



ANALYSIS

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1989, No. 10

An Act to establish a General Licensing Authority and provide for its functions and powers (5 May 1989)

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

Preliminary

1. Short Title and commencement - (1) This Act may be cited as the General Licencing Authority Act 1989.

(2) This Act shall come into force on a day to be determined by the Minister and notified in the Gazette.

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

"Accommodation premises" means and includes hotels, motels, boarding houses, and all land, buildings and premises used to provide board or lodging for tourists and the travelling public;

"Authority" and "Licensing Authority" mean the General Licensing Authority established by section 3 of this Act;

"Minister" means the Minister of Tourism;

"Restaurant" means and includes any shop or premises in or on which meals or food is prepared for consumption by members of the public in or on such shop or premises irrespective of whether any charge is made or payment given for such meals or food;

"Tourist" means and includes any visitor to the Cook Islands.

PART I

GENERAL LICENSING AUTHORITY

3. General Licensing Authority - (1) There is hereby established an Authority to be called the General Licensing Authority.

(2) The Authority shall consist of 5 members to be appointed by the Minister, one of whom shall be appointed as Chairman.

(3) The Authority shall be a body corporate with perpetual succession and a common seal, and shall be capable of holding real and personal property, of suing and being sued, and of doing and suffering all such other acts and things as bodies corporate may lawfully do and suffer.

4. Term of office of members of Authority - (1) Except as otherwise provided in this Act, every member of the Authority shall be appointed for a term of 2 years, but may from time to time be reappointed.

(2) Notwithstanding anything to the contrary in this Act, every member of the Authority, unless he sooner vacates his office under section 5, shall continue in office until his successor comes into office.

5. Extraordinary vacancies - (1) Any member of the Authority may at any time be removed from office by the Minister for disability bankruptcy neglect of duty, or misconduct proved to the satisfaction of the Minister or may at any time resign his office by writing addressed to the Minister.

(2) If any member of the Authority dies, or resigns, or is removed from office, his office shall become vacant and the vacancy shall be deemed an extraordinary vacancy.

(3) An extraordinary vacancy shall be filled in the manner in which the appointment to the vacant office was originally made.

(4) Every person appointed to an extraordinary vacancy shall be appointed for the residue of the term for which his predecessor was appointed.

(5) The powers of the Authority shall not be affected by any vacancy in the membership thereof.

6. Deputies of members - (1) Where the Minister is satisfied that any member of the Authority is incapacitated by illness, absence, or other sufficient cause from performing the duties of his office, the Minister may appoint a deputy to act for that member during his incapacity.

(2) Any deputy appointed under this section shall, while he acts as such, be deemed to be a member of the Authority, and any deputy acting for the Chairman shall have all the powers of the Chairman.

(3) No appointment of a deputy and no acts done by him as such, and no act done by the Authority while any deputy is acting as such, shall in any proceedings be questioned on the ground that the occasion of his appointment had not arisen or had ceased.

7. Deputy Chairman - (1) From time to time as the office becomes vacant, the Authority shall appoint one of its members to be Deputy Chairman; and that member shall hold that office for such period as the Authority appoints in that behalf or until he ceases to be a member, whichever is the sooner.

(2) During any vacancy in the office of Chairman, or in the absence of the Chairman from any meeting of the Authority, or in the event of the Chairman being incapacitated by illness or other cause from performing the duties of his office, the Deputy Chairman shall have and may exercise all the powers of the Chairman.

8. Meetings of the Authority - (1) The first meeting of the Authority shall be held on a day to be appointed in that behalf by the Minister.

(2) Subsequent meetings of the Authority shall be held at such times and places as the Authority or the Chairman from time to time appoints.

(3) The Chairman of the Authority may at any time call a special meeting of the Authority and the Chairman shall call a special meeting whenever requested to do so in writing by any 3 members of the Authority.

(4) At all meetings of the Authority 3 members shall form a quorum.

