

Hon. Henry Puna

Immigration Bill 2020

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Schedule 1

Amendments to Acts

Schedule 2

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Schedule 3

Administrative provisions relating to reviews

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Administrative fines

An Act to reform the law of immigration.

The Parliament of the Cook Islands enacts as follows—

1 Title

This Act is the Immigration Act 2020.

2 Commencement

- (1) This Act comes into force on a date to be appointed by the Queen's Representative by Executive Order in Council, except as provided in **subsection (2)**, and 1 or more orders may be made bringing different provisions into force on different dates, and at different times.
- (2) **Sections 11 and 12, 112 to 116, 227, 228, and 229** come into force on the day after the date on which this Act is assented to by the Queen's Representative.

Part 1

Preliminary matters

3 Purpose

The purpose of this Act is to manage immigration to the Cook Islands in a way that balances the national interest, as determined by the Crown, and the rights of individuals.

4 Interpretation

In this Act, unless the context otherwise requires,—

absolute discretion has the meaning given to it in **section 7**

administrative error, in relation to the granting of a visa or permit, has the meaning given to it in **section 5**

administrative fine has the meaning given to it in **section 219**

aircraft means any machine that can derive support in the atmosphere from the reactions of the air, otherwise than by the reactions of the air against the earth

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arrival means,—

- (a) in relation to a craft, the arrival of the craft, whether lawfully or unlawfully, in the Cook Islands from a point outside the Cook Islands (irrespective of whether the craft lands at, hovers above, berths, moors, anchors, stops at, or otherwise arrives at any place within the Cook Islands), and **arrive** and **arrived** have corresponding meanings:
- (b) in relation to a person, the entry of the person by any means, whether lawfully or unlawfully, into the Cook Islands from a point outside the Cook Islands, and **arrive** and **arrived** have corresponding meanings

biometric information, in relation to a person, means information that comprises—

- (a) 1 or more of the following kinds of personal information:
 - (i) a photograph of all or any part of the person's head and shoulders:
 - (ii) impressions of the person's fingerprints:
 - (iii) a scan of the person's irises; and
- (b) a record, whether physical or electronic, of the personal information that is capable of being used for biometric matching

carrier, in relation to a craft,—

- (a) means the owner or charterer of the craft; and
- (b) if the owner or charterer is not in the Cook Islands, includes the agent in the Cook Islands of the owner or charterer; and
- (c) if there is no agent in the Cook Islands, includes the captain or other person in charge of the craft

certificate of identity—

- (a) means a document (other than a passport) issued by the government of any country to any person for the purposes of facilitating that person's entry into or exit from any country, being a document that—
 - (i) purports to establish the identity but not the nationality of that person; and
 - (ii) confers on that person a right to enter the country whose government has issued the document; and
- (b) includes—
 - (i) any emergency travel document or refugee travel document; and
 - (ii) any travel document issued by any international organisation for the time being specified by the Minister for the purpose of this definition

child means a person under 18 years of age

conditions include conditions precedent as well as conditions subsequent (whether imposed by an immigration officer, a designated officer, the Minister, or the High Court)

constitution means the constitution of the Cook Islands

Cook Islander has the meaning given to it in **section 21**

Cook Islands means—

- (a) the land and waters enclosed by the outer limits of the territorial sea of the Cook Islands (as provided in section 8 of the Maritime Zones Act 2018); and

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- (b) includes the contiguous zone of the Cook Islands (as described in section 10 of the Maritime Zones Act 2018)

course of study—

- (a) means—
 - (i) any course of tuition or instruction for people entitled to free enrolment and education in the Cook Islands, conducted by any government school or privately registered school; and
 - (ii) any other course of tuition or instruction conducted by any school, college, institute, university, or other body or person, and leading to any educational or vocational qualification, the attainment of which by any person would be likely to enhance the employment prospects of that person, either generally or in respect of any particular profession or occupation; and
 - (iii) any internship provided by an internship provider; and
 - (iv) in relation to any particular person, any other course of tuition or instruction if the undertaking of that course is the principal reason why that person wishes to be or is in the Cook Islands; but
- (b) does not include any course of tuition or instruction excluded, or excluded for a particular purpose, from the application of this definition and the definition of study by the regulations or immigration policy

Court means the High Court of the Cook Islands whose jurisdiction may be exercised—

- (a) by 1 or more High Court Judges; or
- (b) where this or any other Act or rules of court so provide, by—
 - (i) 3 Justices of the Peace; or
 - (ii) a Justice of the Peace; or
 - (iii) a Registrar

craft means any form of aircraft, ship, or other vehicle or vessel capable of being or intended to be used to transport any person to or from the Cook Islands from or to any country outside the Cook Islands

crew, in relation to a craft,—

- (a) means every person employed or engaged in working or providing a service in or on the craft; and
- (b) includes the person in charge of the craft

Department means the Government Department that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

dependent child, in relation to any parent or guardian who is a permanent resident, means a child who is single and who is dependent on that permanent resident, whether or not the child is a child of that person

deportation order—

- (a) means an order that contains the information described in **section 122** and that, when served on a person in accordance with **section 122(2)**, authorises the person to be deported; and
- (b) for the purposes of serving or executing an order described in **paragraph (a)**, includes a copy of the order

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designated officer means a person who is designated at a designated office by the principal immigration officer under **section 207** to perform functions and exercise powers under this Act

designated place means a place designated by the principal immigration officer under **section 188**

disembarkation means the process of physically leaving a craft, whether onto land or otherwise

education provider means a provider of a course of study (other than an internship) and,—

- (a) in relation to any school, the person or body in charge of the school:
- (b) in relation to any institution controlled by the head of the Department of State that, with the authority of the Prime Minister, is responsible for the administration of government schools, that head:
- (c) in relation to any university, the appropriate university council:
- (d) in any other case, the institution, body, or person that or who is entitled to the fees payable by or on behalf of the persons undertaking the course, or that or who would be so entitled if any such fees were payable

employee means a person who does work for an employer (whether under a contract of service or a contract for services)

employer means a person who employs or engages a person to do work, whether under a contract of service or a contract for services

exclusive economic zone of the Cook Islands has the same meaning as in section 11 of the Maritime Zones Act 2018

former Act means the Entry, Residence and Departure Act 1971–1972

gang of concern means a group of 3 or more persons—

- (a) who collectively identify themselves by adopting a group identity that uses 1 or more of the following:
 - (i) a common name:
 - (ii) an identifying sign or symbol:
 - (iii) a rite, ritual, pledge, or similar thing to determine membership:
 - (iv) a slogan:
 - (v) a tattoo or other physical marking:
 - (vi) a style or colour of clothing:
 - (vii) a hairstyle:
 - (viii) a hand sign:
 - (ix) graffiti; and
- (b) who use the group identity to do 1 or more of the following:
 - (i) create an atmosphere of fear or intimidation:
 - (ii) engage in violence against persons or other gang members:
 - (iii) engage in or support engagement in criminal activities:
 - (iv) seek to exercise control over particular locations or regions:
 - (v) seek to exercise control over particular activities or events:
 - (vi) seek to exercise control over particular people or groups; and
- (c) who the principal immigration officer has reason to suspect—

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- (i) is a risk to the order or security of the Cook Islands; or
- (ii) comprises persons who it would be contrary to the national interest to allow to stay in the Cook Islands

government agency—

- (a) means—
 - (i) a department within the meaning of section 4 of the Public Service Act 2009; or
 - (ii) a State owned enterprise or a State owned company; and
- (b) includes the Cook Islands Police

grant, in relation to any visa or permit, includes the situation where this Act, or the regulations, deem a grant of the relevant visa or permit to occur

holder, in relation to a visa or permit granted under this Act,—

- (a) means the person in respect of whom the visa or permit is granted; but
- (b) does not include a person whose visa or permit has expired or been cancelled

honorary permanent resident means a person who is awarded the status of honorary permanent resident under **section 27**

immigration costs has the meaning given to it in **section 82(2)**

immigration officer means a person who is designated as an immigration officer under **section 207**, and includes the principal immigration officer

immigration status means the status of a person under this Act, including whether the person—

- (a) is a person with continuing rights; or
- (b) holds a visa or permit and, if so, what class and type of visa or permit the person holds, and any conditions of the visa or permit; or
- (c) is—
 - (i) lawfully in the Cook Islands and, if so, what class and type of visa or permit the person holds, and any conditions of the visa or permit; or
 - (ii) unlawfully in the Cook Islands, within the meaning of **section 6**

imprisonment means any form of detention or custody by which a person is deprived of liberty for a continuous period, including home detention, detention or custody in a psychiatric institution or hospital, and military custody, but does not include detention or custody under this Act

in transit, in relation to any person, means arriving in the Cook Islands from another country while in transit to a third country without—

- (a) having an intention to stay in the Cook Islands; or
- (b) having permission to stay in the Cook Islands

independent third party, in relation to a child, means a person nominated by the child or the child's parents or guardians, or appointed by the principal immigration officer, to support the child

intern means a student or trainee who is engaged by an internship provider, under a written agreement, with or without pay, in order to—

- (a) satisfy the requirements for a particular qualification; or

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- (b) gain work experience during or immediately following the receipt of a qualification

internship provider means any person or organisation that engages an intern under a written agreement, with or without pay, for the purpose of supporting the intern to—

- (a) satisfy the requirements for a particular qualification; or
- (b) gain work experience during or immediately following the receipt of a qualification

invitation to apply means an invitation to apply for a visa or permit

medical evacuation in relation to any person means travel to another country for urgent medical treatment that—

- (a) cannot be carried out in the Cook Islands; or
- (b) the Ministry of Health has determined is better carried out in that other country to which the person has been referred for medical treatment

member of a gang of concern means a person who the Minister or the principal immigration officer has reason to suspect—

- (a) is a member or participant in the activities of a gang of concern; or
- (b) has applied to be a member of a gang of concern

Minister means the Minister of the Crown who, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

non-Cook Islander means a person who is not a Cook Islander within the meaning of **section 21**

onshore, in relation to an applicant for a visa or permit, means that the applicant is in the Cook Islands (other than in a designated place)

passenger, in relation to a craft, means a person, other than a member of the crew, who is carried in or on the craft with the consent of the carrier or the person in charge of the craft

passport means a document that is issued by or on behalf of the government of any country and that is recognised by the Government of the Cook Islands as a passport, being a document that—

- (a) purports to establish the identity and nationality of the holder; and
- (b) confers on the holder the right to enter the country whose government has issued the document; and
- (c) has not expired

permanent resident has the meaning given to it in **section 34**

permanent resident by descent has the meaning given to it in **section 35**

permit means an entry in the records of the Department made in accordance with **section 88**

permit waiver means a waiver of the requirement for a person to hold a permit to stay in the Cook Islands

person in charge, in relation to a craft, means the master, captain, pilot in command, driver, or other person for the time being responsible for the craft

person with continuing rights means (subject to the qualifications referred to in **sections 22, 28, and 45**)—

- (a) a Cook Islander:

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(b) an honorary permanent resident:

(c) a permanent resident

person without continuing rights means a person who is not a person with continuing rights

personal service, in relation to any document or notice served or to be served on a person, means personal delivery of the document or notice to that person or, where the person refuses to accept the document or notice, the bringing of the document or notice to that person's attention

prescribed means prescribed by the regulations

primary and secondary school education means education that is—

(a) provided at any government or privately registered school in the Cook Islands; and

(b) provided to a person at any time during the period beginning on the person's fifth birthday and ending on 1 January following the person's 18th birthday

prohibited person means a person to whom **section 57 or 58** applies

responsible adult means an adult appointed under **section 16**

review proceedings means proceedings by way of an application for—

(a) judicial review; or

(b) certiorari, mandamus, or prohibition; or

(c) a declaratory judgment

scheduled international service means a series of flights or voyages that are—

(a) performed by a craft for the transport of passengers, cargo, or mail between the Cook Islands and 1 or more points in any other country or territory, if the flights or voyages are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable; and

(b) operated in such a manner that each flight or voyage is open to use by members of the public

ship—

(a) means a ship, boat, or other vessel used in navigation, (whether or not it has any means of propulsion); and

(b) includes—

(i) a hovercraft or any other thing deriving full or partial support in the atmosphere from the reaction of the thing against the surface of the water over which it operates; and

(ii) a submarine or other submersible

stowaway means a person who is carried in or on a craft without the consent of the carrier or the person in charge of the craft

study does not include undertaking a course excluded, or excluded for a particular purpose, for the purposes of the application of this definition and the definition of course of study by the regulations or immigration policy

territorial sea of the Cook Islands has the same meaning as in section 8 of the Maritime Zones Act 2018

the regulations means any regulations made under this Act

transit passenger means a person who arrives in the Cook Islands from another country while in transit to another overseas destination, not intending to enter or remain in the Cook Islands

unlawfully in the Cook Islands, in relation to a person, has the meaning given to it in **section 6**

visa means an entry in the records of the Department made in accordance with **section 88**

visa waiver means a waiver of the requirement to hold a visa permitting travel to the Cook Islands

warrant of commitment means a warrant of commitment issued under **section 137, 138, or 140**

work—

- (a) means any activity that—
 - (i) is undertaken for gain or reward; and
 - (ii) is not excluded, or excluded for a particular purpose, from the application of this definition by the regulations or immigration policy; and
- (b) in relation to a person in the Cook Islands,—
 - (i) means to undertake any activity in the Cook Islands for gain or reward; and
 - (ii) includes an activity undertaken in return for accommodation or board or living allowances; but
 - (iii) does not include—
 - (A) an internship, if the intern is the holder of a study visa and a study permit and is complying with the conditions of that visa or permit; or
 - (B) any other activity prescribed for the purposes of this subparagraph by the regulations or immigration policy

working day means any day other than—

- (a) a public holiday; or
- (b) a Saturday or a Sunday; or
- (c) a day between 24 December in any year and 3 January the following year.

5 Meaning of granted as a result of an administrative error

(1) In this Act, a visa is granted as a result of an **administrative error** if—

- (a) it is granted to a Cook Islander; or
- (b) it is granted to a permanent resident or an honorary permanent resident; or
- (c) it is granted to a prohibited person (unless **section 57(3) or (4)** applies); or
- (d) the person granting it intended to grant a visa of a type other than the one that was actually granted; or

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- (e) it is granted for a period exceeding the period specified in the regulations or immigration policy for visas of that type (unless the Minister or an immigration officer deliberately and properly granted it as an exception to immigration policy); or
 - (f) it is granted on the basis of the person holding a visa that was granted as a result of an administrative error; or
 - (g) it is granted in contravention of immigration policy (unless the Minister or an immigration officer deliberately and properly granted it as an exception to immigration policy).
- (2) In this Act, a permit is **granted as a result of an administrative error** if—
- (a) it is granted to a Cook Islander; or
 - (b) it is granted to a permanent resident or an honorary permanent resident; or
 - (c) it is granted to a prohibited person (unless **section 57(3) or (4)** applies); or
 - (d) it is granted in contravention of immigration policy (unless the Minister or an immigration officer deliberately and properly granted it as an exception to immigration policy); or
 - (e) it is granted on the basis of, or in conjunction with,—
 - (i) a visa or permit that was itself granted on the basis of an administrative error; or
 - (ii) a visa or permit that was granted for a period exceeding the period specified in the regulations or immigration policy for a visa or permit of that type (unless the Minister or an immigration officer intentionally granted the visa or permit as an exception to immigration policy); or
 - (iii) a visa or permit of a class or type other than that intended to be granted.

6 Meaning of unlawfully in the Cook Islands

- (1) In this Act, a person is **unlawfully in the Cook Islands** if the person is in the Cook Islands, and is a person without continuing rights and—
- (a) the person is not—
 - (i) the holder of a visa granted under this Act; or
 - (ii) a person exempt from holding a visa or to whom a visa waiver applies; or
 - (b) the person is not—
 - (i) the holder of a permit; or
 - (ii) a person exempt from holding a permit or to whom a permit waiver applies; or
 - (c) the person is a person to whom **section 91(5)** applies.
- (2) To avoid doubt, a person ceases to hold a visa or permit or an exemption from a requirement to hold a visa or permit or a waiver of a requirement to hold a visa or permit if the visa or permit or exemption or waiver—
- (a) is cancelled under **section 87**; or
 - (b) has expired.

7 Meaning of absolute discretion of decision maker

- (1) If a provision of this Act provides that a matter or decision is in the **absolute discretion** of the decision maker concerned, it means that—
- (a) the matter or decision may not be applied for; and
 - (b) if a person purports to apply for the matter or decision, there is no obligation on the decision maker to—
 - (i) consider the purported application; or
 - (ii) inquire into the circumstances of the person or any other person; or
 - (iii) make any further inquiries in respect of any information provided by, or in respect of, the person or any other person; and
 - (c) whether the purported application is considered or not,—
 - (i) the decision maker is not obliged to give reasons for any decision relating to the purported application, other than the reason that this section applies; and
 - (ii) **section 76** of this Act (which requires the giving of reasons for decisions) and section 25 of the Official Information Act 2008 (which gives persons a right of access to reasons for decisions affecting that person) do not apply in respect of the purported application.
- (2) **Subsection (1)(c)(i)** applies to any decision made in relation to a purported application, whether the decision was made before or after the commencement of that subsection.

8 Act binds the Crown

This Act binds the Crown.

Part 2
General provisions

Subpart 1—Persons unlawfully in Cook Islands

9 Obligation of persons unlawfully in Cook Islands to leave

- (1) A person who is unlawfully in the Cook Islands has an obligation to leave the Cook Islands.
- (2) The obligation under **subsection (1)** arises whether or not the person is aware of the obligation, or of the implications of not meeting it, and—
- (a) that obligation, and any liability of the person to removal or deportation or other action under this Act, is not affected by any failure or alleged failure of the principal immigration officer to communicate the obligation and related information under **section 10**; but
 - (b) nothing in **paragraph (a)** prevents any action from being brought in respect of such a failure or alleged failure in proceedings that are not directed towards preventing the removal or deportation of any person.

10 Duty of principal immigration officer to communicate obligation to leave Cook Islands

- (1) The principal immigration officer must take reasonable steps to communicate to persons who are seeking visas to travel to and enter the Cook Islands or permits to stay in the Cook Islands—
 - (a) the obligation to leave the Cook Islands created by **section 9**; and
 - (b) that a person who fails to meet that obligation is liable to removal.
- (2) Without limiting the means by which the principal immigration officer may communicate those matters, he or she takes reasonable steps to communicate the information required by **subsection (1)** if he or she provides that information in any of the following ways:
 - (a) at offices where visas or permits are granted, by way of notices that can be readily seen by persons to whom it is likely to be of relevance;
 - (b) on application forms for visas or permits;
 - (c) in designated areas, by way of notices that can be readily seen by all arriving temporary entrants;
 - (d) in material provided by the Department to persons who are interested in travelling to the Cook Islands;
 - (e) by providing the person with information on their permitted length of stay (for example, by an endorsement in the person's passport indicating that the person is able to stay for a specified period only).
- (3) The principal immigration officer may communicate the information in 1 or more languages as he or she thinks fit.

Subpart 2—Immigration policy

11 Immigration policy

- (1) The Minister may issue immigration policy of any kind relating to the implementation of any provision of this Act or the regulations.
- (2) Immigration policy issued by the Minister under **subsection (1)** has no effect without the approval of Cabinet.
- (3) Immigration policy may not be inconsistent with this Act or the regulations.
- (4) Immigration policy issued by the Minister under this section is a statement of Government policy and the rules and practice of the Department, but is not a regulation.
- (5) Immigration policy takes effect from—
 - (a) the date on which it receives Cabinet approval; or
 - (b) a date specified in the policy as being the date on which it comes into effect, which must not be earlier than the date on which it receives Cabinet approval.
- (6) Applications for different types of visas or permits that are made before any relevant immigration policy takes effect may be determined in accordance with that immigration policy when that policy takes effect.
- (7) **Subsection (6)** does not apply to applications of a kind specified in the policy as applications to which that subsection does not apply.

