



Cook Islands
Proposed Financial Management Act 2015-2016

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.

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 Financial Management Act 2015/16.
- (2) This Act shall be deemed to have come into force on 1 July 2016.

2. Application

- (1) This Act applies to all revenue, expenditure and investment of government, including both public money and trust money;
- (2) It applies to ministries, crown or statutory agencies, island administrations and island councils, statutory corporations, the Parliament, and ministerial or opposition support offices.
- (3) The implementation of the law may require different standards for different classes of government entities. The Ministry will develop appropriate standards through regulations and procedural guidance.

3. Interpretation

In this Act, unless the context otherwise requires -

“Agency” – Agency means a department or establishment of the Government for the purposes of this Act;

“Budget” in the Cook Islands shall refer to the documents submitted by Government to the Parliament in support of the budget policy statement, including the Appropriations bill, the economic and fiscal update, the medium term budget framework, the ministry budget statements and the capital plan;

“Capital expenditures” is spending for land, structures, equipment and / or information technology that has an estimated useful life of two years or more;

“Contingent liabilities” are existing commitments which are contingent upon future events that may or may not happen;

"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 Government of the Cook Islands, and includes every department, instrument and agent of the Government, and anybody 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 Government; and includes a body corporate or organisation that is wholly owned or controlled by or has significant financial inter-dependence with the Government 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;

“Current appropriation” means annual appropriations for the operating cost of government including personnel expenses, operating expenses and depreciation;

"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 7,

“Financing transactions” include Crown depreciation, transfers to trust funds, debt interest contributions to the Loan Repayment Fund, the depreciation contingency fund and related non programmatic transactions;

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

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

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

"Internationally accepted accounting standards" 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;

"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 the Ministry of Finance and Economic Management Act 1995-1996;

"Outputs" means the production of goods and/or services by a government department;

"POBOCs" - payments on behalf of the crown are payments mandated by law or by court order;

"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, with the exception of "trust money" as defined below;

"ROBOC" – revenue earned on behalf of the Crown refers to revenue items set by the Crown through legislation, such as the value added tax, the income tax, import levies and company tax, and other Crown revenue resulting from a schedule of fees, such as fees from the Financial Services Commission, immigration permits, fisheries licenses and numismatic fees;

"Statutory corporations" – are state-owned enterprises established by law to carry out public policy purposes, including:

- the Airport Authority established under the Airport Authority Act 1985;
- The Bank of the Cook Islands Holding Corporation established under the Bank of the Cook Islands Act 2003;
- The Ports Authority established under the Ports Authority Act 1994-1995; and
- Te Aponga Uira O Tumu-Te-Varovaro established under the Te Aponga Uira o Tumu-Te-Varovaro Act 1991;and
- Aitutaki Power Supply;

"Trading revenue" is revenue earned through the operations of an agency. Trading revenue is used to offset expenditure. Both the revenue and the expenditure are to be recorded in the budget and estimates are to be limited in annual appropriations law;

"Trust money" is money deposited with the Crown pending completion of a transaction or dispute which may become payable to the depositor or to the Crown or money that belongs or is due to any person and is collected by the Crown pursuant to an agreement between the Crown and that person, and

includes monies deposited with the crown by a donor that may be payable to a third party supplier of goods or services.

PART I PARLIAMENTARY REVIEW OF THE BUDGET

4. Parliament

Consistent with Part V of the Constitution of the Cook Islands, no taxation shall be imposed on expenditure made except as authorized by law. To ensure that Parliament has the opportunity to fully consider and act upon budgetary matters, Parliamentary procedures for considering public financial matters established by Parts XXXIV and XXXV of the Standing Orders of the Parliament of the Cook Islands shall be revised to read as follows:

PART XXXIV

MONEY GRANTS AND TAXATION

(For restrictions on Parliament proceeding on financial measures see Article 43 of the Constitution)

302. *Grant of money dealt with in committee – Parliament shall not take final action upon any Bill or motion for granting money or for releasing or compounding any sum of money owing to the Crown except in a committee of the whole House.*
303. *Motion for any public aid or charge referred to a committee – If any motion be made in Parliament for any public aid or charge upon the people, it shall be referred to a committee of the whole House before any resolution or vote of Parliament is taken thereon.*