(5) The Chairman shall preside at all meetings of the Authority at which he is present. In the absence from any meeting of the Chairman and the Deputy Chairman, the members present shall appoint one of their number to be chairman at that meeting.

(6) At any meeting of the Authority the Chairman shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(7) All questions arising at any meeting of the Authority shall be decided by a majority of the valid votes recorded thereon.

(8) Subject to the provisions of this Act and of any regulations made thereunder, the Authority may regulate its procedure in such manner as it thinks fit.

(9) Notwithstanding any other provision of this Act, where it is necessary for the Authority to hear any matter relating to premises or vehicles on any island other than Rarotonga it shall be sufficient for three members of the Authority together with the persons named in subsection (10) to hear and determine the matter.

(10) When sitting on an island other than Rarotonga, the Mayor, and a member of the Aronga Mana of that island appointed by the Aronga Mana for the purposes of attending that hearing shall be deemed to be members of the Authority and shall have the right to have a deliberative vote.

(11) The Chairman shall nominate one of the three members of the Authority, if he or the Deputy Chairman is not present, to be Chairman and in the case of an equality of votes that person shall have a casting as well as a deliberative vote.

(12) Any decision made at any hearing under subsection (9) shall be deemed to be a decision of the Authority.

(13) All hearings held on any Island other than Rarotonga shall be publicly notified by the Authority 7 days before the hearing".

9. Disqualification of members - (1) A member of the Authority shall not vote or take part in the discussion of any matter before the Authority or before any committee thereof in which he has directly or indirectly a pecuniary interest apart from any interest in common with the public.

(2) Any member who knowingly offends against this section shall be guilty of misconduct and a breach of this Act.

10. Remuneration and expenses of members - There shall be paid to members of the Authority such remuneration and expenses as may from time to time be prescribed.

11. Appointment of Officers and employees - (1) The Authority may, with the prior approval of the Minister, appoint such officers and employees as may be necessary for the Authority to efficiently carry out the functions and powers conferred upon the Authority by this Act.

(2) Every appointment made pursuant to subsection (1) shall be on terms and conditions approved by the Minister.

(3) The Minister may, if in his opinion it is expedient to do so, require the Authority to utilise the resources of a government department or ad hoc body as the Minister may determine and if so required the department or ad hoc body so determined shall provide to the Authority such resources and services as the Minister may specify.

PART IIFUNCTIONS AND POWERS

12. Functions of Authority - (1) The principal functions of the Authority shall be -

- (a) To license accommodation premises;
- (b) To license restaurants not being part of accommodation premises;
- (c) To license motor vehicles bicycles and boats used to transport tourists notwithstanding that such motor vehicles bicycles and boats are required to be licensed pursuant to any other enactment;
- (d) To implement a grading system based upon the quality of facilities and services offered by accommodation premises and restaurants and to grant licenses in accordance with that system;
- (e) To identify standards of services and facilities to be complied with by accommodation premises and restaurants;
- (f) To undertake such other functions as the Minister may from time to time determine.

(2) For the purposes of this Act, bicycle and motor vehicle shall have the same meaning as is given to those words by the Transport Act 1966.

13. Powers of the Authority - The Authority shall have all such powers, rights and privileges as may be reasonably necessary or expedient to enable it to carry out its functions, and, in particular, without limiting the generality of the powers of the Authority, it may from time to time -

- (a) Determine to issue licenses in respect of accommodation premises, restaurants motor-vehicles bicycles and boats;
- (b) Set conditions not inconsistent with the provisions of this Act or any regulations thereunder in respect of any licence to be granted;
- (c) Review, suspend or revoke any licence granted;
- (d) Recommend standards to be prescribed in respect of accommodation premises, restaurants motor vehicles bicycles and boats;
- (e) With the prior approval of the Minister engage such professional assistance as may be necessary to enable its functions and or powers to be carried out;
- (f) Make such charges for its services as shall be prescribed.

14. Authority to have regard to direction of Government. In the exercise of its functions and powers, the Authority shall have regard to any representations that may be made by the Minister in respect of any function or business of the Authority and shall give effect to any decision of the Government in relation thereto conveyed to the Authority in writing by the Minister.