12 Publication of immigration policy

- (1) The principal immigration officer must take reasonable steps to publish immigration policy.
- (2) Nothing in **subsection (1)** requires the making available of information that could properly be withheld in accordance with the provisions of the Official Information Act 2008, were a request to be made for the information under that Act.

13 Legal status of immigration policy and related matters

No decision under this Act or the regulations is invalid or subject to judicial review or appeal on the grounds that—

- (a) it is inconsistent with immigration policy; or
- (b) the decision maker failed to apply or take into account immigration policy when making a decision about an application.

Subpart 3—Collection of biometric and other information

Biometric information

14 Use of biometric information in decision making

Biometric information required from persons in accordance with this Act may—

- (a) be used to—
 - (i) establish a record of a person's identity; or
 - (ii) establish or verify a person's identity; or
 - (iii) assist in decision making under this Act:
- (b) be shared with other agencies in accordance with **Part 14**.

15 Collection and storage of biometric information

- (1) Biometric information collected under this Act may be collected, using an automated system or otherwise, by—
 - (a) an immigration officer; or
 - (b) an agent or a person on behalf of an immigration officer.
- (2) Biometric information collected under this Act must be stored in accordance with **Part 14**.

Subpart 4—Children generally

16 Principal immigration officer may appoint independent third party to represent interests of child who is not Cook Islander

The principal immigration officer may appoint an independent third party to represent the interests of a child in relation to any immigration matter, if the child is not a Cook Islander and has no parent or guardian living in the Cook Islands.

17 Responsibilities of responsible parent for child's immigration status

- (1) The responsible parent of a child who is not a Cook Islander is responsible for meeting the obligations of the child under this Act and the regulations, including—
 - (a) ensuring that the child is at all times lawfully in the Cook Islands; and
 - (b) providing for the child's welfare.
- (2) In this section, **responsible parent** is a person with parental responsibilities within the meaning of the Family Protection and Support Act 2017.

18 Child born in Cook Islands to parents who are not Cook Islanders

- (1) The parents of a child born in the Cook Islands must, if neither parent is a Cook Islander, as soon as practicable after the birth of the child,—
 - (a) register the child with an immigration officer; and
 - (b) provide that officer with the prescribed information required to be provided on registration.
- (2) Any child registered with an immigration officer under **subsection (1)** must be provided with an immigration status that the principal immigration officer considers appropriate.
- (3) The requirement to register a child under **subsection (1)** is an additional requirement to any other requirement that applies to the parents of a child under Cook Islands law.

Subpart 5—Administrative matters

Service of notices

19 Service of notices

- (1) A notice is **served** if it is—
 - (a) delivered orally by an immigration officer or a designated officer whether the receiving person purports to have accepted it or otherwise;
 - (b) delivered personally by an immigration officer or a designated officer, whether the receiving person purports to have accepted it or otherwise;
 - (c) sent by email to the person's last known email address, at the time the email is sent;
 - (d) sent by letter to the person's last known address, three days after the letter was posted;
 - (e) sent by electronic telecommunication mechanism to the person's last known telephone number, at the time it is sent.
- (2) The **last known** email address, address, or telephone number of a person is the email address, address, or telephone number that the Department has access to from previous correspondence, from an application, or from the person's arrival card or that the Department finds in its records or by other means.
- (3) If there is any inconsistency between this section and rules of Court, this section prevails.

20 Payment of fees and charges

All fees and charges collected under this Act or the regulations must be paid into a public account or a trust account established under and operated in accordance with the Ministry of Finance and Economic Management Act 1995–96.

**Part 3
Cook Islanders**

21 Meaning of Cook Islander

In this Act, **Cook Islander**—

- (a) means a person who is part of the Polynesian race indigenous to the Cook Islands; and
- (b) includes—
 - (i) a person descended from a person referred to in **paragraph (a)**; and
 - (ii) a child adopted by a Cook Islander in a manner recognised by Cook Islands law.

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

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

- (1) Every Cook Islander has the right to travel to, enter, and stay in the Cook Islands at any time.
- (2) Nothing in this Act (other than **subsection (3) and sections 23(2), 24(5) and regulations made under section 228**) qualifies the right set out in **subsection (1)**, and—
 - (a) no other provision of this Act that is inconsistent with that right applies to a Cook Islander; and
 - (b) no Cook Islander is liable under this Act to removal or deportation from the Cook Islands in any circumstances; and
 - (c) no Cook Islander requires a visa or permit.
- (3) However, a Cook Islander must comply with—
 - (a) **sections 23(1) and 24(5)**; and
 - (b) the arrival or departure requirements set out in **Part 9**.

23 How to exercise right under section 22

- (1) For the purpose of exercising the right under **section 22** to travel to, enter, and stay in the Cook Islands, a Cook Islander must have their passport endorsed under **section 24**.
- (2) If a Cook Islander does not have their passport endorsed under **section 24**, they may be treated as a person without continuing rights for the purposes of this Act.

24 Cook Islanders must prove their status and have passport endorsed

- (1) A Cook Islander must prove their status as a Cook Islander to the satisfaction of the principal immigration officer.

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- (2) The following documents may be produced by a person in order to prove their status:
- (a) an original or certified copy of—
 - (i) their own birth certificate; and
 - (ii) the birth certificates of their Cook Islands parent or parents, grandparent or grandparents, or great-grandparent or great-parents, or great-great-grandparent or great-great-grand parents:
 - (b) if the documents referred to in **paragraph (a)** are not available, evidence of a completed adoption of the person by a Cook Islander that would be recognised under Cook Islands law:
 - (c) if the documents referred to in **paragraphs (a) and (b)** are not available or are insufficient to prove the person’s status as a Cook Islander, a certificate issued by the Registrar of the High Court stating that the person is a Cook Islander.
- (3) If a person proves they are a Cook Islander to the satisfaction of the principal immigration officer, the principal immigration officer must, on presentation of the person’s passport, endorse the passport to state that the person is a Cook Islander.
- (4) If a person’s passport is endorsed to state that they are a Cook Islander, any subsequent passport issued to that person may also be endorsed, without further inquiry, and in the absolute discretion of the principal immigration officer, to state that the person is a Cook Islander.
- (5) However, if at any time the principal immigration officer has reasonable grounds to believe that the endorsement was obtained as a consequence of deception or fraud,—
- (a) the principal immigration officer may give notice to the passport holder that the endorsement is cancelled; and
 - (b) the holder may thereafter be treated as a person without continuing rights.

25 Place of endorsement

The endorsement of a passport under **section 24** must be done at a place that is not a designated place.

26 Registrar of High Court to keep record of persons to whom certificate issued under section 24(2)(c)

- (1) The Registrar of the High Court must maintain a record of the names and addresses of Cook Islanders to whom the Registrar has issued a certificate under **section 24(2)(c)**.
- (2) The Registrar must make available copies of the register or extracts of that register to the Department, on request.

Part 4

Honorary permanent residents

27 How person may become honorary permanent resident

- (1) In recognition of outstanding service, the Queen's Representative may, by Order in Executive Council, confer on a person as an award the status of honorary permanent resident.
- (2) A person who is awarded the status of honorary permanent resident must be given a certificate recording this.
- (3) The power conferred by this section may be exercised only on the recommendation of the Minister, acting in the Minister's absolute discretion, after being satisfied that—
 - (a) the person—
 - (i) has by their work or service been of outstanding benefit to the people of the Cook Islands, or to the national interests of the Cook Islands; or
 - (ii) has contributed substantially to the economic or social or cultural development of the Cook Islands; and
 - (b) that public recognition of that work or service is appropriate; and
 - (c) it would be unreasonable in all the circumstances to require the person to apply to become a permanent resident.
- (4) An award made under this section must be published in a newspaper in general circulation within the Cook Islands within 14 days after it is made.

28 Honorary permanent residents may travel to, enter, and stay in Cook Islands at any time

- (1) Every honorary permanent resident has the right to travel to, enter, and stay in the Cook Islands at any time.
- (2) Nothing in this Act (other than **subsection (3) and sections 29(2) and 30(5)** and regulations made under **section 228**), qualifies the right declared in **subsection (1)**, and—
 - (a) no other provision of this Act that is inconsistent with that right applies to an honorary permanent resident; and
 - (b) no honorary permanent resident is liable to deportation under this Act unless his or her honorary permanent residence status is first revoked; and
 - (c) no honorary permanent resident requires a visa or a permit.
- (3) However, an honorary permanent resident must—
 - (a) comply with **sections 29(1) and 30**; and
 - (b) comply with the arrival and departure requirements set out in **Part 9**.

29 How to exercise right under section 28

- (1) For the purpose of exercising the right under **section 28** to travel to, enter, and stay in the Cook Islands, an honorary permanent resident must have their passport endorsed under **section 28**.
- (2) If an honorary permanent resident does not have their passport endorsed under **section 28**, they may be treated as a person without continuing rights for the purposes of this Act.

30 Honorary permanent residents must prove their status and have passport endorsed

- (1) An honorary permanent resident must prove their status as an honorary permanent resident to the satisfaction of the principal immigration officer.
- (2) The following documents may be produced by the person in order to prove their status:
 - (a) an original or certified copy of the certificate or letter of grant signed by the Queen's Representative conferring the status of honorary permanent resident:
 - (b) a certified copy of an entry from a newspaper circulating in the Cook Islands at the time notifying readers that the person has been granted the status of honorary permanent resident:
 - (c) any other document accepted, in the absolute discretion of the principal immigration officer, as sufficient evidence that the person has the status of an honorary permanent resident.
- (3) If a person proves that they are an honorary permanent resident to the satisfaction of the principal immigration officer, the principal immigration officer must, on presentation of the person's passport, endorse the passport to state that the person is an honorary permanent resident.
- (4) If a person's passport is endorsed to state that they are an honorary permanent resident, any subsequent passport issued to that person may be endorsed without further inquiry, and in the absolute discretion of the principal immigration officer, to state that the person is an honorary permanent resident.
- (5) However, if at any time the principal immigration officer has reasonable grounds to believe that the endorsement was obtained as a consequence of deception or fraud,—
 - (a) the principal immigration officer may give notice to the passport holder that the endorsement is cancelled; and
 - (b) the holder may thereafter be treated as a person without continuing rights.
- (6) The principal immigration officer must keep a record of persons who are honorary permanent residents to support the effective functioning of this Act.

31 Place of endorsement

The endorsement of a passport under **section 30** must be done at a place that is not a designated place.

32 Honorary permanent residents may have status revoked

- (1) An honorary permanent resident may have his or her status as an honorary permanent resident revoked under **section 33**.
- (2) A person whose status as an honorary permanent resident is revoked—
 - (a) ceases to be entitled to the right set out in **section 28(1)**; and
 - (b) must be treated as a person without continuing rights.
- (3) If a person's status as an honorary permanent resident is revoked, an endorsement in their passport that they are an honorary permanent resident—
 - (a) is void; and
 - (b) may be removed, crossed out, or obliterated by the principal immigration officer.

33 Order in Council may revoke honorary permanent residence status

- (1) The Queen's Representative may, by Order in Executive Council, made on the joint recommendation of the Minister and the Solicitor-General, revoke the grant of honorary permanent residence status to any person.
- (2) The Minister and the Solicitor-General may make a joint recommendation if they each believe on reasonable grounds that—
 - (a) the holder of honorary permanent residence status (the holder) has gained their honorary permanent residence status by fraud; or
 - (b) the holder is a threat to the security, defence, or public order of the Cook Islands; or
 - (c) the holder has engaged in, or claimed responsibility for, an act of terrorism; or
 - (d) the holder is or was a member of, or is an adherent of, any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism; or
 - (e) the holder has, or will, become subject to immigration-related sanctions imposed by the United Nations; or
 - (f) the holder has by their conduct brought their status as an honorary permanent resident into public disrepute.

**Part 5
Permanent residents**

34 Who is a permanent resident

A **permanent resident** is a person who—

- (a) is a permanent resident by descent; or
- (b) is granted permanent residence under **section 42** and, if 18 years or over, has taken the oath required by **section 44**; or
- (c) has been granted permanent residence status by the issue of a certificate by the Minister under **section 38** and, if 18 years or over, has taken the oath required by **section 44**.

35 Permanent residents by descent

A person is a permanent resident by descent if he or she was born in the Cook Islands and—

- (a) either or both of his or her parents were permanent residents of the Cook Islands at the date of the person's birth; or
- (b) in the case of a child who was born after the death of the child's father to a mother who was not a permanent resident at the date of birth of the child, the child's father was a permanent resident at the date of the father's death; or
- (c) the person was adopted by a person who at the date of adoption had the status of permanent resident.

36 Certain children born outside Cook Islands to be treated as born inside the Cook Islands

- (1) This section applies to a child born outside the Cook Islands who has at least 1 parent with permanent residence, and who would have been born inside the Cook Islands if there had not been a medical evacuation of the child's mother to another country in order to give birth or receive medical treatment.
- (2) A child to whom this section applies must be treated for the purposes of this Act as if they had been born in the Cook Islands.

Total number of permitted permanent residents

37 Total number of permanent residents that may be permitted limited to 650 persons

- (1) The total number of persons who may be permanent residents of the Cook Islands at any one time is limited to 650.
- (2) The number specified in **subsection (1)** does not include persons—
 - (a) who are permanent residents by descent; or
 - (b) granted permanent residence as a consequence of being a spouse of a Cook Islander or permanent resident or an eligible child; or
 - (c) granted permanent residence under **section 42**; or
 - (d) known to be aged 75 years or over.

38 Eligibility for grant of permanent residence by certificate

- (1) The following are the 3 categories of persons who are granted permanent residence by certificate on application, as a consequence of being eligible for permanent residence:
 - (a) a person who is a permanent resident in their own right;
 - (b) a person who is a permanent resident as a consequence of being a spouse of a Cook Islander or permanent resident;
 - (c) a person who is a permanent resident as a consequence of being an eligible child.
- (2) The criteria that a person must satisfy in order to be eligible for the grant of permanent residence under any of the categories set out in subsection (1) are prescribed in the regulations.
- (3) The Minister must—
 - (a) decide whether a person is eligible for the grant of permanent residence by certificate in accordance with the procedures and criteria prescribed in the regulations; and
 - (b) if the person is eligible under the regulations for the grant of permanent residence by certificate, decide that they are so eligible; and
 - (c) grant the person permanent residence by certificate in accordance with the procedure set out in the regulations, and subject to the provisions of this Act.

39 Process to be followed to apply for permanent residence (other than by descent)

- (1) The process that must be followed to apply for permanent residence (other than through descent) is the process set out in 1 or more of the following:

- (a) this Act;
 - (b) the regulations;
 - (c) immigration policy.
- (2) The process referred to in **subsection (1)** may, without limitation, include—
- (a) providing for the lodging of expressions of interest by persons wishing to apply for permanent residence;
 - (b) providing mechanisms for assessing the number of expressions of interest against criteria to allow applications for permanent residence to be invited;
 - (c) providing mechanisms for consulting on applications for permanent residence with Ministers of the Crown, government agencies, traditional chiefs, or other relevant persons or groups;
 - (d) providing mechanisms to enable applications for permanent residence to be ranked to enable the available number of positions to be filled;
 - (e) providing for the lapse of applications.

40 Timing of lodging expressions of interest for permanent residence in own right and as consequence of being spouse

- (1) The Minister must, at least once every 3 years, invite from the public, in the prescribed manner, expressions of interest from persons who wish to apply for permanent residence in their own right.
- (2) **Subsection (1)** does not apply if—
- (a) no permanent residence certificates can be granted under **section 38** to persons in their own right because the number of permanent residents is at, or is above, the maximum number of persons with permanent resident status allowed at any one time by **section 37(1)**; or
 - (b) the Minister considers there are exceptional circumstances arising from a public health emergency, a natural disaster, or public disorder that justify not seeking expressions of interest within the relevant period.
- (3) The Minister must, at least once every 3 years, invite expressions of interest from the public, in the prescribed manner, from persons who wish to be considered for permanent residence as a consequence of being a spouse of a Cook Islander or permanent resident.
- (4) **Subsection (3)** does not apply if the Minister considers there are exceptional circumstances arising from a public health emergency, a natural disaster, or public disorder that justify not seeking expressions of interest within the relevant period.
- (5) In circumstances where expressions of interest have not been sought due to the operation of **subsection (2)(a)**, this reason must be publically notified and that notification will operate to restart the 3-year period referred to in **subsection (1)**.
- (6) In circumstances where expressions of interest have not been sought due to the operation of **subsection (2)(b) or (4)**, the Minister must invite expressions of interest as soon as practicable after the exceptional circumstances have passed.

- 41 Timing of applications by eligible children and persons wishing to be recognised as permanent residents by descent**
- (1) A child may at any time apply for permanent residence by certificate on the grounds that they are an eligible child.
 - (2) Any person may at any time apply to the principal immigration officer, in accordance with any prescribed procedures, to be recognised for official purposes as a permanent resident by descent.
- 42 Minister may grant non-Cook Islanders permanent residence status in Minister's absolute discretion**
- (1) The Minister may at any time, in his or her absolute discretion, grant a non-Cook Islander permanent residence by certificate.
 - (2) The power conferred by **subsection (1)** overrides any limits or restrictions or procedures set out or referred to in—
 - (a) **sections 37 to 40**; and
 - (b) any criteria or limitations or procedures set out or referred to in the regulations.
- 43 When permanent residence is granted by certificate under section 38 or 42**
- For the purposes of this Act and the regulations, the date on which permanent residence is granted by certificate under **section 38 or 42** is,—
- (a) in the case of a child the date on which a permanent residence certificate for that person is signed by the Minister;
 - (b) in the case of a person aged 18 years or over who the Minister advises is eligible for permanent residence, the date on which the person takes the oath required by **section 44**.
- 44 Certain adults eligible for permanent residence required to take oath**
- (1) A person aged 18 years or older who the Minister has advised is eligible for permanent residence under **section 38** or who is advised that they will be granted permanent residence under **section 42** must, within 12 months of the date on which the person receives that advice, take an oath in the prescribed form before the Queen's Representative.
 - (2) If a person fails to comply with **subsection (1)**, they are disqualified from becoming a permanent resident, unless the person was not provided with an opportunity to take the oath.
 - (3) For the avoidance of doubt, a permanent resident by descent is not required to take the oath.
- 45 Permanent residents may travel to, enter, and stay in Cook Islands at any time**
- (1) Every permanent resident has the right to travel to, enter, and stay in the Cook Islands at any time.
 - (2) Nothing in this Act (other than **subsection (3)** and **sections 46(2) and 47(5)** and regulations made under **section 228**) qualifies the right declared in **subsection (1)**, and—

- (a) no other provision of this Act that is inconsistent with that right applies to a permanent resident; and
 - (b) no permanent resident is liable under this Act to be removed or deported from the Cook Islands unless his or her permanent residence status is first revoked; and
 - (c) no permanent resident requires a visa or permit.
- (3) However, a permanent resident must—
- (a) comply with **sections 46(1) and 47**; and
 - (b) comply with the arrival and departure requirements set out in **Part 9**.

46 How to exercise right under section 45

- (1) For the purpose of exercising their right under **section 45** to travel to, enter, and stay in the Cook Islands, a permanent resident must have their passport endorsed under **section 47**.
- (2) If a permanent resident does not have their passport endorsed under **section 47**, they may be treated as a person without continuing rights.

