasts shall also include a statement of all significant assumptions underlying them.

19. Fiscal forecast data - Fiscal forecasts required under this Act shall include -

- (a) forecast information in respect of the statements required under section 25 of this Act;
- (b) forecast information in respect of the current year fiscal update;
- (c) comparative budgeted and estimated actual figures for the financial year immediately before the first of the financial years to which the fiscal forecasts relate.

20. Availability of financial figures - where a forecast is required to be published, actual rather than estimated figures shall be used when available.

21. Reporting entity - Where any financial statements or forecast financial statements are required by this Act, the statements shall specify the reporting entity (as defined by generally accepted accounting practice) to which the statements apply.

22. Disclosure of policy decisions and other matters that may influence future fiscal situations - (1) Every economic and fiscal update prepared under this Act shall incorporate all Government decisions that may have a material effect on the economic and fiscal outlook.

(2) Where the fiscal implications of Government decisions referred to in subsection (1) of this section can be quantified the quantified fiscal implications shall be included.

(3) Where the fiscal implications of Government referred to in subsection (1) of this section cannot be quantified, they shall be disclosed in the statement of specific fiscal risks of the Crown required under section 25 of this Act and that statement shall specify that they cannot be qualified.

### **PART III** **FISCAL RESPONSIBILITY**

23. Principles of responsible fiscal management - (1) Subject to subsection (4) of this section, the Government shall pursue its policy objectives in accordance with the principles of responsible fiscal management specified in subsection (2) of this section.

(2) The principles of responsible fiscal management are -

- (a) managing total Crown debt at prudent levels so as to

provide a buffer against factors that may impact adversely on the level of total Crown debt in the nature, by ensuring that, unless such levels have been achieved, the total operating expenses of the Crown in each financial year are less than its total operating revenues in the same financial year; and

- (b) achieving and maintaining levels of Crown net worth that provide a buffer against factors that may impact adversely on the Crown's net worth in the future; and
- (c) managing prudently the fiscal risks facing the Crown; and
- (d) pursuing policies that are consistent with a reasonable degree of predictability about the level and stability of tax rates for future years.

(3) The Government shall agree on the fiscal limits that shall apply to the current and future financial needs.

(4) The Government may depart from the principles of responsible fiscal management specified in subsection (2) of this section only in cases of exceptional circumstances, and when the Government does so –

- (a) any such departure shall be temporary; and
- (b) the Minister shall, in accordance with this Act, specify –
  - (i) the detailed reasons for the Government's departure from those principles including justification of those exceptional circumstances; and
  - (ii) the approach the Government intends to take to return to those principles; and
  - (iii) the period of time that the Government expects to take to return to those principles.

(5) Should any such circumstances arise which forces departure from these principles during the financial year, these must be disclosed in accordance with the provisions of this Act.

#### **PART IV** **BUDGET PROCESS**

24. Budget process – (1) Not less than 14 days prior to the introduction of an Appropriation Bill the Ministry shall provide to Cabinet -

- (a) the estimated revenue of the Crown;
- (b) the details of each Government Department's bid for funds;
- (c) the Crown's debt management responsibilities;

(2) Cabinet shall, not less than 7 days prior to the introduction of an Appropriation Bill, return to the Ministry a fiscally responsible budget in accordance with the principals set out in this Act.

#### **PART V** **REPORTING REQUIREMENTS**

25. Reporting requirements - (1) Any forecast or statement of account required by this Act shall include details of -

- (a) the total operating expenses;

- (b) the total operating revenues;
  - (c) the balance between the total operating expenses revenues;
  - (d) the level of the total debt;
  - (e) the level of the net worth.
- (2) Each report shall also include -
- (a) a statement of the financial position;
  - (b) a statement of financial performance;
  - (c) a statement of cashflows;
  - (d) a statement of borrowings;
  - (e) a statement of commitments;
  - (f) a statement of specific fiscal risks;
  - (g) such other statements as are required to be consistent with generally accepted accounting practice;
  - (h) a statement of accounting policies.

26. Statement of accounts - (1) The Financial Secretary shall as soon as practicable after the end of each financial year, but not later than the end of the third month of the next succeeding financial year, prepare and send to the Government Auditors a financial statement (of transactions affecting the Public Account) covering all the information required under section 25.

