

Number 196
No. s.



ANALYSIS

<p>Title</p> <p>1. Short Title</p> <p style="text-align: center;">PART I</p> <p style="text-align: center;">HOUSING IMPROVEMENT</p> <p>2. Interpretation</p> <p>3. Housing Improvement Fund</p> <p>4. Housing improvement scheme</p> <p>5. Rate of interest</p> <p>6. Housing Improvement Board</p> <p>7. Meetings of the Board</p> <p>8. Security for advances other than to societies</p> <p>9. Advances to societies</p> <p>10. Repayment of advances</p> <p>11. Securities to be taken in name of Her Majesty</p> <p>12. Assignment of money as security may be irrevocable</p> <p>13. Alienation and assignment as security for advances</p> <p>14. Assignments of money from land vested in trustees</p> <p>15. Advances to be paid as Board directs</p> <p>16. Charging order may be made</p>	<p>17. Discharge of charging orders</p> <p>18. Appointment of receiver to enforce charges</p> <p>19. Expenditure for protection of securities</p> <p>20. Application of this Part to Niue</p> <p>21. Taking of land for housing</p> <p>22. Repeals</p> <p style="text-align: center;">PART II</p> <p style="text-align: center;">VESTING ORDERS</p> <p>23. Vesting orders</p> <p>24. Duty on vesting orders</p> <p>25. Court may cancel vesting order</p> <p>26. Succession to interest under vesting order</p> <p>27. Land subject to mortgage or encumbrance</p> <p style="text-align: center;">PART III</p> <p style="text-align: center;">MISCELLANEOUS AMENDMENTS</p> <p>28. Native Appellate Court</p> <p>29. Employees of New Zealand Government Service seconded to Tokelau Islands Administration</p> <p>30. Reserved enactments</p>
--	---

1960, No. 32

An Act to amend the Cook Islands Act 1915

[17 October 1960

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

1. Short Title—This Act may be cited as the Cook Islands Amendment Act 1960, and shall be read together with and deemed part of the Cook Islands Act 1915* (hereinafter referred to as the principal Act).

PART I

HOUSING IMPROVEMENT

2. Interpretation—In this Part of this Act, unless the context otherwise requires,—

“Advance” means an advance made under this Part of this Act out of the Housing Improvement Fund:

“Board” means the Housing Improvement Board constituted under this Part of this Act:

“Director of Social Development” means the officer of the Cook Islands Public Service holding the office of Director of Social Development; and includes any person for the time being authorised to exercise or perform any of the powers, duties, or functions of the Director of Social Development:

“Housing Improvement Fund” or “Fund” means the fund established by section 3 of this Act:

“Housing purpose” means any purpose specified in subsection (2) of section 4 or in section 19 of this Act:

“Occupation order” means an order of the Native Land Court of the Cook Islands granting a right of occupation made under section 50 of the Cook Islands Amendment Act 1946:

“Society” means the Cook Islands Cooperative Thrift and Loan Society Limited (a body corporate constituted and registered under the Cook Islands Cooperative Societies Regulations 1953); and includes any other body corporate constituted and registered under those regulations:

“Treasurer” means the Treasurer of the Cook Islands appointed under section 17 of the Cook Islands Amendment Act 1957; and includes any person for the time being authorised to exercise or perform any of the powers, duties, or functions of the Treasurer:

“Vesting order” means an order of the Native Land Court of the Cook Islands made under Part II of this Act.

REV. 196
No. 3.
Substitutn.

3. Housing Improvement Fund—(1) There is hereby established in the Cook Islands Account a fund to be called the Cook Islands Housing Improvement Fund.

(2) The Fund shall consist of—

- (a) All money that may be appropriated by Parliament for the purpose of the Fund;
- (b) All accumulations of money belonging to the Fund; and
- (c) All other money that may otherwise be lawfully payable into the Fund.

(3) All principal, interest, purchase money, rent, or other money received in respect of advances made out of the Fund, or otherwise received in respect of expenditure made from the Fund, shall belong to the Fund.