47 Permanent residents must prove their status and have their passport endorsed

- (1) A permanent resident must prove their status as a permanent resident to the satisfaction of the principal immigration officer.
- (2) The following documents may be produced by the person to prove their status:
- (a) an original or certified copy of the certificate signed by the Minister conferring the status of permanent residence;
 - (b) their passport, or a certified copy of their passport, endorsed with a statement indicating that they are a permanent resident of the Cook Islands;
 - (c) any other documents that are acceptable, in the absolute discretion of the principal immigration officer, as sufficient evidence that the person is a permanent resident.
- (3) If a person proves that he or she is a permanent resident to the satisfaction of the principal immigration officer, the principal immigration officer must, on presentation of the person's passport, endorse the passport to state that the person is a permanent resident.
- (4) If a person's passport is endorsed to state that the person is a permanent resident, any subsequent passport issued to that person may be endorsed without further inquiry, and in the absolute discretion of the principal immigration officer, to state that the person is a permanent resident.
- (5) However, if at any time the principal immigration officer has reasonable grounds to believe that the endorsement was obtained as a consequence of deception or fraud,—
- (a) the principal immigration officer may give notice to the passport holder that the endorsement is cancelled; and
 - (b) the holder may be treated as a person without continuing rights.
- (6) The principal immigration officer must keep a record of persons who are permanent residents to support the effective functioning of this Act.

48 Place of endorsement

The endorsement of a passport under **section 47** must be done at a place that is not a designated place.

49 Certain permanent residents may have status revoked

- (1) A permanent resident (other than a permanent resident by descent) may have their status as a permanent resident revoked in the circumstances set out in **sections 50 and 51**.
- (2) A person whose status as a permanent resident is revoked—
 - (a) ceases to be entitled to the right set out in **section 45(1)**; and
 - (b) must be treated as a person without continuing rights.
- (3) If a person's status as a permanent resident is revoked, an endorsement in their passport that they are a permanent resident—
 - (a) is void; and
 - (b) may be removed, crossed out, or obliterated by the principal immigration officer.

50 Application to High Court to revoke permanent residence status

A Judge of the High Court may, on the application of the Minister, revoke the permanent residence status of any person (other than a permanent resident by descent) if the Judge is satisfied that—

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

51 Minister may revoke permanent residence status

The Minister may revoke a person's permanent residence status (other than permanent residence by descent) if the person has been outside the Cook Islands continuously for more than 3 years and the Minister is satisfied that the person has ceased to make their home in the Cook Islands.

52 When permanent resident ceases to make Cook Islands their home

In determining whether a person has ceased to make their home in the Cook Islands, the Judge of the High Court or the Minister, as the case requires, may consider the following:

- (a) the tax status of the person and whether they pay any tax in the Cook Islands;
- (b) the amount of time the person spends in the Cook Islands and any reasons for their absence;
- (c) the primary place of residence of the person;
- (d) whether the person has a home in the Cook Islands;
- (e) the extent of any assets owned by the person that are located in the Cook Islands;
- (f) the extent of the person's business interests and investments that are located in the Cook Islands;
- (g) any other matters the Judge of the High Court or the Minister, as the case requires, considers relevant.

Part 6

Persons without continuing rights

Subpart 1—Fundamental requirements

53 Persons without continuing rights must hold visa to travel to and enter and permit to stay in Cook Islands

- (1) A person without continuing rights may—
 - (a) travel to and enter the Cook Islands only if the person—
 - (i) is the holder of a visa granted under this Act and the travel is consistent with the conditions of the visa; or
 - (ii) is a person exempt from holding a visa or a person to whom a visa waiver applies; and
 - (b) stay in the Cook Islands only if—
 - (i) the person is the holder of a permit granted under this Act; or
 - (ii) is a person exempt from holding a permit or a person to whom a permit waiver applies.
- (2) To avoid doubt, the fact that an application for a visa or a permit or a visa or permit waiver has been made by or for any person who is onshore does not—
 - (a) make the person's presence in the Cook Islands lawful; or
 - (b) give the person a right to remain in the Cook Islands while the application is considered; or
 - (c) give the person a right to apply for or be granted any other visa or permit pending determination of the application; or
 - (d) inhibit the operation of any removal or deportation procedures under this Act that may apply to the person.

54 Obligation of persons without continuing rights to apply for permit

- (1) A person without continuing rights who arrives in the Cook Islands must apply for, and obtain, a permit to stay in the Cook Islands, unless that person is a person who is exempt, or a member of a class of persons who are exempt, from this requirement, or for whom this requirement is waived.
- (2) The grant of a permit does not place any obligation on the Minister, the principal immigration officer, or any other immigration officer to—
 - (a) extend the permit; or
 - (b) issue a further permit of the same or a different kind.

Subpart 2—Exceptions and exemptions

55 Persons exempt from requirement to obtain visa and permit

If the following persons do not have continuing rights, they are exempt from the requirement to hold a visa to travel to and entry into the Cook Islands and a permit to stay in the Cook Islands:

- (a) the Head of State of the Cook Islands and the Queen’s Representative;
- (b) the Heads of State of other countries or nations visiting the Cook Islands for official purposes associated with their role;
- (c) the official representatives and party travelling with a Head of State, and the spouse and dependants of any Head of State visiting the Cook Islands for official purposes;
- (d) any person entitled to diplomatic privileges and immunities under Part 1 or 2 of the Diplomatic Privileges and Immunities Act 1968 and their spouse and dependants with them for official purposes;
- (e) any person entitled to consular privileges and immunities under the Consular Privileges and Immunities Act 1971 and their spouse and dependants with them for official purposes;
- (f) any person entitled to privileges and immunities under the New Zealand Representative Act 1980 and their spouse and dependants with them for official purposes;
- (g) any Judge of the High Court of the Cook Islands or of the Court of Appeal of the Cook Islands and their spouse and dependants with them for official purposes;
- (h) any member of a visiting force (including members of the civilian component of a visiting force and the spouses and dependants of those persons, and crew members of any military craft transporting those people to the Cook Islands) who will stay in the Cook Islands—
 - (i) at the request or with the consent of the Government of the Cook Islands; and
 - (ii) in the ordinary course of the member’s employment.

56 Requirements for certain exempt persons to provide information to principal immigration officer

- (1) This section applies to a person who—
 - (a) is a person without continuing rights; but

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- (b) is exempt from the requirement to hold a visa to travel to and enter and a permit to stay in the Cook Islands or in respect of whom the requirement has been waived.
- (2) A person to whom this section applies must, no later than 14 days before the date of their departure or a later date set at the absolute discretion of the principal immigration officer, provide the Department with the following information:
- (a) their full name:
 - (b) their date of birth:
 - (c) their nationality:
 - (d) their travel document identification number:
 - (e) the country that issued their travel documents:
 - (f) their intended date of arrival in the Cook Islands:
 - (g) their intended method of travel to the Cook Islands:
 - (h) their intended place of entry in the Cook Islands:
 - (i) their intended place of stay in the Cook Islands:
 - (j) their intended date of departure from the Cook Islands.
- (3) A failure by any person to whom this section applies to comply with **subsection (2)** cancels the exemption from, or waiver of, the requirement for that person to obtain a visa and permit.

Subpart 3—Prohibited persons

57 Prohibited persons not eligible for visa to enter or permit to stay in Cook Islands

- (1) No visa or permit may be granted to any person without continuing rights who the Minister believes on reasonable grounds—
- (a) is likely to act or speak in an aggressive, derogatory, or racially or culturally insensitive manner to such a degree or such an extent that it may affect the well-being of the Cook Islands; or
 - (b) is likely to commit an offence in the Cook Islands that is punishable by imprisonment; or
 - (c) is a member of a gang of concern; or
 - (d) is a threat to the security, defence, or public order of the Cook Islands; or
 - (e) has engaged in, or claimed responsibility for, an act of terrorism; or
 - (f) is, or has been, a member or an adherent of any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism; or
 - (g) is, or is likely to become, subject to immigration-related sanctions imposed by the United Nations.
- (2) No visa or permit may be granted to any person without continuing rights who the principal immigration officer believes on reasonable grounds—
- (a) owes a debt to the Crown arising from their obligations, responsibilities, or entitlements under this Act or the regulations, or as a result of their actions or inactions under this Act or the regulations, or arising from an offence or penalty under the provisions of this Act or any other Act or the regulations; or

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- (b) is prohibited from entry under the provisions of this Act or has been removed or deported from any other country, regardless of whether they are subject to a prohibition or ban on re-entry to that country; or
 - (c) has been convicted of any offence, in the Cook Islands or overseas, and sentenced to a term of imprisonment of 1 year or more, regardless of how that offence and conviction was described in the overseas jurisdiction and the term of the sentence actually served; or
 - (d) has been convicted of more than 1 offence, in any 1 or more countries, for which the total periods of imprisonment imposed exceed 1 year, regardless of how those offences and convictions were described and the terms of the sentences actually served; or
 - (e) does not have an acceptable standard of health, having regard to—
 - (i) the risk they pose to public health;
 - (ii) the likely costs or demands they may impose on the Cook Islands health service.
- (3) The Minister, in the Minister's absolute discretion, may waive a prohibition set out in **subsection (1)**, subject to any conditions that he or she may impose on the waiver, or on a visa or permit granted to the person who is the subject of the waiver.
- (4) The principal immigration officer, in the principal immigration officer's absolute discretion, may waive a prohibition set out in **subsection (2)**, subject to any conditions that he or she may impose on the waiver, or on a visa or permit granted to the person who is the subject of the waiver.
- (5) Before exercising any power set out in **subsection (4)** in relation to the prohibition set out in **subsection (2)(e)**, the principal immigration officer must consult the Ministry of Health.

Notices prohibiting entry

58 Prohibition on entry where notice issued

- (1) The Minister may issue a notice under this section in respect of any person without continuing rights outside the Cook Islands who the Minister believes on reasonable grounds is intending to travel to the Cook Islands and—
- (a) is likely to act or speak in an aggressive, derogatory, or racially or culturally insensitive manner to such a degree or such an extent that it may affect the well-being of the Cook Islands; or
 - (b) is likely to commit an offence in the Cook Islands that is punishable by imprisonment; or
 - (c) is a member of a gang of concern; or
 - (d) is a threat to the security, defence, or public order of the Cook Islands; or
 - (e) has engaged in, or claimed responsibility for, an act of terrorism; or
 - (f) is, or has been, a member or an adherent of any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism; or

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- (g) is, or is likely to become, subject to immigration related sanctions imposed by the United Nations; or
 - (h) is, for any other reason, subject to a prohibition on entry set out in **section 57**.
- (2) The principal immigration officer may issue a notice under this section in respect of any person outside the Cook Islands who the principal immigration officer believes, on reasonable grounds, is intending to travel to the Cook Islands and—
- (a) owes a debt to the Crown arising from their obligations, responsibilities, or entitlements under this Act or the regulations, or as a result of their actions or inactions under this Act or the regulations, or arising from an offence or penalty under the provisions of this Act or any other Act; or
 - (b) is prohibited from entry under the provisions of this Act or has been removed or deported from any other country, regardless of whether they are subject to a prohibition or ban on re-entry into that country; or
 - (c) has been convicted of any offence, in the Cook Islands or overseas, and sentenced to a term of imprisonment of 1 year or more, regardless of how that offence and conviction were described in the overseas jurisdiction and the term of the sentence actually served; or
 - (d) has been convicted of more than 1 offence, in any 1 or more countries, for which the total periods of imprisonment imposed exceeded 1 year, regardless of how those offences and convictions were described and the terms of the sentences actually served; or
 - (e) does not have an acceptable standard of health, having regard to—
 - (i) the risk they pose to public health;
 - (ii) the likely costs or demands they may impose on the Cook Islands health service.
- (3) A notice issued under this section in respect of a person must—
- (a) state the date on which the notice is issued; and
 - (b) state the date on which the notice expires or state that it remains in force until—
 - (i) the occurrence of an event or action specified in the notice; or
 - (ii) it is revoked by the Minister or the principal immigration officer, as the case requires; and
 - (c) contain sufficient information to accurately identify the person to whom it applies, including (to the extent practicable) the following:
 - (i) the person's full name;
 - (ii) the person's date of birth;
 - (iii) the person's gender;
 - (iv) the person's nationality;
 - (v) the number of the person's passport or certificate of identity.
- (4) A person in respect of whom a notice under this section applies—
- (a) may not lawfully enter the Cook Islands; and
 - (b) must be denied entry into the Cook Islands.

59 Prohibited persons who wish to enter Cook Islands must contact principal immigration officer

A person who is prohibited from entering the Cook Islands under **section 57 or 58**, but who intends to enter, stay in, or transit through the Cook Islands, must contact the principal immigration officer to indicate that intention at least 7 days before the date on which the person proposes to enter the Cook Islands.

60 Method of delivering notice under section 58

- (1) A notice under **section 58** may be given in electronic or paper form and may be given to any person or organisation that the Minister considers has a role in ensuring that the person does not enter the Cook Islands.
- (2) A notice under this section remains in force until the expiry date stated in it, or while it is in force, as the case requires, and is not invalid just because some of the information about the person is incorrect or incomplete, if the information is sufficient to accurately identify the person to whom it is intended to apply.
- (3) To avoid doubt, a person to whom **section 57** applies is a prohibited person, regardless of whether a notice has been served on that person under **section 58**.

Part 7

Administrative provisions: applications, visas, and permits

Forms

61 Principal immigration officer to approve forms

- (1) An application for a visa, a permit, permanent residence, or any other matter under this Act or the regulations must,—
 - (a) if the principal immigration officer has approved a form for use in making an application of that kind, be made in that form:
 - (b) if the principal immigration officer has not approved a form for use for the application but has set requirements for the information to be included in the application and published those requirements, contain the information required by the principal immigration officer:
 - (c) if **paragraphs (a) and (b)** do not apply, must be in any form that, in the opinion of the principal immigration officer, enables the application to be assessed in accordance with this Act and the regulations.
- (2) A form approved under **subsection (1)(a)** may be used as part of, or in conjunction with, any other form approved under a Cook Islands Act for use in the Cook Islands.
- (3) Nothing in this Act prevents the use of forms jointly approved by the principal immigration officer and—
 - (a) the Department; or
 - (b) any other department or government agency in the Cook Islands.

Certain restrictions on right to apply for visa or permit

62 No right for person unlawfully in Cook Islands to apply for visa or permit

- (1) A person who is unlawfully in the Cook Islands may not apply for a visa or permit.
- (2) **Subsection (1)** is subject to **section 64**.

63 No right for person unlawfully in Cook Islands to work or study

- (1) A person who is unlawfully in the Cook Islands may not—
 - (a) work in the Cook Islands or in the exclusive economic zone of the Cook Islands; or
 - (b) study in the Cook Islands, except in primary or secondary school education.
- (2) This section is subject to **section 66**.

64 Minister may waive prohibition

- (1) The Minister may at any time waive the prohibition in **section 62** on a person unlawfully in the Cook Islands applying for a visa or permit.
- (2) A decision to grant a waiver under **subsection (1)** is at the Minister's absolute discretion.

Exception to ordinary rules about grant of visa or permit

65 Grant of permit or visa

- (1) The Minister may at any time grant a visa or permit of any type to a person who is unlawfully in the Cook Islands.
- (2) A decision to grant a visa or permit under **subsection (1)** is in the Minister's absolute discretion.
- (3) If the Minister grants a visa or permit under this section, the Minister may impose conditions on the grant of that visa or permit.

Exception to ordinary rules about working while unlawfully in Cook Islands

66 Grant of permission to work to person unlawfully in Cook Islands

- (1) The Minister may at any time grant a person unlawfully in the Cook Islands permission to work until—
 - (a) their removal or deportation from the Cook Islands is in effect; or
 - (b) they earlier leave the Cook Islands.
- (2) A decision to grant permission to work under **subsection (1)**—
 - (a) is in the Minister's absolute discretion and subject to any conditions the Minister considers appropriate; and
 - (b) does not change the status of the person as being unlawfully in the Cook Islands.

Applications

67 Principal immigration officer decides how applications made

The manner in which applications for a visa, a permit, an exemption, a waiver, permanent residence, or any other matter are made is, except to the extent provided in sections 68 and 69 and prescribed in the regulations, decided by the principal immigration officer.

68 Inclusion of children in parent's or guardian's immigration application

A child who is not a Cook Islander but is a dependent of an applicant for permanent residence or any visa or permit may have their application included—

- (a) in the case where their parent or guardian applies for permanent residence, in their parent's or guardian's application, but only if this is permitted by the regulations;
- (b) in the case where their parent or guardian applies for a visa or permit, in their parent's or guardian's application, but only if that is permitted by the regulations.

69 Conditions for separate immigration application by child

A child who is not a Cook Islander and who wishes to apply for permanent residence or any visa or permit, may make an application separately and independently of their parents or guardians, but only if—

- (a) a parent or guardian of the child consents; or
- (b) in the case of an application for a visa or permit (but not an application for permanent residence), the regulations permit or require the child to make a separate and independent application; or
- (c) in any case, the principal immigration officer is satisfied that there are special circumstances that justify the making of a separate and independent application by the child.

70 When application lapses

- (1) An application for a visa, permit, permanent residence, an exemption, waiver, or any other matter lapses in the prescribed circumstances.
- (2) If an application lapses, no further processing of the application is required.

71 Who has power to decide applications for visas or permits

- (1) The principal immigration officer, an immigration officer, or a designated officer may—
 - (a) grant a visa or permit or a visa or permit waiver under this Act; or
 - (b) decline an application for a visa or permit or a visa or permit waiver under this Act.
- (2) The principal immigration officer, an immigration officer, or a designated officer may, if a visa or permit was granted as a result of an administrative error, grant a new visa or permit.
- (3) Decisions on applications for a visa or permit, or a visa or permit waiver, or permanent residence may be made using automated processes in accordance with the regulations.

72 When applications must be declined

- (1) An application for a visa or permit, or a visa or permit waiver, or permanent residence must be declined if the applicant—
- (a) is a prohibited person; or
 - (b) has used a false identity; or
 - (c) has committed a fraud in the making of an application; or
 - (d) is reasonably believed not to be acting in good faith in the applicant's stated reasons for travelling to, entering, or staying in the Cook Islands; or
 - (e) does not meet any requirements under the Act, the regulations, or immigration policy, including—
 - (i) character requirements; or
 - (ii) health requirements; or
 - (iii) any other requirements for permanent residence, or the visa or permit class and type; or
 - (f) is reasonably believed to be unable to comply with the conditions associated with the visa or permit type for which they have applied; or
 - (g) is not able to gain sponsorship or provide a bond where it is required; or
 - (h) does not provide biometric information when requested; or
 - (i) has not advised an immigration officer of any change in information or any material change in circumstances during the application process, in accordance with the prescribed requirements.
- (2) **Subsection (1)** does not apply if an applicant has been given permission by the Minister, in the Minister's absolute discretion, to make the application.
- (3) Despite **subsection (1)**, the following persons must be allowed to enter the Cook Islands:
- (a) the holder of a resident visa granted in the Cook Islands;
 - (b) the holder of a resident visa arriving in the Cook Islands for a second or subsequent time as the holder of a visa.

Automated decisions

73 Automated decision making in relation to visas, etc

- (1) An automated electronic system that applies criteria predetermined in accordance with immigration policy may be used by the principal immigration officer or another immigration officer to process an application for, grant (with or without conditions), or refuse to grant, a visa or permit.
- (2) However, nothing in this section prevents an immigration officer or the Minister from imposing further conditions, or varying or cancelling conditions, on or in relation to a visa or permit granted by way of an automated electronic system.

74 Legal effect of automated decisions

If a decision to grant or refuse to grant a visa or permit, or to issue or refuse to issue an invitation to apply for a visa or permit, is made by way of an automated electronic system, that decision must for all purposes be treated as a decision of an immigration officer who is authorised to make the decision under this Act.

75 Automated decision making in advanced passenger processing

The principal immigration officer may make a decision about whether to grant a visa or permit by means of an automated electronic system that analyses the information (if any) about a person—

- (a) that is held by the principal immigration officer; or
- (b) to which the principal immigration officer has access using criteria predetermined by the principal immigration officer.