PART XXXV

ESTIMATES AND FINANCIAL PROCEDURE

304. *Estimates of Expenditure – The Estimates of Expenditure and the Appropriation Bill shall be introduced in to Parliament on or before the first of June each year.*
305. *Appropriation Bill –*
10. *The Appropriation Bill shall contain estimated financial requirements for expenditure on the revenue account for all services of Government for the financial year. The details of these financial requirements shall be contained in the draft Estimates of Expenditure and the Budget which shall be presented to Parliament following the first reading of the Bill.*
11. *The Minister in charge of the Estimates may then move the second reading of the Bill and read the Budget Message. Debate thereon shall be confined to the financial and economic state of the Cook Islands and the Government's financial policy.*
306. *Committee on Supply –*
(1) *When the Appropriation Bill has been read a second time it shall stand committed to the committee of the House to be called the Committee of Supply to which the Estimates shall also stand referred.*

- (2) *The Committee of Supply shall consist of nine members, proportionally allocated among political parties.*
- (3) *A quorum for the Committee of Supply shall be a simple majority of the members of the Committee.*
- (4) *The Speaker shall preside over the proceedings of the Committee of Supply.*
- (5) *Actions taken in the Committee of Supply shall not be “issues of confidence” as defined in section 105(a) of the Electoral Amendments Act of 2007.*

307. Allocation of times for Committee of Supply –

- 1) *A total of ten sitting days shall be allocated for consideration of the draft Estimates and Appropriation Bill in the Committee of Supply.*
- 2) *Before Parliament begins its consideration of the draft Estimates and Appropriation Bill in the Committee of Supply, the Speaker shall allocate and announce to Parliament a limit to the total time that may be spent debating each departmental vote.*
- 3) *The Speaker shall allocate the time limit for each departmental vote having regard to –*
 - a) *The sum of money allotted to the vote relative to other Departmental votes; and*
 - b) *The likely amount of public interest in the department Concerned and its vote, relative to other departments and their votes.*
- 4) *The Speaker shall ensure that no debate (including speeches) in the Committee of Supply on a departmental vote exceeds the time limit allocated to the vote.*

308. Consideration of departmental votes –

- 1) *The Minister in charge of Estimates may select the order in which departmental votes of the draft Estimates shall be considered.*
- 2) *The clauses of the Appropriation Bill shall stand postponed until after consideration of any schedule or schedules which there may be to such Bill.*
- 3) *On consideration of the first schedule, the Chairman shall call the title of each department in turn and shall propose the question, “That the sum ofdollars for thedepartment stand part of the schedule”.*
- 4) *Any member may move an amendment to reduce by a dollar or a specified number of dollars the sum to be allocated for any item in a departmental vote.*

- 5) *When several such amendments are proposed to reduce by a dollar or a specified number of dollars the sum allocated for any item in a departmental vote.*
- 6) *An increase in the sum allocated for any item in a departmental vote may only be moved by the Minister in charge of the Estimates provided the recommendation of the Queen's Representative has been obtained and transmitted to Parliament pursuant to Article 43 of the Constitution. At least one day's notice of any such amendment shall be required.*
- 7) *An amendment to increase takes priority over any amendment to decrease any item in a departmental vote. If the amendment to increase is carried the amendment to decrease the item lapses.*
- 8) *After an amendment to an item has been disposed of no amendments or debate on a previous item of that departmental vote shall be permitted.*
- 9) *When all amendments in respect of any particular departmental vote have been disposed of, the Chairman shall put the question, "That the sum (or reduced or increased sum) ofDollars for thedepartment stand part of the schedule".*
- 10) *When all departmental votes have been decided the Chairman shall put the question, "That the first schedule (with or without amendments) stand part of the bill", as the case may be. Any remaining schedules shall then be considered and decided in the same manner.*
- 11) *The Speaker shall then call each clause of the Bill indicating to members any consequential amendments thereon.*

309. *Bill Reported – When the draft Estimates and Appropriation Bill have passed the Committee on Supply, the Committee shall rise and report the Bill to the Committee of the whole House and the third reading of the Bill shall be taken forthwith. No debate shall be permitted on the motion for the third reading. The third reading of the Appropriation Bill and passage by the whole House shall be a "confidence vote"*