(2) The financial statements together with the report thereon by the Government Auditors as required by Article 71(2) of the Constitution shall be forwarded to the speaker of Parliament.

27. Appropriation account - The Financial Secretary shall include in the statement of accounts for each financial year an account to be called "The Appropriation Account", showing the several sums appropriated by Parliament under the Appropriation Act or Acts for the year, and the expenditure thereon during the year, with the amount under-expended or over-expended on each vote severally or expended under the authority of Article 70(3) of the Constitution.

28. Departmental accounts - (1) Every Government Department after the end of each month shall, in accordance with any directions of the Ministry, report on the key variables specified in section 25 of this Act as they relate to the Government Department.

(2) At the conclusion of each financial year, all Government Departments shall prepare an annual report as specified by the Minister and covering all the information required under section 25 of this Act as it applies to the Government Department.

(3) The statement of financial performance shall report the results achieved by the outputs for which appropriation was provided under the Appropriation Act.

(4) The financial statements of each Government Department at the end of the financial year shall be examined and reported upon by the Government Auditors and laid before Parliament as soon as practicable after tabling of financial accounts required under section 26.

29. Responsibilities of Heads of Government Departments - (1) All Heads of Departments are responsible for ensuring in addition to meeting the

reporting of section 28 of this Act that -

- (a) all activities of the Government Department are undertaken in a manner which is consistent with Government financial and fiscal policies and sound financial management; and
- (b) adequate arrangements exist within the Government Department, to ensure the requirements of section 28 of this Act are met

(2) Heads of Government Departments shall ensure that all financial management obligations are met including -

- (a) forecasts provided for budgetary purposes will be accurate as possible, take account of all relevant information available at the time they are prepared, be free from methodological and arithmetic error, and be subjected to appropriate internal and external quality assurance with respect to methodology and date;
- (b) material required by the responsible Minister, the Minister of Finance or the Ministry of Finance and Economic Management for preparation of the Budget and Estimates will meet stated requirements with respect to timeliness, completeness, accuracy and format;
- (c) revenue collected on behalf of the Crown will match as closely as possible the forecast levels most recently supplied for budgetary purposes;
- (d) sound financial management systems and internal controls exist and these are operated so as to provide:
  - (i) timely and materially accurate financial information; and
  - (ii) reasonable assurances that the transactions recorded are within statutory authority and properly disclose the use of all public financial resources administered by the department on behalf of the Crown;
- (e) the provision of all information required by the Ministry to enable it to meet the Crown reporting requirements.

(3) Where the Ministry draws to the attention of any Head of Department an example of non-compliance of any of the sections of this Act, the Head of Department shall immediately take action to remedy this failure and explain the failure and the action taken, to the Public Expenditure Review Committee.

## **PART VI** **STATEMENT OF RESPONSIBILITY**

30. Statements of responsibility - (1) All reports prepared under this Act, shall be accompanied by statements of responsibility.

(2) A statement of responsibility for the financial statements shall be prepared and signed separately by –

- (a) the Minister of Finance and;

- (b) the Financial Secretary.
- (3) A statement of responsibility for the financial statements of a Government Department shall be prepared and signed separately by –
  - (a) the Minister responsible for that Department and;
  - (b) the head of that Department.
- (4) All statements shall warrant the -
  - (i) integrity of the disclosures; and
  - (ii) consistency with the requirements of this Act.

31. Publication inspection and purchase of statements and reports – The Minister shall, in respect of every statement or report referred to in Part V, arrange for publication in the Gazette of a notice -
- (a) that it has been published;
  - (b) where it can be inspected free; and
  - (c) where it can be purchased.
- (2) The Financial Secretary shall, for at least 2 months after the date of gazetting ensure that opportunities for free inspection or purchase are available.