Reasons for decisions

76 Reasons for decisions

- (1) If an application by a person in the Cook Islands for a residence, work, or study class visa or permit is declined, a short summary of the reasons why the application was declined must be provided to the applicant at the time that, or as soon as practicable after, the application is declined.
- (2) If an application by a person in the Cook Islands for a visa or permit of a class different from those referred to in **subsection (1)** is declined, a short summary of the reasons why the application was declined must be supplied to the applicant, if the applicant requests it and pays the prescribed fee (if any).
- (3) The summary of reasons must be supplied as soon as practicable after the applicant requests it.
- (4) Despite **subsections (1) to (3)**, if an application for a visa or permit is declined in the absolute discretion of the decision maker, no reasons need be provided for the decision.

Conditions

77 Conditions may be imposed on visas and permits or visa or permit waivers

- (1) A visa or a permit or a visa or permit waiver may be granted subject to—
 - (a) conditions prescribed in the regulations;
 - (b) other conditions imposed by the decision maker for good reason.
- (2) The principal immigration officer or another immigration officer may, if he or she considers there is good reason to do so, remove, vary, or impose conditions in relation to any individual visa or permit or visa or permit exemption or waiver.
- (3) The principal immigration officer or an immigration officer may remove, vary, or impose conditions under **subsection (2)** in a manner that is inconsistent with the regulations or immigration policy if the principal immigration officer or immigration officer considers that there is good reason to do so.

78 Persons to comply with conditions of visa or permit

- (1) A person whose visa or permit or visa or permit waiver is issued subject to conditions must comply with those conditions.
- (2) A failure by any person to comply with the conditions of their visa or permit makes the person liable to have their visa or permit or visa or permit waiver cancelled.

Sponsorship and bonds

79 Requirement for sponsorship or payment of bond

The following persons may be required by the principal immigration officer to have a sponsor or to pay a bond:

- (a) an applicant for a visa or permit or a visa or permit waiver:
- (b) a person granted a visa or permit or a visa or permit waiver:
- (c) the holder of a visa or permit or a visa or permit waiver.

80 Bond and sponsorship obligations may differ

(1) Different sponsorship obligations may be imposed—

- (a) on different classes of applicants, different classes of persons granted visas or permits or visa or permit waivers, and different classes of holders of visas and permits; and
- (b) in respect of different visa and permit classes and types; and
- (c) in respect of different parts of the Cook Islands where applicants or other persons are intending to stay.

(2) Different amounts of bond may be required to be paid—

- (a) by different classes of applicants, different classes of persons granted visas or permits or visa or permit waivers, and different classes of holders of visas and permits; and
- (b) in respect of different visa and permit classes and types; and
- (c) in respect of different Islands within the Cook Islands where applicants or other persons are intending to stay.

81 Failure to comply with sponsorship obligations

(1) If a sponsor fails to comply with their obligations under a sponsorship and the Crown or a government agency suffers loss as a consequence, the amount of that loss is a debt due to the Crown and may be recovered accordingly.

(2) If a sponsor fails to comply with their obligations under a sponsorship, the sponsor is not entitled to act again as a sponsor unless the principal immigration officer considers that there are good reasons for allowing that person or organisation to again act as a sponsor.

82 Bond moneys

(1) Money paid to the principal immigration officer as a bond—

- (a) must be paid into a trust account established and operated in accordance with the Ministry of Finance and Economic Management Act 1995–96; and
- (b) may be used in any of the ways set out in this section.

(2) If a person who is the subject of a bond breaches conditions linked to the payment of the bond, the amount of the bond may be used by the Financial Secretary to meet or reimburse the cost of the person's arrest, detention, removal, or deportation, or any other costs incurred in immigration matters affecting the person who is the subject of the bond, or their spouse or dependants (**immigration costs**).

- (3) If the bond is paid by an employer, any amount remaining after the deductions required under **subsection (2)** may be used by the Financial Secretary to pay for (in equal proportions, if applicable) the taxes and superannuation contributions owed in respect of the person who is the subject of the bond.
- (4) However, before any payment is made under **subsection (3)**, the Financial Secretary must receive a request from the relevant department or government agency requiring the payment of money owed by or in respect of, the person who is the subject of the bond.
- (5) A bond may only be used for expenditure authorised by this section, unless the bond is forfeited under **section 84**.

83 Bond paid by third party

- (1) This section applies if a bond is paid by a person other than the subject of the bond.
- (2) The person who pays the bond may not recover the amount of the bond from the person who is the subject of the bond or from any other person.
- (3) No person may deduct amounts from the wages or entitlements of the person who is the subject of the bond or from any other person in order to recover the costs of the bond.
- (4) No person (whether or not the person who paid the bond) may use any mechanism (for example, a requirement to pay interest or provide additional services) to recover the cost, or any part of the cost, of payment of the bond.

84 Forfeiture of bond

- (1) A bond is forfeited in full if—
 - (a) the person who is the subject of the bond remains unlawfully in the Cook Islands after their permit, exemption from obtaining a permit, or permit waiver expires; or
 - (b) the Financial Secretary authorises the provision of financial assistance by the Crown to enable the bonded person to leave the Cook Islands voluntarily.
- (2) A bond that is forfeited may be used to provide financial assistance authorised under **subsection (1)(b)** and for any of the purposes set out in **section 82(2) to (4)** (meeting immigration costs and other costs).

85 Limitation on proceedings

No proceedings may be brought in the High Court against the Crown, the Attorney-General, the Department, the Financial Secretary, or the principal immigration officer in respect of decisions made by the principal immigration officer under **sections 79 to 84**.

Cancellation of visas, permits, and visa or permit waivers

86 Cancellation of visas or permits and visa or permit waivers by operation of law

- (1) A visa or permit or a visa or permit waiver is cancelled by operation of law if—
 - (a) it is granted to a person who establishes that they are a Cook Islander, honorary permanent resident, or permanent resident:

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- (b) it is granted to a person (**person A**) as a result of another person (**person B**) using person A's identity to obtain the visa or permit or a visa or permit waiver;
 - (c) a person to whom it is granted fails to present themselves at a designated place or to a designated officer within 48 hours after their arrival in the Cook Islands (except in circumstances where **section 113** applies);
 - (d) a person without continuing rights to whom it is granted and who is liable to be deported leaves the Cook Islands voluntarily;
 - (e) a person without continuing rights to whom it is granted is deported from the Cook Islands.
- (2) If a visa or permit or visa or permit waiver is cancelled by operation of law, the principal immigration officer must alter the records kept in the Department and record the date of cancellation of the visa or permit or visa, or permit waiver.

87 Cancellation of visas, permits, and visa or permit waivers by Minister or Department

- (1) The Minister, the principal immigration officer, or an immigration officer may cancel a visa or permit or any visa and permit waiver if—
- (a) the visa or permit or visa or permit waiver was granted as a result of administrative error; or
 - (b) the holder of the visa or permit or visa or permit waiver has been, or is, convicted of—
 - (i) an offence in the Cook Islands or another country punishable on conviction by a maximum term of imprisonment of more than 1 year (regardless of the sentence actually imposed); or
 - (ii) any offence under this Act (regardless of the sentence actually imposed); or
 - (c) the holder of the visa or permit or visa or permit waiver is in the Cook Islands unlawfully as a consequence of travelling to, entering, and staying in the Cook Islands under a false identity and has been convicted of an offence in the Cook Islands or in another country for which proof of that identity being false is required as an element of the offence; or
 - (d) the holder of the visa or permit or visa or permit waiver is in the Cook Islands unlawfully as a consequence of travelling to, entering, and staying in the Cook Islands as a result of fraud and has been convicted of an offence in the Cook Islands or in another country for which proof of that fraud is required as an element of the offence; or
 - (e) the holder of the visa or permit or visa or permit waiver has their sponsorship withdrawn; or
 - (f) the holder of the visa or permit or visa or permit waiver was due to be deported or removed from the Cook Islands but was not deported or removed from the Cook Islands, or did not leave the Cook Islands voluntarily on the date on which they were expected to be removed or deported or to otherwise leave; or

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- (g) the holder of the visa or permit or visa or permit waiver fails to provide the prescribed arrival information or any required biometric information (in addition to any information they are required to provide to establish that they hold a permit or to apply for a permit); or
 - (h) the holder of the visa or permit or visa or permit waiver fails or refuses to provide biometric information when requested to do so for immigration purposes; or
 - (i) the holder of the visa or permit or visa or permit waiver does not comply with the requirements or conditions of their visa, permit, or visa or permit waiver.
- (2) If the principal immigration officer has reasonable grounds to believe that a visa or permit or visa or permit waiver was granted as a result of an administrative error, the officer may cancel that visa or permit or visa or permit waiver.

Miscellaneous

88 Form of visa or permit

- (1) The grant of a visa or permit is recorded by entering and retaining the details in the records (whether electronic or physical) of the Department in a manner determined by the principal immigration officer.
- (2) The entry for a visa or permit must specify—
 - (a) any details required by the regulations or immigration policy;
 - (b) any other details that are required or approved by the principal immigration officer.
- (3) A visa or permit may (but need not) be evidenced by an endorsement in a passport or certificate of identity.
- (4) To avoid doubt, no electronic or physical record is required to be created for a visa or permit that is deemed to be granted by or under this Act.

89 Extension or suspension of visas or permits in situations of emergency

The principal immigration officer may, if there is an emergency situation that affects the ability of persons to travel to and from or stay in the Cook Islands,—

- (a) extend the visas or permits of any persons or class of persons in the Cook Islands; or
- (b) suspend for any specified period all visas and permits held by persons who are not in the Cook Islands; or
- (c) do both the things authorised by **paragraphs (a) and (b)**.

Part 8

Visa and permit framework

90 Classes of visas and permits

- (1) The following classes of visa may be granted under this Act:
 - (a) transit:
 - (b) residence:
 - (c) work:
 - (d) study:

- (e) visitors:
 - (f) special.
- (2) The following classes of permit may be granted under this Act:
- (a) residence:
 - (b) work:
 - (c) study:
 - (d) visitors:
 - (e) special.

91 Transit visas

- (1) A person without continuing rights who intends to transit through the Cook Islands must apply for and be granted a transit visa, unless—
- (a) this requirement is waived under the regulations, under immigration policy, or, in the case of an individual, by an immigration officer; or
 - (b) the person’s immigration status means that they are exempt from the requirement to obtain a transit visa.
- (2) A person who holds a transit visa must, while in transit, remain—
- (a) in the craft on which they are transiting through the Cook Islands; or
 - (b) in the confines of a designated place.
- (3) A person who holds a transit visa must not, while in transit, apply for a permit.
- (4) A person who holds a transit visa must leave the Cook Islands on their out-bound craft.
- (5) A person who holds a transit visa is unlawfully in the Cook Islands if—
- (a) they leave the place in which they are required to remain under **subsection (2)**; or
 - (b) they remain in transit for a period exceeding 48 hours (unless **section 113** applies).

92 Principal immigration officer may allow application for permit or grant permit in absolute discretion

- (1) The principal immigration officer may, in his or her absolute discretion, grant a person in transit—
- (a) the right to apply for a permit:
 - (b) a permit.
- (2) **Subsection (1)** overrides **section 91(3)**.

93 Residence visas and permits

- (1) A person without continuing rights who is outside the Cook Islands may apply for—
- (a) a residence visa; or
 - (b) a residence permit; or
 - (c) both a residence visa and a residence permit.
- (2) A person without continuing rights who is lawfully in the Cook Islands may, if permitted by the regulations, apply for—
- (a) a residence visa; or

- (b) a residence permit; or
 - (c) both a residence visa and a residence permit.
- (3) The holder of a residence visa or a residence permit, or both, must comply with any conditions imposed by the regulations, an immigration officer, or a designated officer.

94 Entitlements provided by residence visa and residence permit

- (1) A residence visa entitles the holder to travel to and enter the Cook Islands for the duration of the visa, if the holder complies with the conditions of the visa.
- (2) A residence permit entitles the holder to—
- (a) stay in the Cook Islands for the duration of the permit, if the holder complies with the conditions of the permit:
 - (b) work in the Cook Islands, study in the Cook Islands, and visit the Cook Islands.

95 Work visas and permits

- (1) A person without continuing rights who is outside the Cook Islands may apply for—
- (a) a work visa; or
 - (b) a work permit; or
 - (c) both a work visa and a work permit.
- (2) A person without continuing rights who is lawfully in the Cook Islands may, if permitted by the regulations or immigration policy, apply for—
- (a) a work visa; or
 - (b) a work permit; or
 - (c) both a work visa and a work permit.
- (3) The holder of a work visa or a work permit, or both, must comply with any conditions imposed by the regulations, an immigration officer, or a designated officer.

96 Entitlements provided by work visa and work permit

- (1) A work visa entitles the holder to travel to and enter the Cook Islands for the duration of the visa, if the holder complies with the conditions of the visa.
- (2) A work permit entitles the holder to—
- (a) stay in the Cook Islands for the duration of the permit, if the holder complies with the conditions of the permit:
 - (b) work in the Cook Islands, if the holder complies with the conditions specified or imposed in relation to a work permit of a type held by the holder.

97 Study visas and permits

- (1) A person without continuing rights who is outside the Cook Islands may apply for—
- (a) a study visa; or
 - (b) a study permit; or
 - (c) both a study visa and a study permit.

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- (2) A person without continuing rights who is lawfully in the Cook Islands may, if permitted by the regulations or immigration policy, apply for—
 - (a) a study visa; or
 - (b) a study permit; or
 - (c) both a study visa and a study permit.
- (3) The holder of a study visa or a study permit, or both, must comply with any conditions imposed by the regulations, an immigration officer, or a designated officer.

98 Entitlements provided by study visa and study permit

- (1) A study visa entitles the holder to travel to and enter the Cook Islands for the duration of the visa, if the holder complies with the conditions of the visa.
- (2) A study permit entitles the holder to—
 - (a) stay in the Cook Islands for the duration of the permit, if the holder complies with the conditions of the permit; and
 - (b) study in the Cook Islands, if the holder complies with the conditions specified or imposed in relation to a study permit of a type held by the holder.
- (3) The holder of a study permit is not entitled to work in the Cook Islands unless this entitlement is prescribed in the regulations or specified in immigration policy.

99 Visitors visas and permits

- (1) A person without continuing rights who is outside the Cook Islands may apply for—
 - (a) a visitors visa; or
 - (b) a visitors permit; or
 - (c) both a visitors visa and a visitors permit.
- (2) A person without continuing rights who is lawfully in the Cook Islands may, if permitted by the regulations or immigration policy, apply for—
 - (a) a visitors visa; or
 - (b) a visitors permit; or
 - (c) both a visitors visa and a visitors permit.
- (3) The holder of a visitors visa or a visitors permit, or both, must comply with any conditions imposed by the regulations, an immigration officer, or a designated officer.

100 Entitlements provided by visitors visa and visitors permit

- (1) A visitors visa entitles the holder to travel to and enter the Cook Islands for the duration of the visa, if the holder complies with the conditions of the visa.
- (2) A visitors permit entitles the holder to stay in the Cook Islands for the duration of the permit, if the holder complies with the conditions of the permit.
- (3) The holder of a visitors permit is not entitled to work or study in the Cook Islands unless this entitlement is prescribed in the regulations or specified in immigration policy.

101 Special visas and permits

- (1) A person without continuing rights who is outside the Cook Islands may apply for—
 - (a) a special visa; or
 - (b) a special permit; or
 - (c) both a special visa and a special permit.
- (2) A person without continuing rights who is lawfully in the Cook Islands may, if permitted by the regulations, apply for—
 - (a) a special visa; or
 - (b) a special permit; or
 - (c) both a special visa and a special permit.

102 Entitlements provided by special visa and special permit

- (1) A special visa entitles the holder to travel to and enter the Cook Islands for the duration of the visa, if the holder complies with the conditions of the visa.
- (2) A special permit entitles the holder to stay in the Cook Islands for the duration of the permit, if the holder complies with the conditions of the permit.

General limitation on rights conferred by visas and permits

103 Rights provided by visas and permits subject to requirements in regulations and other enactments

The entitlements conferred by any visa or permit are subject to—

- (a) any provisions in the regulations affecting those entitlements; and
- (b) the provisions of any other enactment affecting those entitlements.

Part 9

Arrivals and departures

Subpart 1—Passenger responsibilities

104 Obligations of persons arriving in Cook Islands

- (1) This section applies to every person who arrives in the Cook Islands.
- (2) The person must—
 - (a) report to a designated place or to an immigration officer or a designated officer within 48 hours (unless **section 113** applies); and
 - (b) provide to an immigration officer or to a designated officer the prescribed arrival information.

105 Person may be required to provide biometric information

- (1) Any person who enters the Cook Islands may be required by an immigration officer or a designated officer to supply biometric information for any purpose set out in **section 14**.
- (2) If a person entering the Cook Islands fails to comply with **subsection (1)**, an immigration officer or a designated officer may, if the person does not have continuing rights, decline their application for a visa or permit.

Persons leaving Cook Islands

106 Obligations of persons leaving Cook Islands

A person who intends to leave the Cook Islands must—

- (a) present themselves at a designated place or to an immigration officer or a designated officer; and
- (b) provide the prescribed departure information to an immigration officer or a designated officer.

107 Person leaving Cook Islands may be required to pay outstanding fines and fees before departure

If a person who intends to leave the Cook Islands presents themselves at a designated place or to an immigration officer or a designated officer, they may be required to pay the following before being allowed to depart the Cook Islands:

- (a) any unpaid fine (including an administrative fine) imposed in the Cook Islands for an offence against this Act; and
- (b) any unpaid fee or charge of any kind imposed under this Act or the regulations; and
- (c) any unpaid fine, fee, or charge otherwise owing to Cook Islands Government that—
 - (i) a government department asks the principal immigration officer to recover before the person leaves the Cook Islands; and
 - (ii) the principal immigration officer considers it appropriate to recover before the person leaves the Cook Islands.

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

108 Duties of carriers or persons in charge of ship arriving in Cook Islands

- (1) This section applies to a carrier and a person in charge of a ship if—
 - (a) the ship is scheduled to arrive in the Cook Islands from another country; or
 - (b) it is proposed that the ship travel to the Cook Islands from another country.
- (2) If this section applies, the carrier or person in charge of the ship must, no later than 48 hours before the arrival of the ship in the Cook Islands,—
 - (a) provide the principal immigration officer with the prescribed arrival information about all persons then known to be on board the ship; and
 - (b) provide that information in a form approved by the principal immigration officer.

109 Duties of carriers and persons in charge of aircraft arriving in Cook Islands

- (1) This section applies to a carrier and a person in charge of an aircraft if—
 - (a) the aircraft is scheduled to depart from another country to travel to the Cook Islands; or

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- (b) it is proposed that the aircraft travel to the Cook Islands from another country.
- (2) If this section applies, the carrier or person in charge of the aircraft must, no later than 76 hours before the aircraft departs from another country to the Cook Islands,—
 - (a) provide the principal immigration officer with the prescribed advance passenger and record information about all persons then known to be intending to board the aircraft; and
 - (b) provide that information in a form approved by the principal immigration officer.
- (3) If this section applies, the carrier or person in charge of the aircraft must, no later than 1 hour before the aircraft departs from another country to travel to the Cook Islands,—
 - (a) provide the principal immigration officer with the prescribed arrival information about all persons then known to be intending to board the aircraft; and
 - (b) provide that information in a form approved by the principal immigration officer.
- (4) If this section applies, the carrier or person in charge of the aircraft, must as soon as practicable after the aircraft departs for the Cook Islands,—
 - (a) provide the principal immigration officer with the prescribed arrival information about all persons currently known to be on board the aircraft; and
 - (b) provide that information in a form approved by the principal immigration officer.