310. *Appropriations Bill takes precedence – An Appropriation Bill takes precedence of all business and until disposed of shall be set down each day as the Order of the Day at the commencement of the next sitting day.*

311. *Supplemental Estimates – If at any time supplemental estimates and a supplemental Appropriation Bill are introduced into Parliament the provisions of Orders 298 to 303 shall apply to the stages and the proceedings on such Bill.*

PART II GOVERNMENT PUBLIC FINANCIAL MANAGEMENT RESPONSIBILITIES

5. Cabinet

The Cabinet is responsible for making executive policy decisions on financial management for the government, including:

- (1) Approving the budget policy statement, the medium term budgetary framework, the annual budget and the appropriations bill, and approval of supplementary appropriations requests for submission to the Parliament.
- (2) The Cabinet approves executive transfers under Section 70 (3) of the Constitution and section XX of this Act.
- (3) The Cabinet approves financial management regulations issued under Part VI of this Act

6. Ministry of Finance and Economic Management

The Ministry is charged with the general administration of this Act, and with such other functions as may from time to time be lawfully conferred on it.

7. 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.
- (3) The Financial Secretary is responsible for the government-wide implementation of this act including the financial management functions specified in Section 9 of this Act.
- (4) The Financial Secretary shall report and be responsible to the Minister for compliance by the Ministry with the Ministry's obligations under this Act.
- (5) The Financial Secretary shall be responsible for providing to the Minister the reports and associated information required in accordance with this Act.

8. Responsibilities of heads of government agencies

The executive officer for a ministry or chief executive officer of an agency or department is responsible for financial management functions itemized in section 9 of this Act within that entity, for compliance by that entity with this Act and related regulations and guidance, and with providing reports and associated information required in accordance with this Act for the agency or department.

9. Financial management functions

The Financial Secretary is responsible government-wide and heads of government agencies within their agencies for the following functions:

- (1) Planning and management of the budget to ensure the program of the agency is implemented within the medium term budgetary framework and capital limitations for the agency;
- (2) Management of expenditure commitments, borrowings, and payments of outstanding liabilities within authorized budget and cash allocation;
- (3) Financial accounting and reporting to properly record the agency's transactions, and report financial performance, and financial position in a reliable and timely manner;
- (4) Accounting for public money and property accurately;
- (5) Preparation of in-year and annual fiscal reports, and annual financial statements;
- (6) Preparation of fiscal notes and periodic updates to a statement of forecasted revenues, expenditures, and available balances covering at least the current budget year and 3 forward years;
- (7) Collection of government revenue;
- (8) Development, implementation, and oversight of procurement;
- (9) Monitoring, maintenance and management of government equity investments, and capital assets; and
- (10) Maintenance of an effective system of internal control and a risk management framework for money and property.

10. Delegation of financial management powers

The Financial Secretary or head of agency, as appropriate, may from time to time in writing either generally or particularly, delegate to any employee of the agency as he thinks fit all or any of the powers exercisable by him under this Act. The delegating authority may vary or revoke any such delegation. The delegation of authority does not limit the responsibility or accountability of the delegating authority.

PART III ECONOMIC, FINANCIAL, AND FISCAL POLICY

11. Mid-year economic and fiscal update and budget policy statement

- (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 a mid-year economic and fiscal update and a budget policy statement prepared by the Ministry.
- (2) The mid-year update shall contain revisions of forecasts required under section 13 of this Act,
- (3) The budget policy statement shall be for the financial year commencing on the 1st day of July after it is published, and the 3 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 13 of this Act;
- d) indicate the outputs and other expenditure that the Government anticipates will be in the estimates.
- e) 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 15 of this Act; and
- f) 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.