15. Delegation of Powers of Authority - (1) The Authority may from time to time appoint a Committee or Committees consisting of two or more persons being members or officers of the Authority and may from time to time delegate to any such Committee any of the powers or functions of the Authority including the power of delegation conferred by this section.

(2) The Authority may from time to time delegate any of its powers to any member officer or employee of the Authority including the power of delegation conferred by this section.

(3) Subject to any general or special directions given or conditions imposed by the Authority or Committee or person to whom any powers are delegated as aforesaid the Committee or person to whom any powers are so delegated may exercise those powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(4) Every Committee or person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.

(5) Any delegation under this section may be made to a specified person or to persons of a specified class or may be made to the holder for the time being of a specified office or appointment or to the holders of offices or appointments of a specified class.

(6) Any delegation under this section may be revoked at any time.

(7) The delegation of any power by the Authority or by any Committee or person shall not prevent the exercise of that power by the Authority or as the case may require by that Committee or person.

PART III

LICENCES

16. Hotels, accommodation premises, and restaurants to be licensed - Except pursuant to a licence issued under this Act no land building or premises shall be used to provide board lodging accommodation or meals to or for any holidaymaker tourist or any member of the public where any charge payment or consideration of any kind is made or given or to be made or given for supplying such board lodging accommodation or meals, provided this section shall not apply to the provision of board lodging or accommodation for any person who is following an occupation requiring residence in the Cook Islands and also is not a holidaymaker tourist or traveller.

17. Authority to issue licences - (1) The Authority is hereby authorised to issue licences for the use of any land building or premises to provide board lodging accommodation or meals to or for any tourist or the public or any member thereof upon such conditions as the Authority shall decide with power to renew, revoke or re-issue such licences as the Authority shall decide.

(2) Each licence shall be for such period as the Authority shall decide but shall be subject to review each twelve months and shall not be assigned or transferred without the prior consent of the Authority and then only on such terms as the Authority shall decide.

(3) (a) If the Authority shall at any time be of the opinion that it is desirable or necessary when considering the issue, renewal, review, revocation or re-issue of a licence, it may hold a public sitting of which notice shall be given:

(b) At the public sitting the Authority may hold such inquiry as it thinks fit and shall afford all interested persons an opportunity to give evidence or make representations.

18. Circumstances in which licences may be authorised - In determining whether the issue of any licence under this Act is necessary or desirable the Authority shall have regard to -

- (a) The desirability of increasing the amount and improving the standard of accommodation and restaurants for the public, tourists and holidaymakers; and
- (b) The convenience of persons who will be entering upon or staying on the land or in the building or premises with which the Authority is concerned.
- (c) The desirability of improving the standard of motor vehicles and other transport used, by the public, tourists and holidaymakers".

19. Authority may refer matters for investigation - (1) The Authority may from time to time appoint one or more of its members or any other qualified person to investigate and report to the Authority on such matters as are referred to him or them by the Authority for the purpose of the proper exercise of its powers or functions under this Act.

(2) Every person commits an offence against this Act who having the custody or possession of any books papers accounts or documents relevant to any matter to be investigated under this section refuses or fails to allow to have access thereto any person investigating the matter under this section or who obstructs any such person in the making of the investigation.

PART IV

FINANCIAL PROVISIONS

20. Appropriation by Parliament - (1) There shall be paid to the Authority such sums of money as may be appropriated by Parliament from time to time for the purposes of the Authority whether by vote or an item within a vote.

(2) Where in any Appropriation Act or in any estimates of expenditure and revenue accompanying any Appropriation Act for any year, any vote or item to which this section applies is noted as being for a specified purpose, it shall not be competent except with the consent of the Minister of Finance for the Authority to use the moneys so appropriated for any purpose other than that specified in the said Act or estimates save only that the moneys may be placed on interest bearing deposit with a bank pending the time when they will be required.