## **PART VII** **APPROPRIATIONS**

32. Appropriation required - (1) No expense or liability shall be incurred by the Crown unless the expenditure in relation to such expense or liability is in accordance with Article 70 of the Constitution and is capable of being charged to a category specified in subsection (2) of this section.
- (2) A Separate appropriation shall be made within the estimates for each of the following categories -
- (a) outputs;
  - (b) categories of benefits or other unrequited expenses;
  - (c) categories of borrowing expenses and repayment of debts;
  - (d) categories of other non-operating expenses;
  - (e) capital acquisitions and capital contributions.
- (3) The authority to expend cash or incur expenses or liabilities under an Appropriation Act shall lapse at the end of the financial year to which that Act relates but any unexpended balance of any appropriation may be dealt with in accordance with this Act.

33. Timing of first Appropriation Bill for any financial year - Except as otherwise provided by a resolution of the Parliament, the first Appropriation Bill relating to a financial year shall be introduced into the Parliament before the end of the first month after the commencement of that financial year.

34. Transfer of resources between outputs - (1) Notwithstanding subsection (2) of section 32 of this Act, the Head of a Government Department may from time to time transfer an amount appropriated for a prescribed output to another output where -
- (a) the transfer of that amount does not conflict with budget policy; and

(b) the total amount appropriated for that financial year for all outputs for that Government Department is unaltered.

(2) The Head of the Government Department will advise the Minister who shall ensure that sufficient details to explain any transfer made pursuant to subsection (1) shall be included in the next Appropriation Bill.

35. Expenses or liabilities or payments appropriated other than by an Appropriation Act – Every appropriation made by an Act shall be specified as one of the categories of subsection (2) of Section 32 and all appropriations shall be accounted for in accordance with this Act.

36. Net Appropriation - (1) All appropriations shall be for the total amount of the expenditure required.

(2) An appropriation may be shown in the Appropriation Act to be offset by an amount of revenue where that revenue applies to the recovery of costs of the relevant output, and meets the criteria set for this purpose by the Financial Secretary

~~37. Transfer of subsequent expenditure of unexpended appropriations – where provision has been made in any Appropriation Act for expenditure in the nature of a grant or for a purpose that does not normally recur but that expenditure was not incurred during the financial year to which Act relates the Minister, with the concurrence of Cabinet, and subject to appropriation in a subsequent Appropriation Act, may direct that the unexpended amount be available for expenditure by the Government Department concerned within the total amount to be allocated to that Government Department in the subsequent Appropriation Act.~~

Amended

37. Where provision has been made in any Appropriation Act for expenditure by any Government Department or Crown Agency in accordance with its outputs, and the total amount of that expenditure has not been incurred during the financial year to which that Act relates, the Financial Secretary, with the concurrence of the Minister, may direct that the unexpended amount be available for expenditure by the Government Department or Crown Agency, in accordance with its outputs, in following financial years, in addition to the total amount to be allocated to that Government Department or Crown Agency in the next Appropriation Act.

~~38. Unauthorised expenditure - All sums issued and paid under Article 70 (3) (b) of the Constitution shall be charged as unauthorised expenditure and separately disclosed.~~

Amended

38. Additional earnings - (1) Where a Government Department derives revenue in connection with its outputs in any financial year in excess of the anticipated income for those outputs as provided in the Appropriation Acts for that year, the Head of the Government Department may apply that revenue to an amount approved by the Financial Secretary with the concurrence of the Minister in accordance with its outputs for that year or the subsequent year.

(2) Where the Financial Secretary with the concurrence of the Minister

directs that the revenue in excess of the anticipated income, or any part thereof, be paid into the Cook Islands Government Account, the Head of the Government Department shall make payment of the amount accordingly.

## **PART VIII** **AUTHORISATION OF EXPENDITURE**

39. Authorisation and certification of expenditure – (1) Upon the passing of an Appropriation Act, the Head of a Government Department responsible for the appropriation may authorise expenditure but only in accordance with the allocations specified and voted in that Act, and the Head of Government Department alone shall be responsible for ensuring that the moneys are expended for the purposes intended.

(2) All Heads of Government Departments shall be responsible for ensuring that there is adequate control over the release of and use of funds in accordance with Section 29.

(3) No money may be withdrawn from the Public Account otherwise than in payment of expenditure that has been duly authorised in accordance with this section.

40. Imprests - (1) Money may be issued by way of imprest from the Public Account for the purpose of effecting payment of amounts payable by the Government Department where because of the amounts involved it is impracticable to draw a payment by cheque or other means.