(4) 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. Annual budget submission

The annual budget shall be submitted on the day of the introduction of the first appropriation bill in each financial year, including the following information:

- (1) **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. The statement shall include all significant economic and financial policies including policies affecting the key variables stated in section 13 of this Act.
- (2) **Fiscal strategy report** - The Minister shall lay before Parliament a report on the Government's fiscal strategy
 - a) The fiscal strategy report shall include –
 - i. an assessment of the extent to which the economic and fiscal update required under subsection 1 is consistent with the budget policy statement required under section 11 of this Act;
 - ii. 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;
 - iii. projections of trends in the variables specified in sections 13 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.

b) The fiscal strategy report shall reflect a medium term budget framework prepared for the financial year and 3 succeeding years including:

- i. baseline estimates of revenue and expenditures and resulting deficits or surpluses for the budget year and three succeeding years reflecting the continuation of current legal authority and documenting the outyear implications of current operating and capital expenditures;
- ii. a statement of the Government's proposed financial targets or limits for the next financial year and for the three following financial years, relating to:
- iii. the budget result in absolute amounts and as a proportion of gross domestic product;
 - a. total revenues
 - b. total operating expenditures
 - c. total capital expenditures and
 - d. deficit or surplus, if any
- iv. government debt as a proportion of gross domestic product;
- v. government debt servicing as a proportion of gross domestic product;
- vi. government cash balance and net worth; and
- vii. contingent liabilities as a proportion of gross domestic product.
- viii. Cost increases due to step or progression increases in employee compensation agreements;
- ix. Outyear cost implications on previously approved policies whose implementation requires several years to reach maturity;
- x. Changes in the costs of delivering current services or benefits attributable to demographic factors; Outyear implications of ongoing capital projects, both for capital construction and resulting operating costs., and
- xi. Statement of major fiscal risks.

(2) **Budget estimates** - The Minister shall table in Parliament a statement of the estimates, providing supporting detail for ministry budget statements.

(3) **Capital plan** – The Government shall prepare an annual compilation of capital funding proposals for purchases, construction, and capital grants for the budget year and three succeeding years that shall serve as the basis for the budget for capital investment of government. The capital plan shall reflect the current national strategic development plan and will identify the source of funding, provide a schedule for construction or purchase, identify the implementing ministry and provide estimates of outyear operating budgetary requirements, if any.

(4) Donor assistance - To the maximum extent possible the Ministry shall incorporate donor assistance projects in the annual budget; and report to Cabinet at mid-year and end-of-year on the status of donor assistance programs.

(5) Current year fiscal updates –

- a) The Minister shall, on the introduction of the first Appropriation Bill for any financial year lay before Parliament a fiscal update.
- b) The update shall contain fiscal forecasts for that financial year and a statement of all significant assumptions underlying them.
- c) The fiscal forecasts shall include forecast financial statements for the Crown for that financial year including all the information required under section 41 of this Act.
- d) In addition the annual fiscal forecast shall provide:
 - i. a statement of borrowings;
 - ii. a statement of commitments; and
 - iii. a statement of specific fiscal risks.

13. Economic and fiscal forecast 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) balance of trade; and
- d) such other information deemed necessary by the Minister to provide a comprehensive economic forecast.
- e) an explanation of all significant assumptions underlying these

(2) Fiscal forecasts required under this Act shall include:

- a) forecast information in respect of the statements required under section 41 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.

(3) Availability of financial figures – where a forecast is required to be published, actual rather than estimated figures shall be used when available.

(4) 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 internationally accepted accounting practice) to which the statements apply.

- (5) Reporting responsibilities of Government - The Government shall ensure that all of the information required under Part III of this Act is provided to the Parliament and made public.
- (6) Fiscal risks
- a) 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, including contingent liabilities and guarantees, and including any fiscal risks identified for statutory corporations or outer island governments.
 - b) Where the fiscal implications of government decisions referred to in subsection (1) can be quantified, implications shall be included.
 - c) 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 41 of this Act and that statement shall specify that they cannot be quantified, and explain why they cannot be quantified.

14. 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 section 13 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.

PART IV FISCAL RESPONSIBILITY

15. 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 future, 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 V BUDGET PROCESS

16. Budget process

- (1) The mid-year fiscal and economic update and budget policy statements are released by the end of December;
- (2) Government presents the budget estimates and appropriations bills to Parliament by June 1st;
- (3) Parliament approves the budget estimates and appropriations bill no later than June 30th;
- (4) The financial year begins on July 1.

PART VI APPROPRIATIONS

17. 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) Current appropriations
 - (i) Personnel
 - (ii) Operating expenses
 - (iii) Trading revenue
 - (iv) Depreciation

- (b) Capital expenditures
 - (i) Cook Islands funded
 - (ii) Donor funded
- (c) POBOCs
- (d) Financing transactions.