(4) All money in the Fund shall be used exclusively for housing purposes.

4. Housing improvement scheme—(1) For the purpose of providing dwellings and improved housing and living conditions in the Cook Islands, advances may from time to time be made out of the Housing Improvement Fund to—

- (a) Any permanent resident of the Cook Islands;
- (b) The Cook Islands Cooperative Thrift and Loan Society Limited (a body corporate constituted and registered under the Cook Islands Cooperative Societies Regulations 1953) under an agreement that the Society will make advances to such of the Society's registered members who are duly qualified from time to time under the Society's bylaws for loans from the Society;
- (c) Any other body corporate constituted and registered under those regulations and approved by the Minister for the purposes of this section,—

for all or any of the purposes specified in subsection (2) of this section.

(2) Advances may be made under subsection (1) of this section for the following purposes:

- (a) The erection, repair, alteration, or improvement of any dwelling and of all necessary outbuildings and appurtenances attached thereto;
- (b) The repair, alteration, improvement, or installation in or in respect of any dwelling of a system of lighting, sanitation, water supply, or other conveniences:

- (c) The purchase of any land or interest in land as a site for any dwelling:
- (d) The draining, cultivation, development, or general improvement of the land appurtenant to any dwelling or intended to be used as a site for any dwelling.

5. Rate of interest—The rate of interest to be charged upon any advances shall be fixed from time to time by the AM.D. 196 Minister with the concurrence of the Minister of Finance. No. s.

6. Housing Improvement Board—(1) For the purposes of AM.D. 196 this Part of this Act there is hereby established a Board to be called the Cook Islands Housing Improvement Board, consisting of— No. s.

- (a) The Treasurer:
- (b) The Director of Social Development:
- (c) Three other persons (whether officers of the Cook Islands Public Service or not), to be appointed by the Minister, and to hold office during his pleasure.

(2) Subject to any directions given from time to time by the Minister, the Board shall control the making of advances from money from time to time in the Housing Improvement Fund and matters incidental thereto (including expenditure under section 19 of this Act), and shall have no other functions.

(3) No person shall be deemed to be an employee of the Cook Islands Public Service for the purposes of Part III of the Cook Islands Amendment Act 1957 or to be in the service of Her Majesty for the purposes of the Superannuation Act 1956 by reason only of his being a member of the Board.

7. Meetings of the Board—(1) The Treasurer shall be the Chairman of the Board, and shall preside at all meetings of the Board at which he is present.

(2) In the absence of the Chairman from any meeting of the Board, the members present shall elect one of their number to be chairman of the meeting.

(3) In the absence from any meeting of the Board of any member appointed under paragraph (a) or paragraph (b) of subsection (1) of section 6 of this Act, any officer of his Department appointed by him may attend the meeting, and while so attending any meeting he shall be deemed for all purposes to be a member of the Board. The fact that any such person attends and acts as a member of the Board at any meeting shall be conclusive proof of his authority to do so.

(4) Meetings of the Board shall be held at such times and places as the Board or the Chairman may from time to time appoint.

(5) At any meeting of the Board a decision of the majority of members present shall be the decision of the Board.

(6) On all questions before the Board the Chairman shall have a deliberative vote and, in the case of equality of votes, shall also have a casting vote.

(7) All proceedings and resolutions of the Board shall be recorded in minutes kept by the Board.

(8) At all meetings of the Board three members shall form a quorum.

(9) No act done by the Board shall be invalid because of any vacancy in the membership of the Board or because of any defect or irregularity in the appointment of any member of the Board.

(10) Except as provided in this section, the Board shall determine its own procedure.

8. Security for advances other than to societies—(1) The Board may make advances from the Housing Improvement Fund for any housing purpose upon any of the following classes of security, namely:

- (a) A first charge on any freehold interest in Native freehold land or land owned by Natives or descendants of Natives:
- (b) A first charge on any leasehold interest in Native freehold land or land owned by Natives or descendants of Natives:
- (c) A first charge on any interest in land under any vesting order:
- (d) A first charge on any interest in land under any occupation order:
- (e) An assignment of the proceeds of the alienation of Native freehold land or land owned by Natives or descendants of Natives:
- (f) An assignment or other disposition of any money payable or to become payable, whether on account of the sale of fruit or vegetables or other produce of land or otherwise howsoever:

Provided that the Board may in its discretion make an advance not exceeding two hundred pounds without any such security.