110 Obligations of carriers and persons in charge of ship or aircraft en route to or intended to travel to Cook Islands

A carrier and the person in charge of any ship or aircraft that is en route to the Cook Islands or is intended to travel to the Cook Islands must—

- (a) ensure that all persons boarding the craft (including crew) have with them the information required by the regulations; and
- (b) prevent, with any reasonable force that is necessary, the boarding or disembarkation of any person without the information required by the regulations.

111 Persons in charge of ship or aircraft to prevent certain persons from entering Cook Islands

- (1) If the person in charge of a ship receives a notice issued under **section 58** about a passenger who is travelling, or is intending to travel, to the Cook Islands on the ship, the person in charge must ensure that the passenger does not leave the ship at any time while the ship is in the Cook Islands.
- (2) If the person in charge of an aircraft receives a notice issued under **section 58** about a passenger who is travelling, or is intending to travel, to the Cook Islands on the aircraft, the person in charge must,—
 - (a) if the passenger has not yet boarded the aircraft, prevent the passenger from doing so; or

- (b) if the passenger is on board the aircraft, prevent the passenger from disembarking in the Cook Islands, or allow the person to disembark only in accordance with the directions of an immigration officer or a designated officer.

112 Obligations in relation to ship or aircraft en route to, or intended to arrive in Cook Islands

The carrier and the person in charge of any ship or aircraft that is en route to the Cook Islands or that is intended to arrive in the Cook Islands must—

- (a) ensure that, on arrival in the Cook Islands, all passengers and crew are cleared for immigration purposes at a designated place or by an immigration officer or a designated officer without delay, and in no case later than 48 hours after their arrival in the Cook Islands (unless **section 113** applies):
- (b) prevent any person from disembarking other than into—
 - (i) a designated place; or
 - (ii) another place to report to an immigration officer or a designated officer:
- (c) if a stowaway has been found on the ship or aircraft, report that fact to an immigration officer, a designated officer, a customs officer, or a police officer as soon as practicable.

113 Where clearance cannot be completed within 48 hours

- (1) This section applies if a carrier or person in charge of a ship or aircraft is unable to ensure that the ship or aircraft is cleared at a designated place or by an immigration officer or a designated officer because of weather conditions or other unforeseen circumstances.
- (2) If this section applies, the carrier or person in charge of the ship or aircraft must make appropriate arrangements for all persons on board the ship or aircraft to report to a designated place or to an immigration officer or a designated officer as soon as practicable.

114 No obligation to grant visa or permit if arrival occurs in irregular circumstances

The principal immigration officer and any other immigration officer or designated officer are not required to grant a visa or a permit to a person who arrives on a ship or aircraft merely because their ship or aircraft arrived in irregular circumstances (for example, the circumstances described in **section 113**).

115 Obligations of carriers and persons in charge of ship or aircraft on departure

The carrier and the person in charge of a ship or aircraft departing from the Cook Islands must—

- (a) ensure that all passengers and crew depart at a designated place:
- (b) provide any prescribed information about the ship's or aircraft's departure to a designated officer or an immigration officer:
- (c) permit any non-Cook Islander being removed or deported to board the ship or aircraft:

- (d) take reasonable steps to detain a person delivered by an immigration officer, a designated officer, or a police officer for the purposes of removal or deportation, until the person to be deported or removed boards the ship or aircraft:
- (e) report to an immigration officer or a designated officer, before the ship or aircraft departs, the details of any person (whether passenger or crew member) who is supposed to be on board the ship or aircraft but is not:
- (f) before the ship or aircraft departs, obtain immigration clearance from the principal immigration officer authorising that departure in accordance with the directions of the principal immigration officer.

116 Protection for carriers and persons in charge of ship or aircraft

A person who in good faith uses or imposes reasonable measures, including restraint or reasonable force, on another person in order to carry out his or her responsibilities under **sections 108 to 115**,—

- (a) is not guilty of an offence; and
- (b) is not liable to any civil proceedings in respect of those measures.

Part 10
Removal and deportation

117 Application of this Part

This Part applies to any person without continuing rights.

118 Persons who may not be removed or deported from Cook Islands

Persons who are exempt under **section 55** from the requirement to obtain a visa and a permit may not, while the exemption conferred by that section applies to them, be removed or deported from the Cook Islands.

Removal

119 Circumstances in which persons may be removed from Cook Islands

A person to whom this Part applies may be arrested, detained, and removed from the Cook Islands if the person is unlawfully in the Cook Islands.

120 Person liable to be removed may be served with deportation order

- (1) A person who is liable to be removed under **section 119** may be served with a deportation order.
- (2) However, it is not necessary to serve a person to whom **section 119** applies with a deportation order in order to arrest, detain, and remove the person from the Cook Islands.

Deportation and removal

121 Grounds for deportation

- (1) If this section applies, a person to whom this Part applies—

- (a) is liable to deportation; and
 - (b) may be served with a deportation order issued by the Minister; and
 - (c) may be arrested, detained, and deported from the Cook Islands.
- (2) This section applies if a person—
- (a) conceals, omits, or misrepresents information that was relevant to the person's application for a visa or permit or a visa or permit waiver or exemption; or
 - (b) fails to advise an immigration officer of a material change in circumstances—
 - (i) while the person's application for a visa or permit or visa or permit waiver or exemption was being processed or after it was granted; or
 - (ii) while a previous application for a visa or permit or visa or permit waiver or exemption was being processed, or after it was granted; or
 - (c) is believed by the Minister, on reasonable grounds, to be a person who—
 - (i) is likely to commit an offence in the Cook Islands that is punishable by imprisonment; or
 - (ii) is in the Cook Islands unlawfully as a result of fraud (but has not been convicted of a relevant offence proving that fraud); or
 - (iii) is in the Cook Islands unlawfully under a false identity (but has not been convicted of a relevant offence proving that identity was false); or
 - (iv) is a member of a gang of concern; or
 - (v) has been a threat to the security, defence, or public order of the Cook Islands; or
 - (vi) has been engaged in, or has claimed responsibility for, an act of terrorism; or
 - (vii) is or was a member of, or is an adherent of, any organisation or group of people that has engaged in, or has claimed responsibility for, an act of terrorism; or
 - (viii) is subject, or likely to become subject, to immigration-related sanctions imposed by the United Nations; or
 - (d) is believed by the Minister, on reasonable grounds, to be a person who is likely to act or speak in an aggressive, derogatory, or racially or culturally insensitive manner to such a degree or to such an extent that it may affect the well-being of the Cook Islands.

122 Contents of deportation order

- (1) A deportation order must state—
- (a) that the person named in the order is ordered to be deported from the Cook Islands; and
 - (b) that any visa or permit held by the person has been, or will be cancelled; and
 - (c) the provision of this Act under which the person became liable for deportation; and
 - (d) the ground or grounds for deportation; and

- (e) the period of any prohibition on entry to the Cook Islands that the person named in the order is subject to; and
 - (f) any right of appeal or review against the order and when that right of appeal or review must be exercised; and
 - (g) whether the person named in the order must pay the costs of deportation and, if so, the actual or estimated costs of deportation that the person must pay.
- (2) A deportation order must be signed by the Minister and must be served on the person who is to be deported.
- (3) A deportation order is not invalid by reason only that it fails to comply with **subsection (1)**, and a failure to comply with **subsection (1)** does not affect the liability of the person to arrest, detention, or deportation.

123 Duration of liability to removal or deportation if deportation order not suspended

A person to whom this Part applies who is liable to be removed or deported remains liable indefinitely to be removed or deported unless the person's deportation order is suspended.

124 When person may be deported

A person to whom this Part applies may be deported from the Cook Islands—

- (a) when any time allowed for an appeal against a deportation order has expired, and no appeal or application for review has been lodged; or
- (b) on the determination of any appeal that upholds the person's liability to deportation; or
- (c) on the person's release from custody under a sentence of imprisonment; or
- (d) if a High Court Judge orders that the person may be deported instead of serving a sentence of imprisonment; or
- (e) if the person is sentenced to probation or some other form of community-based sentence, and deportation of the person from the Cook Islands is consistent with the orders of the Court.

125 Liability to removal or deportation may be suspended

- (1) The Minister, in the Minister's absolute discretion, may issue a notice—
- (a) suspending a person's liability to removal or deportation; and
 - (b) imposing any conditions relating to that suspension that the Minister considers appropriate.
- (2) A notice under **subsection (1)** may be issued to and served on a person liable to deportation—
- (a) at the same time as the deportation order is served on that person; or
 - (b) at any time after the deportation order is served.
- (3) A notice under **subsection (1)** may be issued to and served at any time on a person liable to removal.
- (4) If a person to whom a notice is issued under **subsection (1)** fails to comply with any conditions imposed under **subsection (1)(b)**,—
- (a) the suspension of their liability to removal or deportation is cancelled; and

- (b) they may be arrested, detained, and removed or deported.
- (5) A person to whom this Part applies who is served with a deportation order but whose liability to deportation is suspended remains liable to be deported until whichever of the following occurs first:
 - (a) the expiry of 5 years after the date on which the deportation notice was served on the person;
 - (b) the expiry of any visa or permit that the person held when their liability to deportation was suspended.
- (6) **Subsection (5)** does not apply to a person if the suspension of their liability to deportation is cancelled under **subsection (4)(a)**.

Removal and deportation costs

126 Obligations of carrier or person in charge of craft to meet costs

- (1) A carrier, or the person in charge of a craft who brought to the Cook Islands a person to whom **subsection (2)** applies, must—
 - (a) provide passage from the Cook Islands, at the cost in all respects of the carrier or bearing the costs of the passage by any other carrier, of that person; and
 - (b) pay any costs incurred by the Crown in detaining and maintaining that person pending the person's departure from the Cook Islands (including that person's immigration costs).
- (2) This subsection applies to a person who arrives in the Cook Islands if—
 - (a) a notice was issued under **section 58** in respect of that person (irrespective of how or when or whether the making of that notice was communicated to the carrier or person in charge of the craft); or
 - (b) the person did not have the arrival documents required by the regulations and—
 - (i) their application for a permit or permit waiver or exemption was refused; or
 - (ii) their permit or permit waiver or exemption was cancelled at a designated place; or
 - (c) the person was a passenger in transit but did not reboard the craft; or
 - (d) the person—
 - (i) disembarked from their craft at a place other than a designated place; or
 - (ii) failed to report to a designated officer after disembarking from their craft; or
 - (e) the person was a stowaway on board the craft (irrespective of whether this was reported to an immigration officer, a designated officer, or a police officer, as soon as this was discovered).

127 Costs to be paid by persons who are deported or removed when costs not payable by others

A person to whom this Part applies who is deported or removed from the Cook Islands must pay their immigration costs if those costs are not payable by the carrier or person in charge of a craft under **section 126**.

128 What happens if costs of deportation or removal cannot be paid by persons being removed or deported

- (1) If a person to whom this Part applies is deported or removed from the Cook Islands but is unable to pay their immigration costs and those costs are not met by another person, those costs are payable from public revenues.
- (2) However, the costs paid from public revenues under **subsection (1)** are recoverable as a debt due to the Crown from the following persons:
 - (a) any carrier or person in charge of a craft who acted in breach of their obligations under this Act in respect of the person being removed or deported;
 - (b) the person removed or deported, at any time after their removal or deportation;
 - (c) any sponsor, employer, or education provider, internship provider, or other person who accepted responsibility for the person removed or deported as a condition of that person being granted a permit to visit, work, or study in the Cook Islands;
 - (d) in the case of a person (**person A**) who was a prohibited person before their arrival and during their stay in the Cook Islands, any other person (**person B**) who knew that A was a prohibited person, but—
 - (i) allowed person A to enter the Cook Islands; or
 - (ii) supported person A during their stay in the Cook Islands.

Prohibited period of re-entry following removal or deportation

129 Temporary prohibition on re-entry after removal or deportation

- (1) A person to whom this Part applies who is removed or deported from the Cook Islands may not return to the Cook Islands or be granted a visa or permit for a period of 5 years if their removal or deportation occurred because the person—
 - (a) held a transit visa but did not board a craft before the transit period expired; or
 - (b) failed to provide the information required to be provided by the regulations on entry or—
 - (i) to show that they held a permit; or
 - (ii) if they did not hold a permit, to apply for a permit; or
 - (c) failed to present themselves at a designated place or to a designated officer without delay, and in no case later than 48 hours after arriving in the Cook Islands (except in the circumstances set out in **section 113**); or
 - (d) was refused a permit on arrival in the Cook Islands or had their permit cancelled on grounds set out in this Act or the regulations; or
 - (e) had their honorary permanent residence or permanent residence revoked; or
 - (f) was unlawfully in the Cook Islands (for reasons other than travelling to or staying in the Cook Islands under a false identity); or
 - (g) breached the conditions of their visa, permit, or visa or permit waiver or exemption; or
 - (h) concealed, omitted, or misrepresented relevant information in relation to their application for a visa or permit or visa or permit waiver; or

- (i) failed to advise an immigration officer of any material change of circumstances, while their application for a visa or permit or visa or permit waiver was being considered or after it was granted.
- (2) The Minister or the principal immigration officer may at any time, in their absolute discretion, cancel the period of prohibition set out in **subsection (1)** on a person entering the Cook Islands and applying for a visa and a permit.

130 Prohibition on re-entry cancelled in certain circumstances

A person to whom this Part applies who would, if they were removed or deported, be subject to a prohibition on re-entry or being granted a visa or a permit for a period of 5 years, is not subject to the prohibition in **section 129** if—

- (a) the person leaves the Cook Islands within 2 weeks of being advised by an immigration officer that they must leave the Cook Islands; and
- (b) the person leaves the Cook Islands at their own expense, and owing no money to the Crown or any government agency in respect of any immigration-related matter.

131 Cancellation of prohibition period because of voluntary departure does not affect other prohibitions

The cancellation under **section 130** of a period of prohibition under **section 129** on a person's re-entry to the Cook Islands or the grant of a visa or a permit to that person does not—

- (a) cancel any other prohibition on the ability to re-enter the Cook Islands or be granted a visa or a permit under any other provision of this Act; or
- (b) limit the ability of an immigration officer to decline an application for a visa or permit made after the person's departure.

132 Permanent prohibition on re-entry after removal or deportation

A person aged 18 years or older to whom this Part applies who is removed or deported from the Cook Islands may not return to the Cook Islands or be granted a visa or permit for an indefinite period, if the removal or deportation occurred because the person—

- (a) was in the Cook Islands under a false identity; or
- (b) was in the Cook Islands as a result of fraud; or
- (c) was believed by the Minister, on reasonable grounds,—
 - (i) to be likely to commit an offence in the Cook Islands punishable by imprisonment; or
 - (ii) to be, or have been, a member of a gang of concern; or
 - (iii) to be a threat to the security, defence, or public order of the Cook Islands; or
 - (iv) to have engaged in, or claimed responsibility for, an act of terrorism; or
 - (v) to be, or have been, a member of, or an adherent of any organisation or group of people that has engaged in, or claimed responsibility for, an act of terrorism; or

- (vi) to be, or to be likely to become, subject to immigration-related sanctions imposed by the United Nations.

Part 11

Arrest and detention

133 Application of this Part

This Part applies to a person without continuing rights—

- (a) who is liable to be removed; or
- (b) in respect of whom a deportation order has been made.

134 Person to whom this Part applies may be arrested and detained

- (1) A police officer, an immigration officer, or a designated officer may arrest a person to whom this Part applies for any of the purposes set out in **subsection (3)**.
- (2) An immigration officer, a designated officer, or a police officer may detain a person to whom this Part applies—
 - (a) for any of the purposes set out in **subsection (3)**; and
 - (b) at any place designated for the purpose by the principal immigration officer (for example police cells or cells at the Ministry of Justice).
- (3) The purposes are—
 - (a) to ascertain the identity of the person detained and—
 - (i) determine any rights they have to be in the Cook Islands; or
 - (ii) confirm whether they are liable to removal or deportation from the Cook Islands:
 - (b) to await the provision of additional information to establish whether the person is liable to removal or deportation from the Cook Islands:
 - (c) to enable a deportation order to be served on the person:
 - (d) to await the expiry of any period allowed for a review or an appeal against the removal or deportation to be lodged; and if a review or an appeal is lodged, to await the determination of that review or appeal:
 - (e) to ensure that a person to whom this Part applies does not evade removal or deportation from the Cook Islands.

135 Initial period of detention

A person detained under **section 134** may not be detained for a period exceeding 144 hours unless their detention is authorised by a warrant of commitment issued under **section 137 or 138**.

136 Application for warrant of commitment

- (1) An immigration officer may apply to a High Court Judge for a warrant of commitment (or a further warrant of commitment) authorising a person's detention for up to 28 days in any case where it becomes apparent, in the case of a person detained in custody under this Part, that before the expiry of the period for which detention is authorised,—
 - (a) there will not be, or there is unlikely to be, a craft available to take the person from the Cook Islands; or

- (b) the person will not, or is unlikely to, supply satisfactory evidence of his or her identity; or
 - (c) the Minister has not made, or is not likely to make, a decision as to whether to certify that the person constitutes a threat or risk to security; or
 - (d) for any other reason, the person is unable to leave the Cook Islands.
- (2) Every application under this section—
- (a) must be made on oath; and
 - (b) must include a statement of the reasons why the person should be the subject of a warrant of commitment; and
 - (c) may include any other supporting evidence.
- (3) The Judge must determine the application under **section 137**.

137 Decision on application for warrant of commitment

- (1) On an application for a warrant of commitment, a High Court Judge—
- (a) must, if satisfied on the balance of probabilities that the person is not the person named in the application for the warrant of commitment, order that the person be released from custody immediately;
 - (b) may, in any other case,—
 - (i) issue a warrant of commitment in the prescribed form authorising the person's detention, in a place named in the warrant, for a period of up to 28 days, if satisfied of the matters in **subsection (2) or (3)** (and having taken into account the matters in **subsections (4) and (5)**); or
 - (ii) order the person's release from custody on conditions under **section 143**, if the Judge is not satisfied that detention is warranted.
- (2) A High Court Judge may issue a warrant of commitment, if satisfied on the balance of probabilities, that the person in custody is the person named in the application and that any 1 or more of the following applies:
- (a) a craft is likely to be available, within the proposed period of the warrant of commitment, to take the person from the Cook Islands;
 - (b) the reasons why a craft was not available to take the person from the Cook Islands are continuing and are likely to continue, but not for an unreasonable period;
 - (c) the other reasons the person was not able to leave the Cook Islands are still in existence and are likely to remain in existence, but not for an unreasonable period;
 - (d) the person has not supplied satisfactory evidence of his or her identity.
- (3) If **subsection (2)** does not apply, the Judge may, nevertheless, issue a warrant of commitment if it is, in all the circumstances, in the public interest to do so.
- (4) In determining whether to issue a warrant of commitment, or whether to order the person's release on conditions, the Judge must have regard to, among other things, the need to seek an outcome that maximises compliance with this Act.
- (5) Unless there are exceptional circumstances, the Judge must not release the person on conditions if—
- (a) the identity of the person is unknown; or

- (b) the person's identity has not been established to the satisfaction of the Court; or
- (c) a direct or indirect reason for the person being unable to leave the Cook Islands is, or was, some action or inaction by the person occurring after the person was—
 - (i) served with a deportation order; or
 - (ii) arrested and detained for the purpose of deportation or removal.