(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 section 23 of this Act.

18. 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 by June first.

19. Limitations on Appropriations

- (1) No appropriations shall be transferred between appropriations categories identified under section 17 of this Act.
- (2) Transfers within categories may occur only if the amount transferred is consistent with budget policy;
- (3) The total amount appropriated for that financial year for all outputs for that Government agency must be unaltered; and
- (4) The head of the government agency will provide the Minister sufficient details to explain any transfer made pursuant to subsection (2);
- (5) The Minister shall identify all transfers during the prior quarter and provide their rationale in the next quarterly report submitted to Parliament under this Act.
- (6) Regulatory guidance will be issued under section 70 of this Act to establish procedures for and restrictions on transfer authority.

20. Transfer of resources within appropriations categories

- (1) Current appropriations - the head of a government agency may from time to time transfer an amount appropriated for a prescribed output to another output.
- (2) Transfers between Cook Islands funded capital projects – The head of a government agency may from time to time transfer amounts appropriated from one project to another project identified in the capital plan.
- (3) Transfers between donor funded projects – Transfers between donor financed projects may only occur with the agreement of the donor and the Government.
- (4) POBOCs – The head of a government agency may from time to time transfer funds among programs funded within a specified amount for POBOC funding.

- (5) Financing – Cabinet must approve any transfers of any financing amounts.
- (6) All transfers are subject to the limitations established under section 19 and to any regulatory guidance issued by the Ministry.

21. 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 17 and all appropriations shall be accounted for in accordance with this Act.

22. Net Appropriation

- (1) All appropriations shall be for the total amount of the expenditure required.
- (2) Estimates of trading revenue offset shall be specified in appropriations.
- (3) 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.
- (4) Where a Government agency 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 agency 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.
- (5) 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 agency shall make payment of the amount accordingly.
- (6) Revisions to estimates of trading revenue, expenditure, or deposits into the Government account shall be disclosed in the next quarterly report and included in the annual financial statement of the government.

23. Carryover

- (1) Notwithstanding subsection 17(3) of this Act, where provision has been made in any appropriation act for expenditure by any government agency 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 agency or Crown agency, in accordance with its outputs, in the subsequent financial year, in addition to the total amount to be allocated to that government agency or Crown agency in the next appropriation act;
- (2) Funds carried over under this authority must be obligated within three months of the beginning of the financial year; and

(3) The Ministry shall report any carryover authority approved under this authority in the next quarterly report submitted to Parliament following the approval.

24. Unauthorised expenditure

All sums issued and paid under Article 70 (3) (b) of the Constitution shall be charged as unauthorised expenditure and separately disclosed in the next quarterly report submitted to Parliament under this Act.

25. Supplemental appropriations

(1) In the event that the Cabinet approves spending that exceeds total appropriations or totals for any category under section 29 above, over and above the amounts provided under section 36, the Government shall submit a request for supplemental appropriations to the Parliament.

(2) Expenditure shall not occur, prior to appropriation approval by Parliament.

PART VII AUTHORISATION OF EXPENDITURE

26. Annual cash management plans

(1) All government agencies shall prepare, and submit to the Ministry, an annual cash plan projecting month by month expenditures for the financial year;

(2) Where the Ministry, or other budgetary entity is responsible for collection of revenues, they are to prepare an annual revenue collection plan projecting revenue collection month by month for the financial year;

(3) The Ministry shall issue detailed instructions for annual cash plans.

(4) the Ministry shall consolidate and allocate the available cash among the budget entities based on these cash plans, and the approved budget.

(5) The Ministry shall likewise include in the consolidated cash plan, other proposed use of cash resources such as investment, or cash reserves.

27. Authorisation and certification of expenditure

(1) Upon the passing of an appropriation act, the head of a government agency 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 agency shall be responsible for ensuring that the moneys are expended for the purposes intended.

(2) All heads of government agencies shall be responsible for ensuring that there is adequate control over commitment of expenditure and the release of and use of funds in accordance with Section 9.

(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.

28. 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 agency where because of the amounts involved it is impracticable to draw a payment by cheque or other means.

(2) The head of a government agency 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.