(3) Where any appropriation is made for the purposes of the Authority, the Minister responsible for Finance may direct the manner in which the moneys appropriated shall be paid to the Authority and may require that any such appropriation be used first in payment of any debt due to the Public Account or to any account within the Public Account.

21. Preparation of estimates - The Authority shall prepare and submit to the Minister annual estimates of revenue and expenditure, covering the operations of the Authority in the exercise of its powers and functions.

22. Annual report and accounts - (1) The Authority shall, as soon as practicable after the end of each financial year, furnish to the Minister a report covering its activities for the year and including financial statements showing estimated and actual expenditure and receipts together with such commercial accounts as are appropriate to the nature of its financial operations.

(2) The financial statements required to be furnished to the Minister in accordance with subsection (1) shall be in such form as may be directed from time to time by the Minister responsible for Finance and shall be completed and available for examination in accordance with subsection (3) not later than four months after the end of the financial year to which they relate.

23. Audit - The accounts and financial statements of the Authority's activities shall be presented for examination in conjunction with the audit required pursuant to Article 71 of the Constitution and a copy of the annual report shall be laid before the Parliament as soon as practicable after the presentation to Parliament of the Annual Report required by that Article.

24. Receipts of Authority to be public money - (1) All money or security of any kind for the payment of money received by for or on account of or payable to or belonging to or deposited with, or held by or on behalf of the Authority shall be deemed to be public money and shall be dealt with in the manner provided for by the Public Money and Stores Act 1987.

(2) Every person who fails to comply with the provisions of subsection (1) shall be guilty of an offence and be liable to such punishment as may be provided by the Public Money and Stores Act 1987 as if the failure were a failure under that Act.

PART V

MISCELLANEOUS

25. Savings - Every licence issued by the Tourist Authority pursuant to the provisions of the Tourist Authority Act 1968 shall, notwithstanding the repeal of those provisions in that Act relating to the licensing of hotels accommodation premises restaurants or other facilities, continue in force according to its tenor and be deemed to have been issued pursuant and subject to the provisions of this Act.

26. Exemption from taxation - The Authority shall be exempt from income tax, turnover tax, duties, levies, imposts and fees.

27. Limitations of liability of Authority - (1) The Authority shall not be subject to any liability in respect of any licence issued by it or failure to issue any licence pursuant to any application.

(2) Subsection (1) shall not affect any liability of the Authority arising out of the negligence or misconduct of a servant or agent of the Authority.

(3) No member officer employee or agent of the Authority shall be personally liable for any act done or omitted by the Authority in good faith and in pursuance or intended pursuance of the powers and functions of the Authority.

28. General penalty - Every person who is guilty of any wilful act or omission contrary to any of the provisions of this Act for which no penalty is expressly provided shall be liable to a fine not exceeding \$500.

29. Regulations - (1) The Queen's Representative may from time to time by Order in Executive Council make all such regulations as may in his opinion be necessary or expedient for giving effect to the provisions of this Act and for the due administration thereof.

(2) Without limiting the general power hereinbefore conferred it is hereby declared that regulations may be made under this section for all or any of the following purposes:

- (a) Prescribing and regulating procedures for making applications under this Act and for inquiries reports notices objections or other matters arising out of such applications and the granting of any licences under this Act:
- (b) Prescribing forms and documents required under this Act:
- (c) Prescribing any standards minimum or otherwise the Authority is empowered to fix under this Act:
- (d) Prescribing fees payable in respect of this Act:
- (e) Prescribing fines not exceeding five hundred dollars in any case for failure to comply with the provisions of this Act or any regulations under this Act or with any condition to which any licence issued under this Act is subject and if the offence is a continuing one to a further fine not exceeding one hundred dollars for every day or part of a day during which the offence continues.

(3) All such regulations shall be laid before Parliament within fourteen days after the date of the making thereof if Parliament is then in session, and, if not shall be laid before within fourteen days after the date of the commencement of the next ensuing session.

This Act is administered by the General Licensing Authority.