(2) For the purposes of determining whether an application for an advance should be granted, the Board shall not be bound to insist upon any fixed or definite margin of security.

9. Advances to societies—(1) As security for the repayment of any advance made to any society, the Board may require the society to execute a mortgage or other charge or an agreement to the satisfaction of the Board.

(2) The Board may, in the name and on behalf of Her Majesty the Queen, enter into any agreement with any society to which an advance is made in order to give effect to the provisions of section 4 of this Act.

(3) Any society to which an advance is made shall undertake with the Board—

- (a) To use and apply any amounts advanced to it exclusively in making loans for housing purposes; and
- (b) Not to charge interest on any such loans at a rate in excess of a rate fixed from time to time by the Minister with the concurrence of the Minister of Finance.

10. Repayment of advances—All advances (including any reasonable charge for supervision which may be approved by the Board), with interest at the rate fixed under section 5 of this Act, shall be a charge against the land in respect of which the advance is made, and shall be repayable at such time or times and in such manner as the Board from time to time determines, subject to any regulations made under the principal Act.

11. Securities to be taken in name of Her Majesty—Every security for an advance shall be taken in the name of Her Majesty the Queen.

12. Assignment of money as security may be irrevocable—

(1) The Board may require any order on or assignment of money given as security for the repayment of any advance to be expressed to be irrevocable, notwithstanding the death of the person giving the order or assignment, and the order or assignment shall be irrevocable accordingly except with the consent in writing of the Board.

(2) Notwithstanding anything in any enactment to the contrary, any company, corporate body, or person upon whom any notice of any such order or assignment has been served shall be bound to accept and to act upon the order or assignment and to pay to the person nominated in that behalf in the order or assignment all money from time to time payable thereunder.

13. Alienation and assignment as security for advances—

(1) Notwithstanding anything in section 470 or section 471 or section 473 of the principal Act, it shall be competent for any Native or descendant of a Native to alienate any Native freehold land or things growing on or attached to any such land or the rents and profits from any such land as security for any advance made by the Board from the Housing Improvement Fund or made by any society for any housing purpose.

(2) Notwithstanding anything in the Property Law Act 1952, no power of sale shall be contained or implied in any charge given on any interest in land (not being a leasehold interest) to secure the repayment of any advance, whether made by the Board out of the Housing Improvement Fund or made by any society for any housing purpose.

14. Assignments of money from land vested in trustees—

(1) For the purpose of securing the repayment of any advance made by the Board from the Housing Improvement Fund or made by any society for any housing purpose, it shall be competent for any Native or descendant of a Native to give an order on or an assignment of the proceeds of the alienation of any land (including compensation money for land taken), whether the land is vested in a trustee or not.

(2) Any such order or assignment shall be valid and enforceable for all purposes, notwithstanding the provisions of section 646 of the principal Act or of any other enactment.

15. Advances to be paid as Board directs—Every advance (not being an advance to a society) shall be expended or applied by the Board, or at its direction, for any one or more housing purposes for the benefit or on behalf of the applicant, and, unless the Board otherwise determines, shall not be paid direct to the applicant.

16. Charging order may be made—(1) Notwithstanding anything in section 470 of the principal Act, where a charge on any interest in land has been given as security for the repayment of any advance (whether made by the Board out of the Housing Improvement Fund or made by a society), the Native Land Court, on proof to its satisfaction that the advance has been made, may make an order charging the land or any interest therein or any part thereof or any undivided or partial interest therein with repayment of the amount advanced with interest, in the case of an advance by the Board, at the rate fixed under section 5

of this Act and, in the case of an advance by a society, at the rate fixed in the charge, and by such instalments and with such directions for giving effect to the charge as the Court thinks expedient.