29. Refunds and corrections

(1) The head of a government agency shall, on application being made at any time within 6 years of any sum being paid to any government agency, 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.

30. 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 VIII PUBLIC MONEY

31. 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.

(6) 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.

(7) The Ministry shall develop an integrated system for management of public money to allow efficient cash management and investment of public funds.

32. 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.

33. 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 IX TRUST MONEY

34. 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.

a) 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.

b) 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.

35. Establishment of bank accounts for trust money

All trust money shall be lodged in a bank account designated as a trust account.

36. 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.

37. 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.

38. 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.

39. 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 37, be deemed to be public money and shall be transferred to the Public Account.

PART X PUBLIC MONEY OUTSIDE COOK ISLANDS

40. 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 XI REPORTING REQUIREMENTS

41. 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 financial performance;
- b) a statement of cash flows;
- c) such other statements as are required to be consistent with internationally accepted accounting standards; and
- d) a statement of accounting policies, and relevant Notes to the financial statements.

42. Accounting principles

(1) All reports, associated information and practices required shall be prepared and carried out in accordance with internationally accepted accounting standards.

(2) The Ministry shall issue guidance on accounting standards for financial reporting for the implementation of this Act.

43. Accounting systems support

(1) The Ministry shall develop financial information systems to support government implementation of accounting and reporting under this Act.

(2) The Ministry may provide accounting and support services to government agencies.

(3) Provision of accounting and reporting services by the Ministry shall not transfer responsibility and control over spending or accountability for financial management from agencies to the Ministry.

44. Monthly reports

(1) Agencies shall reconcile their bank accounts with their record of receipts and payments and prepare a bank reconciliation statement at the end of each month;

(2) Heads of agencies shall submit a comparison between budget estimates and actual transactions for the month, and for the financial year to date, to the Ministry within thirty days of the end of the month.

45. Quarterly reports

(1) Heads of agencies shall submit a quarterly report to the Ministry providing a comparison between budget and actual transactions, budget performance and budget plan, and any administrative changes to the budget within the quarter;

(2) The Ministry shall report to the Parliament within 45 days of the end of each quarter on performance of the budget versus the approved budget.

46. Annual 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 Parliament and to the Government Auditors a financial statement (of transactions affecting the) covering all the information required under section 40.

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

47. 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.

48. Departmental accounts

Every government agency after the end of each month shall, in accordance with any directions of the Ministry, report on the key variables specified in section 40 of this Act as they relate to the government agency.

- (1) At the conclusion of each financial year, all government agencies shall prepare an annual report as specified by the Minister and covering information required under section 40 of this Act as it applies to the government agency.
- (2) The statement of financial performance shall report the results achieved by the outputs for which appropriation was provided under the appropriation act.
- (3) The financial statements of each government agency at the end of the financial year shall be examined and reported by the Government Auditors and laid before Parliament as soon as practicable after tabling of financial accounts required under section 46.

PART XII STATEMENT OF RESPONSIBILITY

49. 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 of a government agency shall be prepared and signed separately by -
 - a) The head of that agency; and
 - b) The Minister responsible for the financial statements of that government agency and;
- (3) A statement of responsibility for government-wide financial statements shall be prepared and signed by the -
 - a) The Financial Secretary; and
 - b) The Minister of Finance and Economic Management.
- (4) All statements shall warrant the –
 - a) Integrity of the disclosures; and

- b) Consistency with the requirements of this Act.

50. Publication inspection and purchase of statements and reports

(1) The Minister shall in respect of every statement or report referred to in Part III and Part XI, arrange for electronic access of the report or document, and shall provide 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 release, ensure that opportunities for free inspection or purchase are available.

PART XIII LOANS AND SECURITIES

51. Government not to borrow except under statute

(1) 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.

(2) No government agency, island government or government sponsored enterprise may borrow or create a contingent claim on the Government without the approval of the Minister.

52. 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 agency 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.

53. 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

- (1) repay any loan to the Crown; or
- (2) 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 52.

54. 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.

55. 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 entity.

(2) Subsection (1) 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 58; 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 action that the creditor has against the Crown; or
- d) Any sum the Crown is liable to pay to any creditor of the crown.

56. 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 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 approval of the loan.

57. 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.