(2) The Head of a Government Department shall ensure at all times the operation of the imprest is subject to adequate financial control, including regular accounting for the amounts drawn from the imprest.

41. Refunds and corrections - (1) The Head of a Government Department shall, on application being made at any time within 6 years of any sum being paid to any Government Department, refund as statutory expenditure all or so much of any sum as was not properly payable to the Government.

(2) Where any person has become indebted to the Government and it is subsequently discovered that the amount of the debt or the identity of the debtor is in error, the Financial Secretary on being satisfied as to the facts may amend the records to reflect the true position.

42. Writing off - No losses of public resources shall be written-off without the authority of the Financial Secretary acting with the concurrence of the Minister.

## **PART IX** **PUBLIC FUNDS**

43. Public money - (1) Public money is the property of the Crown.

(2) All public money which is currency or a right or entitlement to currency, shall as otherwise provided in this Act, be paid into bank accounts designated for that purpose.

(3) All money paid into any designated bank account shall be deemed

to be public money, and may not be removed except as provided by the Constitution or this Act.

(4) No bank account shall be opened or operated for the purpose of the deposit and/or withdrawal of public money without the express authority of and on such conditions as the Financial Secretary determines.

(5) Notwithstanding any provision in any other enactment, no Government Department shall establish or continue to operate for the period of one month from the commencement of this Act, any bank account other than in accordance with subsection (4) of this section.

44. Balances may be invested - (1) The Financial Secretary may from time to time invest any balances of the Public Account or any part thereof at call or for such period on such terms as he thinks fit, at any recognised trading bank and in such other securities as the Minister may from time to time declare to be securities consistent with the published financial policies of Government.

(2) It shall not be lawful for any investment funds, including interest earned thereon, to be spent in any other manner than pursuant to an appropriation.

(3) The Financial Secretary may from time to time sell and convert into money any such securities and cause that money to be paid into the Public Account to the credit of the fund to which it belongs

(4) The Financial Secretary may from time to time delegate all or any of his powers under the foregoing provisions of this section in respect of any balance in an account outside the Cook Islands to any person or persons authorised to operate on that account.

(5) All money received by way of donor aid shall be placed into a separate bank account of the implementing Crown Agency or Government Department, and used for the purpose agreed with the donor and accounted for by the Crown Agency or Government Department.

45. Account or fund may be overdrawn - An account or fund within the Public Account may be overdrawn only where this is consistent with fiscal and other financial policies of Government, and that it can be shown how that account will return to credit within a reasonable time having regard for the purpose of that account.

#### **PART X** **TRUST MONEY**

46. Trust Money – (1) The following money shall be deemed to be trust money -

- (a) money that is deposited with the Crown pending the completion of a transaction or dispute and which may become repayable to the depositor or payable to the Crown or any other person;
- (b) all money that is paid into Court for possible repayment to the payee or a third party, by virtue of an Act, rule, or authority whatsoever;
- (c) unclaimed money that is due to or belongs to any person and is deposited with the Crown;
- (d) all money that is paid to the Crown in trust for any

purpose;

(e) money that belongs to or is due to any person and is collected by the Crown pursuant to any agreement between the Crown and that person.

(2) All trust money held by the Crown shall be accounted for separately from public money.

(3) All trust money shall be the responsibility of the Ministry appointed on behalf of the Crown to manage it and shall be managed in a manner consistent with the requirements laid down by the Ministry.

(4) The Ministry may appoint a department or any agent to manage some or all trust money on such terms and conditions as the Ministry from time to time determines subject to the requirements of this section.

47. Establishment of bank accounts for trust money - All trust money shall be lodged in a bank account designated as a trust account.

48. Investment of trust money - The Ministry or any agent of the Crown appointed by the Ministry for the purpose may from time to time invest any trust money held by the Crown for such periods and on such terms and conditions consistent with Government's investment policies.

49. Payment of interest on trust money - When any trust money held by the Crown becomes repayable to the depositor or payable to any other person entitled thereto, where it is practical to do so, this shall be added the amount of interest certified by the Ministry to have been earned thereon, or could reasonably be expected to have been earned.