(2) In the case of an advance by the Board, the certificate of the Board shall for all purposes be prima facie proof of the amount of the advance and of the rate of interest payable, and may be accepted by the Court accordingly.

(3) The Court may make a further order varying any former order in respect of any additional advance or by way of apportioning charges in such manner as it thinks expedient or for any other purpose it thinks fit, and every subsequent order shall supersede all prior charging orders so far as it is inconsistent therewith. Where any charge is apportioned, each portion shall be deemed to be a separate charge.

(4) Every order made under the provisions of this section shall be registered or recorded, as the case may require, in such manner as the Court directs.

17. Discharge of charging orders—The Native Land Court may at any time, on the application of the Board or, as the case may be, of the society by which the advance was made, wholly or partially discharge any charging order made under section 16 of this Act, whether or not the money secured by the charge has been repaid.

18. Appointment of receiver to enforce charges—(1) When by section 16 of this Act any charging order has been made in respect of any land or any interest therein, or upon the revenues thereof or the proceeds of the alienation thereof, the Native Land Court may at any time and from time to time, for the purpose of enforcing that charge, appoint a receiver in respect of the property so charged.

(2) A receiver appointed under this section shall have all such rights, powers, duties, and liabilities as may be expressly conferred or imposed on him by the Court and such other incidental powers as may be reasonably necessary for the exercise of the powers so conferred:

Provided that a receiver appointed under this section shall not have power to sell any Native land, or to lease any such land otherwise than as provided in subsection (3) of this section.

(3) Notwithstanding any of the provisions of the principal Act as to the alienation of Native land, a receiver appointed under this section for the purpose of enforcing a charge may,

in his own name and with the leave of the Court, grant leases of any land so charged for any term not exceeding twenty-one years, on such conditions and for such rent or other consideration as he thinks fit.

19. Expenditure for protection of securities—(1) The Board may from time to time expend money out of the Housing Improvement Fund for the protection, preservation, and improvement of any property on the security of which or in respect of which any advance has been made.

(2) The authority conferred by this section shall extend to authorise the expenditure out of the Fund of money required for such purposes as the Board considers necessary to prevent or minimise any loss on the realisation of the security.

20. Application of this Part to Niue—The provisions of this Part of this Act, except sections 6 and 7, as far as they are applicable and with the necessary modifications, shall apply with respect to Niue, as if references therein to the Cook Islands were references to Niue and as if references therein to the Board were references to the Resident Commissioner of Niue.

21. Taking of land for housing—Section 364 of the principal Act is hereby amended by adding the words “and also includes any housing purpose within the meaning of Part I of the Cook Islands Amendment Act 1960”.

22. Repeals—Sections 7 to 10 and subsections (1) and (4) of section 11 of the Cook Islands Amendment Act 1958 are hereby repealed.

PART II

VESTING ORDERS

23. Vesting orders—(1) The Native Land Court may in its discretion, on application being made to it by an owner of any estate or interest in any Native freehold land, make an order (hereinafter referred to as a vesting order) for the transfer of any such Native freehold land to a Native or a descendant of a Native to provide him with a site for a dwelling. A vesting order may be made in favour of two or more persons as joint tenants.

(2) No vesting order shall be made vesting any area exceeding one-third of an acre in any one person or in two or more persons as joint tenants:

AMB. 196
No. s.

1960
No. s.

Provided that the Court may make a vesting order in respect of a larger area in any case where it is satisfied that the nature of the land is such that it is unsuitable for subdivision into lots that will enable a vesting order to be made in respect of an area of not more than one-third of an acre.

(3) In the making of a vesting order, the Court shall determine the value of the land or of the interest in land comprised therein, and the value so determined shall for the purposes of this Part of this Act be final and conclusive.

24. Duty on vesting orders—(1) No stamp duty shall be payable in respect of any vesting order if the value of the land or of the interest in land comprised therein, as determined by the Court, does not exceed the sum of one hundred pounds.