58. 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. The Minister shall enter into a Deed of Guarantee with the borrowing entity specifying the conditions and responsibilities of the guaranteed entity.

(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.

(4) The Ministry shall keep a record, monitor, and report all financial guarantees issued by the government, and disclose the consolidated information in the financial statements.

PART XIV DEBT MANAGEMENT

59. Payment of principal and interest on loans

Consistent with the Cook Islands Loan Repayment Fund Act 2014, all government debt must repaid from the Cook Islands Repayment Fund. Estimates of government debt and debt service requirements shall be included in fiscal forecasts developed under this Act.

PART XV PROCUREMENT

60. Procurement

(1) The Minister may, from time to time, issue and amend Procurement Instructions, to govern the process of acquiring goods, civil works and services which includes all functions from the identification of needs, selection and solicitation of sources, preparation and award of contract and all phases of contract administration and management through the end of the service contract or the disposal of the asset.

(2) Procurement procedures have the objective of ensuring an open, competitive, and transparent means of acquiring all government goods and services.

(3) The Procurement Instructions apply to and are to be complied with by all government agencies and statutory corporations. Instructions may apply differently to statutory corporations.

(4) Procurement instructions will include requirements necessary to ensure efficient, equitable acquisition of goods and services of government, including duties of officers, qualification of suppliers and contractors, tender procedures, project assessment and project management.

(5) Procurement instructions will establish provisions to avoid conflict of interest in government procurement.

PART XVI INTERNAL CONTROL

61. Internal control

- (1) The Finance Secretary shall maintain an effective system of internal controls for government.
- (2) If considered appropriate, the Financial Secretary may authorize the conduct of special audits and investigations on the
 - a) financial management of any ministry or department;
 - b) accounts of a sponsored enterprise; and
 - c) accounts of any recipient government grants to the extent necessary to ensure that any conditions of any grant made to it by the State, have been fulfilled.
- (3) The Financial Secretary has the discretion to appoint any officer to carry out the audits under paragraph (2).
- (4) Ministries and departments shall provide full, free and unrestricted access to all premises, assets, personnel records, accounting records, returns and other documentation and information to officers appointed under paragraph (3) that the Financial Secretary deems necessary to carry out audits under paragraph (2).

PART XVII 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

- (1) 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.
- (2) Regulations and procedural guidelines will be used to provide instructions:
 - a) Regulations will be issued by the Minister with the approval of the Cabinet and will be viewed as an extension of the Act.
 - b) Procedural guidance will be issued by the Financial Secretary and will provide instructions on implementation of the Act and regulations.

- c) Instructions will be issued for the following topics –
 - i. Financial policies and procedures;
 - ii. Accounting and fiscal reporting;
 - iii. Procurement;
 - iv. Development assistance;
 - v. Capital planning; and
 - vi. Such other matters as determined to be necessary by the Financial Secretary.

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

PART XVIII OFFENCES AND SANCTIONS

64. Offences

(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) obligates the Government to expenditure in excess of appropriated amounts or for purposes not approved under the requirements of this Act;
- b) refuses or neglects to pay any public money into a bank account of the Crown; or
- c) refuses or neglects to pay any trust money into a bank account of the Crown; or
- d) 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
- e) 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.
- f) wilfully 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 76 may have occurred shall report those circumstances to the Financial Secretary.

66. Action by head of agency

(1) When the head of agency becomes aware of non-compliance with any provisions of this Act, the head of agency shall immediately take action to remedy the failure;

(2) Where the Ministry draws to the attention of any head of agency an example of non-compliance of any of the sections of this Act, the head of agency shall immediately take action to remedy this failure;

(3) In taking action to remedy the failure, the head of agency shall determine whether there is a reasonable explanation for non-compliance;

(4) The head of agency shall explain the failure and the action taken, to the Public Expenditure Review Committee.

67. Penalties for offences

(1) Recovery of loss by the Government; or

(2) Personnel actions including reprimand, removal from position of responsibility, or criminal penalty if the circumstances warrant.

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

PART XIX MISCELLANEOUS

68. 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 six months from the coming into force of this Act.

(2) Where, during the period of six 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.

69. 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.

70. Repeals

The Ministry of Finance and Economic Management Act 1995-1996 is repealed when this Act comes into force.