138 Decisions on warrants of commitment where detention beyond 6 months

- (1) This section applies if a person would, upon a successful application under **section 136** for a further warrant of commitment, be detained under consecutive warrants of commitment for a continuous period of more than 6 months following—
 - (a) the person's initial detention under a warrant of commitment, if the person had exhausted all appeal rights under this Act at the time of that initial detention, or had no such appeal rights; or
 - (b) if **paragraph (a)** does not apply, the later of—
 - (i) the conclusion of any appeal proceedings brought by the person; or
 - (ii) the expiry of any period for bringing such an appeal.
- (2) A further warrant of commitment authorising the detention of a person to whom this section applies must be issued if a High Court Judge is satisfied—
 - (a) that the person's deportation or departure is prevented by some action or inaction of the person; and
 - (b) that no exceptional circumstances exist that would warrant release.
- (3) If the Judge is not so satisfied, the Judge must order the person's release on conditions under **section 143**.
- (4) The period of 6 months referred to in **subsection (1)** must be calculated exclusive of any period commencing on the date on which the person to whom the warrant relates escapes from lawful custody and ending 96 hours after the date on which the person is again taken into custody under this Act.
- (5) In subsection (1),—
 - appeal proceedings** means the proceedings in respect of which the appeal rights are exercised
 - appeal rights** means the rights of appeal the person has or had against liability for deportation.
- (6) For the purposes of **subsection (2)**, **exceptional circumstances** does not include—
 - (a) the period of time for which a person has already been detained under this Part; or
 - (b) the possibility that the person's deportation or departure may continue to be prevented by some action or inaction of the person.

139 Procedure for obtaining warrant of commitment under section 138

- (1) An application for a further warrant of commitment in a case to which **section 138** applies—
 - (a) must be supported by evidence under oath by an immigration officer; and

- (b) must include a statement as to why the further warrant is required; and
 - (c) may include any other supporting evidence.
- (2) The Judge may require the immigration officer to attend the hearing to give evidence and be subject to cross-examination.

140 What happens if no High Court Judge is available

- (1) If a Judge of the High Court is not available, either in person or by video link, a Justice of the Peace may exercise the powers conferred on a Judge by **section 137**.
- (2) However, if the Justice of the Peace issues a warrant of commitment, the warrant expires on whichever of the following occurs first:
- (a) the time of expiry specified in the warrant of commitment (which may be a period not exceeding 72 hours);
 - (b) a High Court Judge considers the application and decides either to—
 - (i) issue a warrant of commitment under **section 137**; or
 - (ii) order the release of the person on conditions.

141 Form of warrant of commitment

A warrant of commitment issued by a Judge of the High Court or a Justice of the Peace may be in any form the Judge or Justice of the Peace considers appropriate, but must—

- (a) name the place where the person is to be detained and state in whose custody the person will be during the period of detention; and
- (b) set out the name of the person to be detained; and
- (c) set out the reason for their detention and refer to the provision in this Act under which they are detained; and
- (d) specify the date on which the warrant of commitment expires.

142 Copy of warrant to be given or shown to persons detained

- (1) A copy of a warrant of commitment must be given or shown to the person detained.
- (2) However, a failure to comply with **subsection (1)** does not invalidate the warrant of commitment.

143 Release on conditions

- (1) This section applies if—
- (a) an immigration officer or the principal immigration officer decides in their absolute discretion to release a person to whom this Part applies on conditions, instead of detaining the person or applying for a warrant of commitment; or
 - (b) a Judge of the High Court or Justice of the Peace orders the release of a person to whom this Part applies under **section 137, 138, or 140** on conditions.
- (2) The conditions that may be imposed are 1 or more of the following:
- (a) the person must reside at a specified place:
 - (b) the person must report to a specified place at specified times:

- (c) the person must provide a guarantor who is responsible for ensuring that the person complies with the conditions;
 - (d) the person must attend any specified interview;
 - (e) the person must undertake any specified action to facilitate their departure from the Cook Islands.
- (3) Conditions imposed under this section may be varied at any time—
- (a) by a High Court Judge on the application of the person released or an immigration officer; or
 - (b) by consent between the released person and an immigration officer if—
 - (i) the conditions imposed relate to the matters described in **subsection (2)(a) or (b)**; or
 - (ii) the order imposing the conditions allows the variation.
- (4) A variation of a condition under **subsection (3)**—
- (a) takes effect immediately; but
 - (b) must be put in writing, and notified to the released person, as soon as practicable.
- (5) A person may be arrested and detained under **sections 134 and 135**—
- (a) if an immigration officer determines that the person, without reasonable excuse, has failed to comply with any conditions imposed under **subsection (1)** or varied under **subsection (3)**; or
 - (b) if an immigration officer makes an application for an order that the person be detained under a warrant of commitment; or
 - (c) to execute a deportation order or place the person on the first available craft leaving the Cook Islands.
- (6) Conditions imposed under this section lapse, and the person ceases to be bound by them, when the person leaves the Cook Islands or otherwise ceases to be liable to arrest and detention under this Part.

144 Powers of person arresting or detaining another under this Part

If an immigration officer, a designated officer, or a police officer is exercising a power of arrest or detention under this Part, the officer may use any physical force that the officer has reasonable grounds to believe is reasonably necessary—

- (a) to prevent the detained person from harming any person; or
- (b) to prevent the detained person from damaging any property; or
- (c) to prevent the detained person from escaping or attempting to escape from detention; or
- (d) to recapture the person if the person has escaped from detention; or
- (e) to seize any item in the possession of any person in detention or to be detained that may be used to harm any person or to damage property.

145 Duties of persons detaining persons under this Part

- (1) It is the duty of an immigration officer, a designated officer, or a police officer who arrests or detains a person under this Part to inform the person of the matters in **subsection (2)**.

- (2) The matters are, unless in all the circumstances it is impracticable to inform the person—
 - (a) the reason for the arrest or detention:
 - (b) that they may contact—
 - (i) a lawyer; and
 - (ii) if the person is a child, a responsible adult:
 - (c) the maximum period for which they can be detained without being brought before the Court.

146 Certain officers may call on assistance

- (1) An immigration officer or a designated officer who intends to arrest or detain, or is in the process of arresting or detaining, any person under this Part may ask anyone to assist him or her in arresting or detaining the person.
- (2) A person called to assist an officer under **subsection (1)** has the same powers and privileges for that purpose as the officer.

Part 12
Reviews and appeals

Subpart 1—Decisions that can be reviewed

147 Interpretation

In this **Part**, **decision** includes a purported decision.

148 Review of decisions to refuse study permit or work permit

- (1) A person without continuing rights who is in the Cook Islands may apply to the principal immigration officer for a review of a decision by an immigration officer to refuse to grant the person a study permit or a work permit.
- (2) An application for review under **subsection (1)** must be lodged within 7 days after the date on which the applicant was given notice of the decision being reviewed.
- (3) The review must be undertaken by another immigration officer and is undertaken by that officer acting in his or her absolute discretion.
- (4) On a review under this section, the immigration officer undertaking the review may—
 - (a) confirm the decision reviewed; or
 - (b) reverse the decision and—
 - (i) grant the permit sought; or
 - (ii) request the applicant to make a fresh application for a permit.

149 Review of decision to refuse residence visa or permit

- (1) A person without continuing rights who is in the Cook Islands may apply to the Minister for a review of a decision by an immigration officer to refuse to grant the person a residence visa or permit.
- (2) An application for review under **subsection (1)** must be lodged within 14 days after the date on which the applicant was given notice of the decision being reviewed.

- (3) On a review under this section, the Minister may—
- (a) confirm the decision being reviewed; or
 - (b) reverse the decision and—
 - (i) grant the visa or permit being sought; or
 - (ii) request the applicant to make a fresh application for a visa or permit.

150 Grounds for seeking review under section 148 or 149

- (1) An applicant may apply for a review under **section 148 or 149** only on the grounds that the decision—
- (a) was contrary to this Act or the regulations; or
 - (b) was otherwise wrong in law.
- (2) An applicant may not lodge a review under **section 148 or 149** on humanitarian grounds.

151 No other rights of review

- (1) The only rights of review within the executive branch of government in respect of decisions made under this Act (including the issue of policies) are those in **sections 148 or 149**.
- (2) **Subsection (1)** does not affect a person's ability to seek judicial review of decisions made under this Act, and Part 1A of the Judicature Act 1980–81 applies with the following modifications:
- (a) an application for judicial review must be filed within 28 days after the date on which the applicant was given notice of the decision in respect of which the review is sought:
 - (b) the remedies available to the plaintiff on review are limited to 1 or more of the following:
 - (i) a declaration that 1 or more defendants acted unlawfully;
 - (ii) a declaration that 1 or more defendants reconsider the matter at issue, in accordance with the law;
 - (iii) an award of costs against the defendant:
 - (c) no interim orders may be made—
 - (i) granting an immigration status to a person that is more beneficial than what the person had at the time the application relating to the decision was made;
 - (ii) preventing the removal of a person who was unlawfully in the Cook Islands at the time the application relating to the decision was made;
 - (iii) preventing a person from being deported in circumstances where an appeal against the deportation order has not been filed.

152 Procedures to be adopted on review

The procedures to be adopted on a review under **section 148 or 149** are set out in **Schedule 3**.

Subpart 2—Decisions that may be appealed

153 Appeals against deportation order may be made on certain grounds

- (1) A person without continuing rights who is in the Cook Islands may appeal to a Judge of the High Court against the making of a deportation order only on the grounds set out in **section 154**.
- (2) An appeal under this section must be filed no later than 14 days after the date on which the applicant was given notice of the decision being appealed against.

154 Grounds for appeal against deportation under section 153

- (1) The grounds referred to in **section 153** are that—
 - (a) the decision—
 - (i) was contrary to this Act or the regulations; or
 - (ii) was otherwise wrong in law; or
 - (b) involved a mistake of fact in determining that **section 121(2)(a) or (b) or (d)** applied; or
 - (c) there were no reasonable grounds to believe that at least 1 of the grounds specified in **section 121(2)(c)** was established.
- (2) An applicant may not appeal to the Court under **section 153** on humanitarian grounds, and the Court may not make any decision on an appeal under that section on the basis of humanitarian grounds.

155 Special procedure for appeals involving sensitive information

- (1) If an appeal is made on the ground set out in **section 154(1)(c)** and the respondent advises that the decision was based in whole or in part on information that should not be disclosed to the appellant because of likely harm to a person caused by that disclosure or harm to the security of the Cook Islands, the Judge must—
 - (a) receive the information on an ex parte (without notice) basis; and
 - (b) determine whether there is likely to be harm caused to any person or to the security interests of the Cook Islands if that information is disclosed to the appellant.
- (2) For the purpose of making a decision under **subsection (1)**, the Judge may receive ex parte submissions (either in writing or in person) from the Solicitor-General on the issue.
- (3) If the Judge considers that disclosing the information is likely to cause the harm specified in **subsection (1)**, the information can be taken into account by the Judge in determining the appeal without disclosing the information to the appellant.
- (4) If the Judge considers that the information is not likely to cause the harm specified in **subsection (1)**, then the information cannot be taken into account by the Court in determining the appeal unless it is disclosed to the appellant.

156 Court may confirm or reverse decision on appeal under section 153

On an appeal under **section 153**, the Court may—

- (a) confirm the decision to issue a deportation order; or
- (b) reverse the decision and cancel the deportation order.

157 No other rights of appeal

The only rights of appeal against decisions made under this Act or the regulations (including decisions to make regulations or issue immigration policy or apply or disapply that policy) are those in **section 153**.

Part 13

Responsibilities of employers and education providers

Employer responsibilities

158 Responsibilities of employers

- (1) Every person who employs a person without continuing rights in the Cook Islands must take reasonable steps to ensure that the person is entitled to work in the Cook Islands before that person commences work.
- (2) For the purposes of **subsection (1)**, a person **takes reasonable steps** if the person—
 - (a) requires a prospective employee to supply evidence that they are a Cook Islander, an honorary permanent resident, or a permanent resident and retains a copy of the evidence supplied; or
 - (b) obtains the signed consent of a prospective employee to make inquiries with the Department about the person’s immigration status and then—
 - (i) contacts an immigration officer to ask for confirmation of the person’s entitlement to work in the Cook Islands; and
 - (ii) provides a copy of the prospective employee’s consent to the making of that request to that immigration officer; and
 - (iii) retains a copy of the evidence provided by the immigration officer of the person’s entitlement to work.

159 Duties of employer who employs persons without continuing rights

Every person (**person A**) who employs another person without continuing rights in the Cook Islands (**person B**), must inform an immigration officer of the following:

- (a) any changes in the circumstances of person B’s employment that might be relevant to their continued ability to work in the Cook Islands;
- (b) any changes to the terms and conditions of person B’s employment contract or employment;
- (c) any termination of person B’s employment.

160 Duties of employer to make wage and time and other records available for inspection by immigration officer

Every employer (**person A**) must, on request by an immigration officer, make available any time and wage records and any other records kept by person A to enable the immigration officer to inspect and copy the records for the purpose of ascertaining—

- (a) whether an employee who is a person without continuing rights (**person B**) is complying with the work-related conditions of his or her permit; or
- (b) whether person A is complying with their obligations as an employer, including the obligation not to commit an offence against this Act; or

- (c) the location of person B, if he or she is—
 - (i) unlawfully in the Cook Islands; or
 - (ii) liable to removal or deportation; or
- (d) whether person B is entitled to—
 - (i) work in the Cook Islands; and
 - (ii) work for person A.

161 Requirements for employment contracts with persons other than persons with continuing rights

Every person (**person A**) who employs a person without continuing rights in the Cook Islands (**person B**) must ensure that—

- (a) person B has a written employment contract that complies with the minimum standards set out in the Employment Relations Act 2012; and
- (b) the written employment contract referred to in **paragraph (a)** states—
 - (i) the date on which the contract begins; and
 - (ii) if the contract is for a fixed term, the date on which the contract expires; and
 - (iii) a description of the work to be performed by person B; and
 - (iv) person B's normal hours of work; and
 - (v) the arrangements for payment of wages or salary, annual leave, public holidays, and sick leave; and
 - (vi) the procedures for resolving employment disputes.

162 Other duties of persons wishing to recruit or sponsor employees

A person (**person A**) who wishes to recruit a person without continuing rights (**person B**) as an employee in the Cook Islands, or who is sponsoring person B for a visa or permit that will allow person B to work for person A, must—

- (a) assist person B to comply with any prescribed or other requirements or conditions of person B's visa or permit; and
- (b) comply with any prescribed or other requirements of person A's sponsorship obligations.

163 Duty of employers to search for persons with continuing rights before employing others

- (1) A person who wishes to employ another person as an employee in the Cook Islands must, before appointing any other person, make genuine and reasonable attempts to fill the position with a person with continuing rights.
- (2) An employer to whom **subsection (1)** applies may be required by an immigration officer to produce evidence that the person has complied with that subsection.

164 Other things employers must not do

- (1) No employer, or person acting as an agent of an employer, may—
 - (a) coerce, threaten, deceive, or otherwise exploit an employee who is a person without continuing rights; or

- (b) compel such an employee to work outside the terms and conditions of the employee's contract of employment or otherwise unlawfully.
- (2) No employer, or person acting as an agent for an employer, may withhold from an employee who is a person without continuing rights anything that belongs to that employee, including—
 - (a) any information or document (for example, a passport); and
 - (b) any materials or money.
- (3) No employer, or person acting as an agent for an employer, (**person A**) may use anything that belongs to an employee (**person B**), including any information, document, materials, or money, to influence—
 - (a) person B; or
 - (b) person B's immigration status; or
 - (c) the effective functioning of the immigration system.

Education provider and internship provider responsibilities

165 Responsibilities of education providers and internship providers

- (1) Every person (**person A**) must take reasonable steps to ensure that a person without continuing rights (**person B**) is entitled to study in the Cook Islands before—
 - (a) enrolling person B in a course of study in the Cook Islands; or
 - (b) granting person B an internship in the Cook Islands.
- (2) For the purposes of **subsection (1)**, person A **takes reasonable steps** if—
 - (a) person A requires person B to supply evidence that they are entitled to study in the Cook Islands, and retains a copy of the evidence supplied; or
 - (b) person A obtains the signed consent of person B to make inquiries of the Department about person B's immigration status and then—
 - (i) contacts an immigration officer to obtain evidence of person B's entitlement to study in the Cook Islands; and
 - (ii) provides a copy of person B's consent to the making of that request to the immigration officer; and
 - (iii) retains a copy of the evidence provided by the immigration officer of the person's entitlement to study.
- (3) **Subsections (1) and (2)** are subject to **section 171** (which makes it lawful for an education provider to enrol a person aged under 19 in a primary or secondary school who is not enrolled to study in the Cook Islands if the education provider notifies the principal immigration officer of the person's details as soon as practicable after that enrolment).

166 Duties of education providers or internship providers who enrol or engage persons without continuing rights

Every person (**person A**) who enrolls another person in a course of study or engages a person without continuing rights as an intern (**person B**) must inform an immigration officer of the following:

- (a) any changes in the circumstances of person B's enrolment or engagement that might be relevant to their continued ability to study in the Cook Islands:

- (b) the cessation of person B's course of study or internship:
- (c) the expulsion of person B from the course of study or internship:
- (d) any changes to person B's course of study or internship.

167 Duty of education provider or internship provider to make records available for inspection by immigration officer

Every education provider or internship provider (**person A**) must, on request by an immigration officer, make available any enrolment or attendance records and any other relevant records, to enable the immigration officer to inspect and copy the records for the purpose of ascertaining 1 or more of the following:

- (a) whether a student or an intern who is a person without continuing rights (**person B**) is complying with the study-related conditions of his or her permit:
- (b) whether person A is complying with their obligations as an education provider or an internship provider, including the obligation not to commit an offence against this Act:
- (c) the location of person B, if he or she is—
 - (i) unlawfully in the Cook Islands; or
 - (ii) liable to removal or deportation:
- (d) whether person B is entitled to study in the Cook Islands.

168 Requirements for internship agreements with interns who do not have continuing rights

Every person (**person A**) who engages a person without continuing rights in an internship (**person B**) must ensure that—

- (a) person B has a written agreement stating the terms and conditions of their internship; and
- (b) the written agreement referred to in **paragraph (a)** states—
 - (i) the day on which the internship begins; and
 - (ii) the date on which the internship expires; and
 - (iii) the names of the intern and internship provider; and
 - (iv) the learning or experiential goals of the internship; and
 - (v) the work that person B will perform; and
 - (vi) person B's normal hours of work; and
 - (vii) the provisions for payment of wages or salary, any stipend, public holidays, or sick leave; and
 - (viii) procedures for the resolution of any disputes associated with the internship.

169 Other duties of education providers and internship providers

Every education provider or internship provider (**person A**) must—

- (a) assist a student or an intern who is a person without continuing rights (**person B**) to comply with any prescribed or other requirements or conditions of person B's visa or permit; and
- (b) comply with any prescribed or other requirements of any sponsorship obligations of person A.

170 Other things education providers and internship providers must not do

- (1) No education provider or internship provider, or person acting as an agent of an education provider or internship provider, may—
 - (a) coerce, threaten, deceive, or otherwise exploit a student or an intern who is a person without continuing rights; or
 - (b) compel such a student or intern to work outside the terms and conditions of their contract or enrolment or otherwise unlawfully.
- (2) No education provider or internship provider, or person acting as an agent for an education provider or internship provider, may withhold from a student or an intern who is a person without continuing rights anything that belongs to that student or intern, including—
 - (a) any information or document (for example, a passport); and
 - (b) any materials or money.
- (3) No education provider or internship provider, or person acting as an agent for an education provider or internship provider, (**person A**) may use anything that belongs to a student or an intern (**person B**), including any information, document, materials, or money, to influence—
 - (a) person B; or
 - (b) person B's immigration status; or
 - (c) the effective functioning of the immigration system.

171 Education providers do not commit offence by enrolling persons under 19 in school if principal immigration officer advised

An education provider who enrolls any person who is under 19 years and is without the right to study in the Cook Islands in a primary or secondary school does not commit an offence against this Act, if the provider notifies the name and address of the person enrolled as soon as practicable after the person is enrolled.