50. Fee for service - The Ministry or any agent of the Crown appointed by the Ministry may from time to time charge the beneficiaries of the trust fees equal to the fully costed expenses incurred in managing the trust monies.

51. Unclaimed trust money - Any trust money that is unclaimed for a period of three years, after having become repayable to the depositor or payable to any other person entitled thereto, and after due enquiry and notice by publication, shall, together with interest (if any) added thereto pursuant to section 48, be deemed to be public money and shall be transferred to the Public Account.

## **PART XI** **PUBLIC MONEY OUTSIDE COOK ISLANDS**

52. Overseas imprest and other special accounts - The Minister may approve the setting up and operation of bank accounts overseas, but if that occurs all requirements of this Act shall apply.

## **PART XII** **LOANS AND SECURITIES**

53. Government not to borrow except under statute - Except as provided

by this Act, it shall not be lawful for the Crown to raise a loan or for any person to lend money to the Government.

54. Minister may raise loans - (1) The Minister, on behalf of the Crown, and with the concurrence of Cabinet, may from time to time, if it appears to the Minister to be necessary in the public interest to do so, and consistent with fiscal responsibility and investment policies, raise a loan and provide security to any person, organisation, or Government either within or outside the Cook Islands and shall report the details of the loan at next sitting of Parliament.

(2) No funds raised by loan may be expended for any other purpose than that specified in an appropriation.

55. Repayment or conversion of loans - The Minister may at any time on such terms and conditions as the Minister thinks fit, and where necessary, with the consent of the lender or the holder of any securities issued in respect of the loan -

- (a) repay any loan to the Crown; or
- (b) convert any loan to the Crown into any other such loan or loans provided that if the Minister extends the amount or term, then the Minister must comply with the requirements of section 54.

56. Minister may appoint underwriters and managers for loan - The Minister on behalf of the Crown may from time to time and on such conditions as the Minister may think fit, enter into an agreement with any bank, financial institution, or other person providing for the bank, institution, or person to act as an underwriter, manager, dealer, trustee, registrar, or other agent for, or in connection with, any loan or the raising of any loan under this Act.

57. Liability for debt of Crown - (1) Subject to subsection (2) of this section, the Government shall not be liable to contribute towards the payment of any debt or liabilities of any Crown.

(2) Subsection (1) of this section shall not apply in relation to –

- (a) any sum the Crown is liable to contribute pursuant to any Act; or
- (b) any sum the Crown is liable to contribute pursuant to any guarantee or indemnity given by the Minister pursuant to section 60; or
- (c) any sum the Crown is liable to pay a creditor of my such Crown entity, subsidiary, entity, other agency, or corporate body, by virtue of a good cause of action that the creditor has against the Crown; or
- (d) any sum the Crown is liable to pay to any creditor of the Crown.

58. Power to lend money - (1) The Minister, on behalf of the Crown, may from time to time, if it appears to the Minister to be necessary in the public interest to do so, lend money to any organisation, whether within or outside of the Cook Islands on commercial terms and conditions, but only -

- (a) with the approval of Cabinet;
- (b) on the advice of the Financial Secretary;
- (c) where appropriation exists.

(2) The Minister shall make full disclosure of the details of any loan approved pursuant to subsection (1) of this section at the first sitting of Parliament following the approval of the loan.

59. Authority for the giving by the Crown of guarantees and indemnities - Except as expressly authorised by any Act, it shall not be lawful for any person to give a guarantee or indemnity that imposes an actual or a contingent liability on the Crown.

60. Power to give guarantees and indemnities - (1) The Minister on behalf of the Crown may from time to time, if it appears to the Minister to be necessary in the public interest to do so, give in writing a guarantee or indemnity upon such terms and conditions as the Minister thinks fit, in respect of the performance of any person, organisation, or Government but only with the approval of -

- (a) Cabinet; and
- (b) on the advice of the Financial Secretary; and
- (c) where such guarantee or indemnity is consistent with the fiscal responsibility objectives of this Act.

(2) The Minister shall state at the next sitting of Parliament following the granting of a guarantee or indemnity why it was necessary in the public interest to grant the guarantee or indemnity as the case may be and shall provide an assessment of the risks associated with the guarantee or indemnity.