(2) Where the value of the land or interest in land comprised in any vesting order exceeds the sum of one hundred pounds, conveyance duty shall be payable thereon as if the vesting order was an instrument of conveyance within the meaning and for the purposes of the Cook Islands Stamp Duties Regulations 1931.

25. Court may cancel vesting order—(1) Where the Court has made a vesting order, and it is shown to the satisfaction of the Court that the land has not been used and continued to be used as a site for a dwelling within five years after the date of the order, the Court may, in its discretion and with the consent of any mortgagee or other encumbrancer, make an order cancelling the vesting order.

(2) On the cancellation of any vesting order as aforesaid, the Court may, if it thinks fit, make an order vesting the estate or interest in the former owner, or in any other person whom the Court deems to be justly entitled thereto.

26. Succession to interest under vesting order—The persons entitled on the death of a Native or a descendant of a Native to succeed to any interest acquired under a vesting order in any land shall be the same persons who would, under Native custom, be entitled to succeed to any interest owned by the deceased in the same land before the making of the vesting order:

Provided that, where the Native Land Court is satisfied that the land or interest in land could be more conveniently or economically held by one or more owners, the Court may, with the consent of the majority of the persons beneficially

entitled to the interest owned by the deceased, make an order vesting the interest of the deceased in one or more of the persons beneficially entitled thereto:

Provided further that, if the person to whom any land is transferred under a vesting order did not at the time the vesting order was made have any beneficial interest therein, the Native Land Court shall determine the succession to that land in the manner prescribed by section 446 of the principal Act.

27. Land subject to mortgage or encumbrance—(1) No order shall be made under this Part of this Act in respect of any land or interest in land that is subject to any mortgage, charge, or other encumbrance, without the consent of the mortgagee or person entitled to the benefit of the charge or encumbrance.

(2) In any such case the Court may make such order as it thinks proper for the apportionment or adjustment of the rights and obligations of any person under any such mortgage, charge, or other encumbrance, and every order of apportionment or adjustment shall have effect accordingly and may be registered or recorded as the Court directs.

PART III

MISCELLANEOUS AMENDMENTS

r.e. 196
s.

28. Native Appellate Court—Section 20 of the Cook Islands Amendment Act 1946 is hereby amended by omitting from subsection (4) (as substituted by section 2 of the Cook Islands Amendment Act 1948) the words “of the Native Land Court of the Cook Islands”.

29. Employees of New Zealand Government Service seconded to Tokelau Islands Administration—The Cook Islands Amendment Act 1957 is hereby amended by inserting in Part III, after section 85A (as inserted by section 6 of the Cook Islands Amendment Act 1958), the following section:

“85B. (1) When an employee of the New Zealand Government Service is appointed to a position in the Tokelau Islands Administration, and holds that position either concurrently with or in substitution for the position held by him in the New Zealand Government Service, he shall be deemed to be an employee of the Cook Islands Public Service.

“(2) The provisions of this Part of this Act shall apply to any such employee as from the date of his appointment to the Tokelau Islands Administration and while he is so employed therein, whether appointed to that Administration before or after the commencement of this section.

“(3) The Governor-General in Council may from time to time, on the recommendation of and for special reasons assigned by the Public Service Commission, exempt any officer or class of officer employed in the Tokelau Islands Administration from the operation of this section.

“(4) For the purposes of this section, all employees of the New Zealand Government Service, while holding positions in the Tokelau Islands Administration, shall hold office subject to such conditions as may from time to time be prescribed or determined by the Commission, subject to any regulations made under the provisions of the Tokelau Islands Act 1948.”

30. Reserved enactments—The First Schedule to the Cook Islands Amendment Act 1957, as amended by section 12 of the Cook Islands Amendment Act 1958, is hereby further amended—

(a) By inserting in the appropriate columns thereof, after the provisions relating to the Cook Islands Amendment Act 1957, the following words:

“1958, No. 19— The Geneva Conventions Act 1958	The whole Act.”:
--	------------------

(b) By adding, in the appropriate columns thereof, the following words:

“1960, No. 32— The Cook Islands Amend- ment Act 1960	Parts I and II.”
--	------------------

REP. 196
No. s.