Part 14
Information sharing and data protection

Information sharing within Cook Islands

172 Immigration officer may supply certain information to employer or education provider or internship provider

- (1) An immigration officer may, on request and on receipt of a copy of the signed consent referred to in **subsection (2)**, supply information to an employer or education provider or internship provider indicating whether an employee or a prospective employee, a student or a prospective student, or an intern or a prospective intern has the right to study or work in the Cook Islands.
- (2) An employer or education provider or internship provider must at the same time as making a request under **subsection (1)** give the immigration officer a copy of a signed consent from the person consenting to the release of information about their immigration status to the employer or education provider or internship provider.

173 Principal immigration officer may be given and receive births and deaths information

The principal immigration officer may be given and receive information about the births and deaths of non-Cook Islanders from other departments or government agencies in the Cook Islands, for the purpose of effectively managing decision-making functions under this Act (whether carried out in the Cook Islands or overseas).

174 Principal immigration officer may share and receive other information

The principal immigration officer may give to, or receive from, any department, other government agency, or organisation in the Cook Islands information that may assist—

- (a) in operating the immigration system:
- (b) in detecting, preventing, investigating, prosecuting, and responding to offences:
- (c) in supporting the effective governance of the Cook Islands and the effective operation of government agencies:
- (d) in supporting the health and well-being of the Cook Islands and the Cook Islands community generally.

Information sharing with overseas agencies

175 Definitions used in sections 176 to 178

In sections 176 to 178,—

overseas crime agency means an overseas agency, body, or person whose functions include the prevention, detection, investigation, prosecution, or punishment of immigration offences or other offences, or the administration of immigration laws

specified information means any of the following:

- (a) airline passenger and crew lists:
- (b) craft movements (which may include passenger and crew lists):
- (c) past travel movements of specified people:
- (d) previous convictions of specified people:
- (e) the general history of specified persons (which may include associates and networks):
- (f) the modus operandi of specified persons:
- (g) known currency and other financial transactions of relevant interest, including involvement in money laundering:
- (h) intelligence analysis assessments and reports:
- (i) details of communications interceptions:
- (j) personal identification details (which may include photographs, biometric information, distinguishing features, and details of identity documents or travel documents):
- (k) names and details of immigration personnel and transport personnel:
- (l) details of known or suspected involvement of people in illicit activities:
- (m) details of any visa held by a person.

176 Disclosure to overseas crime agencies

- (1) The principal immigration officer may, in accordance with an agreement made under this section, disclose any specified information to an overseas crime agency (**agency**) or an international body or person whose functions include—
 - (a) the processing of international passengers; or
 - (b) border security.
- (2) The principal immigration officer must not enter into an agreement under this section unless satisfied that it is justified—
 - (a) to help prevent, identify, or respond to breaches of Cook Islands law; or
 - (b) to help prevent, identify, or respond to the kinds of actions that the agency or body or person has a function of preventing, identifying, or responding to; or
 - (c) in any other case, to help prevent, identify, or respond to breaches of the law of the state concerned.
- (3) An agreement under this section must be in writing and state—
 - (a) criteria for the disclosure of information; and
 - (b) the use that the agency, body, or person may make of the information disclosed; and
 - (c) either—
 - (i) that the agency, body, or person must not disclose it to any other agency, body, or person; or
 - (ii) the other agencies, bodies, or persons to which the agency, body, or person may disclose it, and the extent to which and any conditions subject to which the agency, body, or person may do so.
- (4) The agreement may state the form and method by which the information may be disclosed.
- (5) Any agreement under this section may be varied at any time.

177 Conditions of disclosure to overseas crime agencies

- (1) The principal immigration officer may disclose specified information to an overseas crime agency (**agency**)—
 - (a) in accordance with an agreement with the agency made under **section 176**; or
 - (b) if the disclosure complies with the requirements of this section.
- (2) The principal immigration officer must not disclose information under **subsection (1)(b)** unless satisfied that it is justified—
 - (a) to help prevent, identify, or respond to breaches of Cook Islands law; or
 - (b) to help prevent, identify, or respond to the kinds of actions that the agency has a function of preventing, identifying, or responding to; or
 - (c) to help prevent, identify, or respond to breaches of the law of the state concerned.
- (3) Every disclosure of information under **subsection (1)(b)** must be made subject to conditions stating—
 - (a) the use the agency may make of it; and
 - (b) either—

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- (i) that the overseas crime agency must not disclose it to any other agency, body, or person; or
 - (ii) the other agencies, bodies, or persons to which the overseas crime agency may disclose it, and the extent to which and conditions subject to which the agency, body, or person may do so.
- (4) The principal immigration officer must make and keep a record of—
 - (a) any information disclosed under **subsection (1)(b)**; and
 - (b) the overseas crime agency to which it was disclosed; and
 - (c) the conditions subject to which it was disclosed.

General

178 Disclosure under this Part does not affect other disclosures

- (1) Nothing in this Part prevents or limits any disclosure of information that may be required or authorised by or under law, or by or under any treaty, agreement, or arrangement concluded by the Government of the Cook Islands.
- (2) To avoid doubt, nothing in this Part affects any right, duty, or power of the principal immigration officer to disclose information to officers of the Cook Islands Police or employees of the Cook Islands Public Service.

Part 15 Immigration powers

Collection of information and questioning

179 Power of immigration officer or designated officer to request information and documents

- (1) This section applies if an immigration officer, or a designated officer while working in a designated place,—
 - (a) wishes to determine the immigration status and entitlements of any person; or
 - (b) has good cause to suspect that a person has committed an offence against this Act or the regulations; or
 - (c) has good cause to suspect that a person can give information relevant to a determination under **paragraph (a)** or an offence referred to in **paragraph (b)**.
- (2) If this section applies, an immigration officer or a designated officer may ask a person referred to in **subsection (1)(a) to (c)** to do 1 or more of the following:
 - (a) supply the person's full name (or names, if the person is known by more than 1 name), date of birth, country of birth, nationality, and residential address:
 - (b) produce any identity documents for inspection:
 - (c) surrender any identity document produced under **paragraph (b)**:
 - (d) if the person does not currently have in his or her possession an identity document requested by the officer, give details to the officer of where it can be found or who is holding it:

- (e) provide any other information the immigration officer or designated officer considers relevant.
- (3) Before acting under **subsection (2)**, the immigration officer or designated officer must,—
 - (a) if **subsection (1)(b)** applies, inform the suspected person that the officer suspects that the person has committed an offence against this Act; and
 - (b) warn the person from whom the officer proposes to require information or documents that if the person fails without reasonable excuse to comply with the request, the person is liable to arrest and detention under this Act.

180 Questioning about location of certain persons

- (1) This section applies if an immigration officer, or a designated officer working in a designated place, has good cause to suspect that—
 - (a) a person without continuing rights (**person A**)—
 - (i) has contravened this Act or the regulations; or
 - (ii) is unlawfully in the Cook Islands; or
 - (iii) is liable to be removed or deported under this Act; or
 - (iv) is in breach of the conditions of their visa or permit or their visa or permit waiver or exemption; and
 - (b) another person (**person B**) can give information about the location or whereabouts of person A.
- (2) If this section applies, the immigration officer or designated officer may require person B to provide all information known to person B about the whereabouts or location of person A.

181 Copying and recording documents and details supplied under section 179 or 180

- (1) If any person supplies documents or information under **section 179 or 180** to an immigration officer or a designated officer, the immigration officer or designated officer may copy those documents and record that information.
- (2) If an immigration officer or a designated officer states on the copy or record the details of the time and date and the circumstances of the copying or recording, those details are presumed to be true, in the absence of any evidence to the contrary, in any proceedings under this Act.

182 Requirement to provide biometric information

- (1) An immigration officer, or a designated officer working in a designated place, may require any person to provide biometric information if the officer believes, on reasonable grounds, that—
 - (a) the person is a person without continuing rights; and
 - (b) the person—
 - (i) has contravened this Act or the regulations; or
 - (ii) is unlawfully in the Cook Islands; or
 - (iii) is liable to removal or deportation; or
 - (iv) has breached the conditions of their visa or permit or visa or permit exemption or waiver.

- (2) The purpose of collecting biometric information under **subsection (1)** is to enable the current or future identification of the person from whom the information is collected.

183 Application for order authorising collection of biometric information

- (1) An immigration officer may apply, in writing and on oath, to a Judge of the High Court for a compulsion order in any case where a person has refused to allow biometric information to be collected from him or her in response to a requirement made under **section 182(1)**.
- (2) The application must set out the following:
- (a) the facts relied on to show that **section 182(1)(a) and (b)(i), (ii), (iii), or (iv)** apply; and
 - (b) evidence that the person has refused to allow biometric information to be collected from him or her in accordance with **section 182(1)**.
- (3) If an application is made under this section,—
- (a) an immigration officer must serve a copy of the application on the respondent; and
 - (b) both the immigration officer and the respondent may appear and offer evidence at the hearing of the application.
- (4) In considering an application made under this section, the Judge may take into account any oral or documentary material that the Judge considers relevant, whether or not it would be otherwise admissible under the Evidence Act 1968.
- (5) Any application under this section must be heard within 10 days of filing and may proceed in the respondent’s absence if the immigration officer has shown that reasonable efforts have been made to serve the respondent.
- (6) In the event a Judge is not available to conduct the hearing (either in person or by video-link), 3 Justices of the Peace may exercise the powers of a Judge.

184 Court may authorise biometric information and special biometric information to be collected

- (1) On the hearing of an application for a compulsion order, the Court may make a compulsion order requiring the respondent to allow specified biometric information to be collected from him or her if the Judge is satisfied that—
- (a) there is good cause to suspect that **section 182(1)** applies to the respondent; and
 - (b) there are reasonable grounds to believe that biometric information collected from the respondent would tend to confirm or disprove that any provision in **section 182(1)** applies to the respondent; and
 - (c) the respondent has refused to allow biometric information to be collected from him or her following a requirement under **section 182(1)**; and
 - (d) in all the circumstances, it is reasonable to make the order.
- (2) In considering whether to make a compulsion order, the Judge must have regard to any matter the Judge considers relevant, including—
- (a) any reasons given by the respondent for opposing the making of the order; and
 - (b) any evidence regarding the importance to the investigation of the relevant matter of obtaining biometric information from the respondent.

- (3) A person served with a compulsion order must allow the biometric information or special biometric information specified in the order to be collected from him or her.

185 Obtaining biometric information by compulsion

- (1) If, after a compulsion order is served on a person, the person refuses to allow the biometric information or special biometric information specified in the order (the **required biometric information**) to be collected from him or her, a police officer may—
 - (a) arrest the person; and
 - (b) remove the person to, and detain him or her in, a suitable place where the required biometric information can be collected; and
 - (c) collect, as soon as practicable, the required biometric information from the person, by force if necessary.
- (2) If force is used under **subsection (1)(c)**, it must be reasonable and no more than is necessary to collect the required biometric information from the person.
- (3) The person must be released from detention as soon as the required biometric information has been collected, unless the person's continued detention is authorised under any other provision of this or any other Act.

186 Further applications for compulsion order

- (1) The fact that a compulsion order has previously been applied for or made in respect of a matter, whether or not the previous application or order related to the same person, does not prohibit—
 - (a) the making of an application under **section 183** for a compulsion order in respect of a matter; or
 - (b) the making of a compulsion order in respect of a matter.
- (2) Despite anything in **subsection (1)**, if a further application for a compulsion order is made in respect of a matter in relation to which a previous compulsion order application has been made, the Court may refuse to make the order sought if the Court is satisfied that the further application is vexatious or an abuse of the process of the Court.

187 Immigration officer may seize and retain documents

An immigration officer may seize and retain the passport or other identity document and the travel documents of a person without continuing rights, in order to—

- (a) determine whether any or all of those documents are genuine; or
- (b) preserve those documents as evidence for proceedings for an offence against this Act or any other Act; or
- (c) facilitate the person's departure, removal, or deportation from the Cook Islands.

188 Principal immigration officer may designate places

- (1) The principal immigration officer may designate 1 or more places (a **designated place**) for the following purposes:
 - (a) the exercising of powers and carrying out of functions under this Act at the border of the Cook Islands;
 - (b) enabling the carrying out of obligations under this Act and the regulations by carriers, persons in charge of craft, and passengers arriving in, and departing from, the Cook Islands.
- (2) The principal immigration officer must notify any place designated under **subsection (1)**—
 - (a) in the *Gazette*; or
 - (b) on an Internet site maintained by the Department.

Entry powers at border

189 Powers to enter designated area

- (1) An immigration officer or a designated officer may, at any time of the day or night, without a warrant or any authority other than this section, enter any designated area or any building or craft in that area for the purposes of carrying out his or her functions under this Act.
- (2) **Subsection (1)** applies irrespective of whether—
 - (a) the designated place is on publicly or privately owned land; or
 - (b) the building or craft concerned is publicly or privately owned.

Entry powers anywhere in Cook Islands

190 General powers of entry and search

For the purposes of exercising powers or carrying out functions under this Act, an immigration officer, or a designated officer who is working in a designated area, may, without warrant, enter and search—

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

191 Search of persons

- (1) An immigration officer, or a designated officer who is working in a designated area, may search a person who arrives in the Cook Islands from another country or is about to depart from the Cook Islands to another country—
 - (a) if—
 - (i) the immigration officer or designated officer has demanded the production of the prescribed entry or any prescribed departure information; and
 - (ii) the person has refused or failed to comply with that demand; and

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- (iii) the immigration officer or designated officer has reasonable cause to suspect that some or all of the required documents are hidden on or about the person or in any baggage under the immediate control of the person; or
 - (b) if the immigration officer or designated officer has reasonable grounds to suspect that there is something on the person that poses a threat to safety or security; or
 - (c) if the immigration officer or designated officer has reasonable grounds to suspect that the person has a tattoo or other marking that identifies the person as a member of a gang of concern.
- (2) A search under this section may include—
 - (a) a rub-down search; or
 - (b) the removal of clothing likely to conceal a tattoo or other marking; or
 - (c) the removal of clothing likely to conceal a weapon or other object likely to present a threat to safety or security; or
 - (d) a search of the person, including a strip search; or
 - (e) 2 or more of these things.
- (3) If, as a result of a search under this section, the person's passport or certificate of identity or any travel tickets are found,—
 - (a) the documents may be retained by the immigration officer or designated officer for the purpose of administering this Act (unless the person is found to be a person with continuing rights or a person who has a visa and entry permission); and
 - (b) the documents must be returned to the person—
 - (i) if the person is granted a visa and entry permission; or
 - (ii) on the person's departure from the Cook Islands.
- (4) For the purposes of this section, **rub-down search** means a search of a clothed person in which the person conducting the search may do any or all of the following:
 - (a) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than the underclothing) of that person;
 - (b) insert his or her hand inside any pocket or pouch in the clothing (other than the underclothing) of the person being searched;
 - (c) for the purpose of permitting a visual inspection, require the person being searched to do any or all of the following:
 - (i) open his or her mouth;
 - (ii) display the palms of his or her hands;
 - (iii) display the soles of his or her feet;
 - (iv) lift or rub his or her hair.

192 Search for persons unlawfully in Cook Islands

For the purposes of exercising powers or carrying out functions under this Act, an immigration officer may, without warrant, search any vehicle, building, or premises in which the officer believes, on reasonable grounds, there is a person without continuing rights who—

- (a) is unlawfully in the Cook Islands; or
- (b) is liable to be removed or deported from the Cook Islands; or
- (c) is in breach of the conditions of their visa or permit or visa or permit waiver.

193 Warrant to enter and search

- (1) For the purpose of exercising powers and carrying out functions under this Act, an immigration officer may apply for a search warrant to enter and search any vehicle, building, or premises if the officer has reasonable grounds to suspect that—
 - (a) an immigration offence is being committed there or evidence of an immigration offence that is being committed will be found there; or
 - (b) they will find evidence of non-compliance with this Act by a person without continuing rights.
- (2) The application must be made on oath and in writing to the Registrar or a Judge of the Court.
- (3) The Registrar or Judge may issue a search warrant to an immigration officer if the Registrar or Judge is satisfied that there are reasonable grounds—
 - (a) to suspect that any relevant offence specified in the application has been committed, is being committed, or will be committed; and
 - (b) to believe that the search will find evidential material in respect of an immigration offence in or on the place or thing specified in the application.
- (4) In this section and **section 194, immigration offence** means an offence against—
 - (a) this Act or the regulations; or
 - (b) the former Act or any regulations made under it; or
 - (c) any other enactment, if the offence relates directly to matters concerning immigration.

194 Power to secure premises

- (1) An immigration officer may secure any vehicle, building, or premises if the officer has good cause to suspect that the vehicle, building, or premises contains evidence of an offence (other than an immigration offence).
- (2) The purpose of securing vehicle, the building, or premises is to enable it to be searched by the Police or any other relevant government department or agency that has search powers.

195 Further power to search persons

- (1) For the purposes of exercising any powers or carrying out any functions under this Act, an immigration officer may, without warrant, search any person if—
 - (a) the officer has good cause to suspect that the person is a person without continuing rights and that evidence of their identity is on or about their person or in the place or premises where the person is; and

- (b) the officer has demanded that the person produce evidence of their identity and the person has refused or failed to produce it.
- (2) For the purposes of **subsection (1)**, an immigration officer may, without warrant, enter any premises at a reasonable time if the officer suspects that a person to whom **subsection (1)(a) and (b)** applies is there.

196 Production of tickets and assets

- (1) If a person is unlawfully in the Cook Islands or is for any other reason liable to be removed or deported from the Cook Islands, an immigration officer may require that person to surrender—
 - (a) any travel tickets or cash; or
 - (b) any other goods or security, in place of the travel tickets.
- (2) Anything surrendered under **subsection (1)** may be used by the principal immigration officer to effect the person's departure, removal, or deportation from the Cook Islands.

197 Seizure of identity and travel documents

- (1) The Court, may, on application by any person, order that a person's passport or other identity documents and any travel tickets or other documents be seized if—
 - (a) the Court is satisfied that the person's departure from the Cook Islands would not be in the interests of justice or national security; or
 - (b) the person—
 - (i) is in debt to the Crown; or
 - (ii) is a party to proceedings that cannot be appropriately determined in the person's absence.
- (2) The principal immigration officer—
 - (a) must be served with any application under this section; and
 - (b) if the applicant is a person other than the principal immigration officer, is a party to the proceedings for the purposes of determining the application.
- (3) The jurisdiction of the Court under this section may be exercised by—
 - (a) a Judge; or
 - (b) if a Judge is not available, a Justice of the Peace.

198 Search powers

Every search power under this Part authorises the immigration officer or designated officer exercising it—

- (a) to enter and search the place, craft, vehicle, or other thing that the officer is authorised to enter and search, and any item or items found in that place or vehicle or thing, at any time that is reasonable:
- (b) to request any person to assist with the entry and search:
- (c) to use any force in respect of any property that is reasonable for the purposes of carrying out the search and any lawful seizure:
- (d) to seize anything that is the subject of the search or anything else that may be lawfully seized:

- (e) to bring and use in or on the place, craft, vehicle, or other thing searched any equipment, to use any equipment found on the place, craft, vehicle, or other thing, and to extract any electricity from the place, craft, vehicle, or other thing to operate the equipment that it is reasonable to use in the circumstances, for the purposes of carrying out the entry and search:
- (f) to copy any document, or part of a document, that may lawfully be seized:
- (g) to use any reasonable measures to access a computer system or other data storage device located (in whole or in part) at the place, craft, vehicle, or other thing if any intangible material that is the subject of the search may be in that computer system or other device:
- (h) if any intangible material accessed under **paragraph (g)** is the subject of the search or may otherwise be lawfully seized, to copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination):
- (i) to take photographs, sound and video recordings, and drawings of the place, craft, vehicle, or other thing searched, and of any thing found in or on that place, craft, vehicle, or other thing, if the officer has reasonable grounds to believe that the photographs or sound or video recordings or drawings may be relevant to the purposes of the entry and search.