(3) Any money paid by the Crown pursuant to any guarantee or indemnity given under this section shall constitute a debt due to the Crown from the person, organisation, or Government in respect of whom the guarantee or indemnity was given, and may be recoverable as such in any Court of competent jurisdiction.

61. Payment of principal and interest on loans - Subject to the provisions of this Act, all principal, interest, and other money payable in respect of any loan to the Crown or under any public security, other than a guarantee or indemnity given under section 60 shall be paid, without further appropriation than this section from the Public Account.

### **PART XIII** **INFORMATION AND COMPLIANCE**

62. Power of Financial Secretary to obtain information - (1) The Financial Secretary may from time to time request any department or entity that manages any financial liability or asset of the Crown, to supply to the Financial Secretary such information as is necessary to enable the preparation of any financial statements or fiscal forecasts or other obligations under the outputs of the Ministry or to comply with any other requirements of this Act.

(2) Any department or entity receiving a request of the Financial Secretary pursuant to subsection (1) shall comply with the request as soon as practicable.

63. Ministry instructions – Subject to the provisions of this Act and any regulations made pursuant thereto, the Ministry may from time to time issue instructions to ensure compliance with the recognised financial disciplines provided for in this Act.

#### **PART XIV** **OFFENCES AND SANCTIONS**

64. Offences -without reasonable excuse – (1) Every person commits an offence against this Act, who, without reasonable excuse:

- (a) refuses or fails to produce any information that is in that person's control in relation to the financial management, financial performance, or banking activities of a department or in relation to the management or control of any Crown asset or liability when required to do so pursuant to this Act; or
- (b) resists or obstructs any person acting in the discharge of that person's functions or duties or in the exercise of that person's powers under this Act.

(2) Every person commits an offence against this Act who -

- (a) without reasonable excuse, refuses or neglects to pay any public money into a bank account of the Crown; or
- (b) without reasonable excuse, refuses or neglects to pay any trust money into a bank account of the Crown; or
- (c) makes any statement or declaration, or gives any information or certificate, required by or pursuant to this Act, knowing it to be false or misleading, or does so without adequate investigation; or
- (d) does any act for the purpose of procuring for that person or for any other person or organisation –
  - (i) the improper payment of any public money or trust money; or
  - (ii) the improper use of any public resource.
- (e) willfully fails to carry out any duty or obligation imposed on that person pursuant to this Act.

65. Obligation to report - Any public servant who has knowledge of any circumstances which may cause him to consider that an offence under section 64 may have occurred shall report those circumstances to the Financial Secretary.

66. Penalties for offences - (1) Every person who commits an offence against subsection (1) of section 64 of this Act, is liable on conviction -

- (a) in the case of an individual, to a fine not exceeding \$1,000;
- (b) in the case of a person or organisation other than an

individual, to a fine not exceeding \$3,000.

(2) Every person who commits an offence against subsection (2) of section 64 of this Act is liable on conviction -

(a) in the case of an individual to a fine not exceeding \$3,000;

(b) in the Case of a person or organisation other than an individual, to a fine not exceeding \$8,000.

(3) Details of offences and penalties shall be provided to the Public Expenditure Review Committee.

## **PART XV** **MISCELLANEOUS**

67. Transitional - (1) No person shall be convicted of any offence pursuant to section 64 of this Act for any act or failure to act by that person during the period of twelve months from the coming into force of this Act.

(2) Where, during the period of twelve months from the coming into force of this Act, any report, statement or update required by this Act is not provided by the due date in accordance with this Act, the Minister shall report the circumstances of the same to the next sitting of Parliament.

68. Act to prevail - Where the provisions of this Act conflict with the provisions of any other enactments other than the Constitution, the provisions of this Act shall prevail.

69. Regulations - The Queen's Representative may from time to time by Order in Executive Council make all such regulations as may be deemed necessary or expedient to give full effect to the provisions of this Act and for the due administration thereof.

70. Repeals - The enactments specified in the Schedule are repealed.

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This Act is administered by Ministry of Finance and Economic Management

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**SCHEDULE**

Public Money and Stores Act 1987