199 Items of uncertain status may be seized

If a person exercising a search power is uncertain whether any item found may lawfully be seized, and it is not reasonably practicable to determine whether that item can be seized at the place, craft, or vehicle where the search takes place, the person exercising the search power may remove the item for the purpose of examination or analysis to determine whether it may be lawfully seized.

200 Powers of persons called to assist

- (1) Every person called on to assist an immigration officer or a designated officer exercising a search power is subject to the control of the officer with overall responsibility for exercising the power.
- (2) Every person called on to assist a person exercising a search power may—
 - (a) enter the place, craft, vehicle, or other thing to be searched:
 - (b) while under the direction of the person exercising the power, use reasonable force in respect of any property for the purposes of carrying out the entry and search and any lawful seizure:
 - (c) search areas within the place, craft, vehicle, or other thing that the person exercising the power has determined may lawfully be searched:
 - (d) seize anything that is the subject of the search or anything else that may be lawfully seized:
 - (e) take photographs, sound and video recordings, and drawings of the place, craft, vehicle, or other thing, and things found in or on the place, craft, vehicle, or other thing, if the person exercising the power has determined that those things may be lawfully taken:
 - (f) bring into or onto the place, craft, vehicle, or other thing searched and use any equipment, make use of any equipment found in or on the place or in the vehicle or other thing, or extract electricity from the place, ship, craft, vehicle, or other thing for the purposes of operating the equipment that the person exercising the power has determined may be lawfully used:

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- (g) use any reasonable measures to access a computer system or other data storage device located (in whole or in part) at the place, craft, vehicle, or other thing if any intangible material that is the subject of the search may be in that computer system or other device:
 - (h) if any intangible material accessed under **paragraph (g)** is the subject of the search or may otherwise be lawfully seized, copy that material (including by means of previewing, cloning, or other forensic methods either before or after removal for examination):
 - (i) copy any document, or part of a document, that the person exercising the power has determined may be lawfully copied.
- (3) If a police officer is assisting another person exercising the search power, that police officer may, without any direction or supervision by the person he or she is assisting, exercise any power ordinarily exercisable by that police officer.
- (4) An immigration officer or a designated officer exercising the search power must—
- (a) accompany any assistant on the first occasion when the assistant enters the place, craft, vehicle, or other thing to be searched; and
 - (b) provide any other supervision of any assistant that is reasonable in the circumstances.
- (5) **Subsection (4)** does not apply if the assistant is a Police officer.

Part 16

Appointments, delegations, and designations

201 Principal immigration officer

- (1) There must be a principal immigration officer who—
- (a) is appointed under the Public Service Act 2009; and
 - (b) is an employee of the Department.
- (2) When exercising his or her powers and functions under this Act, the regulations, and immigration policy, the principal immigration officer acts independently of the head of the Department.

202 Delegation of powers by Minister

The Minister may delegate any or all of his or her powers to the principal immigration officer, with the exception of—

- (a) the power to waive a prohibition on—
 - (i) entry to the Cook Islands; and
 - (ii) applying for a visa or permit:
- (b) the power to grant permanent residence to a person under **section 42**:
- (c) the power to recommend the making of an Order in Council, or to apply to the Court for an order, revoking a person's status as an honorary permanent resident or a permanent resident:
- (d) the power to revoke under **section 51** a person's permanent residence status.

203 Delegation of powers by principal immigration officer

The principal immigration officer may delegate all or any of his or her powers to an immigration officer or class of immigration officers or a designated officer or class of designated officers.

204 General provisions about delegation

- (1) Every delegation under **section 202 or 203** must—
 - (a) be in writing; or
 - (b) be made orally and confirmed as soon as practicable in writing.
- (2) The power of the Minister to delegate under **section 202** and the power of the principal immigration officer to delegate under **section 203**—
 - (a) are subject to any prohibitions or restrictions contained in this Act or any other enactment about the delegation of (as the case may be)—
 - (i) the Minister’s functions or powers; or
 - (ii) the principal immigration officer’s functions or powers; and
 - (b) do not limit any power of delegation conferred on the Minister or the principal immigration officer by any other Act.
- (3) Subject to any general or special directions given or conditions imposed by the Minister or the principal immigration officer, the person to whom a power or function is delegated may exercise the power and perform the function so delegated in the same manner and with the same effect as if it had been conferred on the person directly by this section and not by delegation.
- (4) If any person purports to be acting under a delegation made under **section 202 or 203**, the person, is in the absence of proof to the contrary, presumed to be acting in accordance with the terms of the delegation.
- (5) A delegation under **section 202 or 203**—
 - (a) does not affect or prevent the performance or exercise of any function or power by the Minister or the principal immigration officer; and
 - (b) does not affect the responsibility of the Minister or the principal immigration officer, as the case requires, for the actions of any person acting under the delegation.

205 Subdelegation of powers delegated to principal immigration officer

- (1) The principal immigration officer may subdelegate any powers or functions delegated to the principal immigration officer by the Minister—
 - (a) to an immigration officer or a class of immigration officers; or
 - (b) to a designated person or a class of designated persons.
- (2) The principal immigration officer may not make a subdelegation under this section without the prior written approval of the Minister.
- (3) A subdelegation under this section may be subject to any general or special directions given, or conditions imposed, by the principal immigration officer.
- (4) In any other respects, the provisions of **section 204** apply to a subdelegation under this section as if it were a delegation under **section 202 or 203**.

206 Disqualification from continuing to exercise powers or carry out functions

- (1) This section applies if the principal immigration officer, an immigration officer, a designated officer, or a police officer is convicted of—

- (a) an offence against this Act or the regulations; or
 - (b) an immigration-related offence under another enactment.
- (2) If this section applies, a person referred to in **subsection (1)** who is convicted may not, unless the Court orders otherwise, exercise powers or carry out functions under this Act or the regulations.
- (3) However, the prohibition imposed by **subsection (2)** does not take effect until the later of the following occurs:
- (a) the time allowed for appealing against conviction expires and no appeal has been lodged;
 - (b) any appeal against conviction is determined and the conviction is upheld.

Immigration officers and designated officers

207 Designation of immigration officers and designated officers

- (1) The principal immigration officer may designate as immigration officers or designated officers—
- (a) any persons or class of persons employed in the Department that the principal immigration officer considers are—
 - (i) necessary to designate for the purposes of this Act; and
 - (ii) suitably qualified and trained; and
 - (b) such other persons or classes of person in the service of the Government of the Cook Islands, or persons in the service of the government of another country, as the principal immigration officer determines, whether designated individually or by class or position.
- (2) The principal immigration officer must specify which functions and powers an immigration officer or designated officer is authorised to perform and exercise under this Act or the regulations, and an officer may not perform any functions or exercise any powers under this Act or the regulations unless specifically authorised by the principal immigration officer.
- (3) An immigration officer or a designated officer authorised to exercise 1 or more of the following powers must be issued with a warrant of designation, signed by the principal immigration officer, specifying which of the following powers the officer may exercise:
- (a) the power to arrest a person under **section 134**;
 - (b) the power to detain a person under **section 134**;
 - (c) all or any specified powers under **Part 9** (which deals with arrivals and departures) at a border;
 - (d) the powers under **sections 179 and 181** to require information or copy or record documents for the purpose of ensuring compliance with this Act;
 - (e) the powers of entry and search under **sections 190 to 192**;
 - (f) the power to apply under **section 193** for a warrant to enter and search;
 - (g) the power to apply for a compulsion order requiring the supply of biometric information, special biometric information, or both, under **section 183**.

- (4) A warrant is sufficient evidence of the officer's designation as an immigration officer or as a designated officer, as the case requires, and the officer's authorisation to perform the functions and exercise the powers specified in it.
- (5) To avoid doubt, the principal immigration officer need not be issued with a warrant of designation, and may perform or exercise all the powers and functions of an immigration officer under this Act and the regulations.
- (6) Whenever an immigration officer (including a police officer exercising the powers of an immigration officer) or a designated officer seeks entry to any premises, building, or craft in the course of exercising a power described in **subsection (3)**, the officer—
 - (a) must, unless subsection (5) applies, produce his or her warrant of designation; and
 - (b) if called upon to do so, must state the provision or provisions of this Act under which he or she is entitled to enter the premises, building, or craft or exercise a power of detention.
- (7) An immigration officer (including a police officer exercising the powers of an immigration officer) or designated officer who, in exercising a power described in **subsection (3)**, orally makes a request, requirement, or demand of a person must, unless subsection (5) applies, also produce his or her warrant of designation if called upon to do so by the person.
- (8) It is sufficient compliance with **subsections (6)(a) and (7)** if, in the case of a police officer, he or she is in uniform or produces his or her badge or other evidence of being a police officer.

208 Immigration officers' or designated officers' functions and powers

- (1) An immigration officer or a designated officer may be authorised by the principal immigration officer to perform or exercise individual functions and powers, or functions and powers of 1 or more classes.
- (2) Without limiting the way in which functions and powers are classified under **subsection (1)**, functions and powers may be classified as follows:
 - (a) visa decision-making functions and powers, being functions and powers set out in **Parts 7 and 8**;
 - (b) entry permission decision-making functions and powers, being functions and powers set out in **Part 8**;
 - (c) compliance and enforcement functions and powers, being the functions and powers set out in **Parts 10, 12, 14, 15, and 17**;
 - (d) the powers of arrest and detention, being the powers set out in **Part 11**.

209 Revocation or lapsing of designations

- (1) Every designation by the principal immigration officer of a person as an immigration officer or as a designated officer, or for any other purpose under this Act, is revocable in writing at will.
- (2) Every authorisation of an immigration officer or a designated officer to exercise a power or perform a function is revocable in writing at will.
- (3) Any such designation or authorisation—
 - (a) continues in force according to its tenor until it is revoked, even if the principal immigration officer who made it has ceased to hold office, and continues to have effect as if made by the successor in office of that principal immigration officer; and

- (b) is subject to any restrictions or conditions that the principal immigration officer specified in writing in the warrant of designation.
- (4) A designation lapses when the person leaves the Department or the service or employment in respect of which the person was designated.
- (5) A person whose designation has lapsed or been revoked must immediately surrender their warrant of designation to the principal immigration officer.

Part 17

Evidence and offences

Subpart 1—Evidence

210 Admissibility of certain immigration documents

- (1) For the purpose of any proceedings brought under this Act, any immigration document can be introduced into evidence by an immigration officer.
- (2) In any proceedings under this Act in the Court involving a challenge to a decision (whether the proceedings are an appeal or a judicial review),—
 - (a) the Court may require the decision maker to produce a sworn statement of reasons for the decision; and
 - (b) that statement is conclusive evidence of the reasons for the decision.
- (3) A decision maker may not be required to give evidence in the Court other than by way of a statement referred to in **subsection (2)**.

Subpart 2—Offences and administrative fines

Offences generally

211 Person who fails to comply with requirements commits offence

- (1) A person commits an offence against this Act if the person—
 - (a) refuses or fails to comply with any lawful requirement made by an immigration officer or a designated officer; or
 - (b) refuses or fails to produce any information or document as required by this Act or the regulations; or
 - (c) refuses to remain in a designated area or other area as required by this Act or the regulations; or
 - (d) refuses to provide biometric information as required under this Act or the regulations; or
 - (e) refuses to comply with any lawful request made by an immigration officer in connection with the exercise or performance of a power or function under this Act.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 3 months, or to both.

212 Alteration or destruction of visa or permit

- (1) A person commits an offence against this Act if the person, without lawful authority,—
- (a) alters a visa or permit issued under this Act; or
 - (b) detaches that visa or permit from a passport or certificate of identity; or
 - (c) fails to comply with their responsibilities under this Act or the regulations.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or to both.

213 Provision of false or misleading information

- (1) A person commits an offence against this Act if the person—
- (a) makes any statement, or provides any information, evidence, or submission, knowing that it is false or misleading in any material respect, in support of—
 - (i) any application or request (whether by that person or by another person) for a visa or permit or visa or permit waiver, or any expression of interest in a visa or permit; or
 - (ii) any request for the variation, waiver, or cancellation of the conditions of a visa or permit or visa or permit waiver; or
 - (iii) any appeal or application to the Minister or the Court; or
 - (b) produces or surrenders any document or supplies any information to an immigration officer or a designated officer knowing that it is false or misleading in any material respect; or
 - (c) completes any document required to be completed as part of an arrival or departure requirement in a manner that the person knows to be false or misleading in any particular.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or to both.

214 Alteration of forms

- (1) A person commits an offence against this Act if the person, not being an immigration officer or a designated officer,—
- (a) after the person to whom a form relates (that is required to be completed for the purposes of this Act) has signed it and declared its contents to be true,—
 - (i) alters information entered on it; or
 - (ii) enters further information on it; or
 - (iii) alters any material attached to it; or
 - (iv) attaches any material or further material to it; and
 - (b) allows the form to leave his or her possession without writing on it and signing a statement of—
 - (i) the information or material that has been altered, entered, or attached; and

- (ii) why and by whom the information or material has been altered, entered, or attached.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or to both.

215 Publishing false or misleading information

- (1) A person commits an offence against this Act who, for the purpose of encouraging, inducing, deterring, or preventing immigration to the Cook Islands of any person or class of persons, publishes, disseminates, or causes or procures the publication of any information or representation, knowing that the information or representation is false or misleading in any respect.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or to both.

216 Improper dealings with immigration or identity documents

- (1) A person commits an offence against this Act if the person, whether inside or outside the Cook Islands, produces, surrenders, or passes off an immigration or identity document—
 - (a) as relating to the person when in fact, to the person’s knowledge, the document relates to some other person; or
 - (b) knowing the document to be forged or to have been obtained fraudulently.
- (2) A person commits an offence against this Act if the person, whether inside or outside the Cook Islands, sells, hires, lends, gives, or otherwise disposes of an immigration or identity document relating to the person to any other person (the **receiver**) knowing that the receiver intends to do 1 or more of the following (but without necessarily knowing which of the following the receiver will do):
 - (a) produce it or pass it off as relating to the receiver or some other person; or
 - (b) sell, hire, lend, give, or otherwise dispose of it.
- (3) In this section, **immigration or identity document** means—
 - (a) a passport; or
 - (b) a certificate of identity; or
 - (c) an endorsement in a passport; or
 - (d) evidence of a visa; or
 - (e) an invitation to apply for a visa; or
 - (f) a certificate of citizenship; or
 - (g) anything purporting to be a document described in any of **paragraphs (a) to (f)**.
- (4) A person who commits an offence against **subsection (1) or (2)** is liable on conviction to a fine not exceeding \$100,000 or to a term of imprisonment not exceeding 7 years, or to both.

217 Impersonation

- (1) A person commits an offence against this Act who, not being an immigration officer or a designated officer, personates or pretends to be an immigration officer or a designated officer.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 7 years, or to both.

218 Other offences

- (1) A person who contravenes **section 83(2), (3), or (4)** commits an offence against this Act and is liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding 1 year, or to both.
- (2) A carrier or person in charge of an aircraft who fails to comply with **section 109(2), (3), or (4)** commits an offence against this Act and is liable on conviction to a fine not exceeding \$50,000.
- (3) A person who fails to comply with **section 158(1), 159, 161, 162, 164, 165, 166, 167, 168, 169, or 170** commits an offence against this Act and is liable on conviction to a fine not exceeding \$50,000.

Administrative fines

219 Interpretation

In this Part, **administrative fine** means the appropriate fine specified in the right-hand column of **Schedule 4** for the corresponding offence specified in the left-hand column of **Schedule 4**.

220 Administrative fines

- (1) If an immigration officer has reason to believe that a person has committed an offence punishable by an administrative fine, the immigration officer may instead of prosecuting the person, issue a notice requiring the person to pay the administrative fine prescribed in **Schedule 4** for that offence.
- (2) The notice may be served by—
 - (a) delivering the notice, or a copy of it, personally to the person who is alleged to have committed the offence; or
 - (b) sending the notice, or a copy of it, to the alleged offender by post addressed to the person's last known place of residence or business.
- (3) A person who is required to pay an administrative fine under **subsection (1)** must pay the fine within 7 days.

A notice must contain the details prescribed by the regulations and must contain—

 - (a) those particulars of the alleged offence that are sufficient to fairly inform a person of the time, place, and nature of the alleged offence together with any other details that are prescribed; and
 - (b) the amount of the administrative fine in respect of the offence; and
 - (c) a statement of the consequences if the person served with the notice does not pay the fine within 7 days (ie, that the person is liable to be prosecuted for the offence).

- (4) If a notice, or a copy of it, is sent to a person by post addressed to the person at the person's last known place of residence or business under **subsection (2)(b)**, the notice or copy is deemed to have been served on the person when it would be delivered in the ordinary course of post.

221 Enforcement of administrative fines

If a person fails to pay an administrative fine, the principal immigration officer may do 1 or both of the following:

- (a) prosecute the person for the offence for which the fine was issued; and
- (b) prohibit the person, in the absolute discretion of the principal immigration officer, from—
 - (i) sponsoring any person; or
 - (ii) leaving the Cook Islands; or
 - (iii) entering the Cook Islands; or
 - (iv) any or all of the things in **subparagraphs (i) to (iii)**.

222 Person in Cook Islands unlawfully commits an offence

A person who enters or stays in the Cook Islands unlawfully commits an offence against this Act and is liable—

- (a) on conviction to a fine not exceeding \$10,000 and to an additional fine not exceeding \$500 for each day on which the offence continues; or
- (b) to the appropriate administrative fine set out in **Schedule 4**.

Sponsorship or bond offences

223 Offence to withhold wages or other property from sponsored or bonded persons

- (1) A person commits an offence against this Act if the person—
 - (a) withholds any wages or other entitlement of a person who is sponsored or is the subject of a bond, for the purpose of recovering any part of the person's sponsorship or bond; or
 - (b) uses any other mechanism for the purpose of recovering, either from the person who is sponsored or subject to a bond or from any other person, the cost of all or part of the sponsorship or bond.
- (2) A person who commits an offence against **subsection (1)** is liable—
 - (a) on conviction to a fine not exceeding \$10,000; or
 - (b) to the appropriate administrative fine set out in **Schedule 4**.

Carriers' offences

224 Carriers' offences

- (1) A carrier or a person in charge of a craft who fails to comply with any applicable responsibilities or obligations under this Act commits an offence against this Act.
- (2) A person who commits an offence against **subsection (1)**, is liable—
 - (a) on conviction to,—
 - (i) in the case of a carrier, a fine not exceeding \$50,000;

- (ii) in the case of a person in charge of a craft, a fine not exceeding \$2,500 or to imprisonment for a term not exceeding 3 months, or to both; or
- (b) to the appropriate administrative fine set out in **Schedule 4**.

Employers' offences

225 Offences by employers

- (1) An employer commits an offence against this Act if the employer—
 - (a) allows or continues to allow any person who is a person without continuing rights to work for that employer, unless that employer has taken reasonable steps to verify that person's entitlement under this Act to do that work; or
 - (b) fails to report a material change in circumstances of an employee who is a person without continuing rights; or
 - (c) without lawful excuse, refuses or fails to provide any information requested by an immigration officer under this Act; or
 - (d) does not have a written employment contract with an employee who is a person without continuing rights that meets the minimum terms and conditions of the Employment Relations Act 2012; or
 - (e) allows or continues to allow any employee without continuing rights to work, knowing that the work is in breach of that person's conditions of permission to work; or
 - (f) allows or continues to allow any employee without continuing rights to work, knowing that the person is not entitled under this Act to do that work.
- (2) An employer who commits an offence under **subsection (1)(a), (b), (c), or (d)** is liable—
 - (a) on conviction to a fine not exceeding \$10,000; or
 - (b) to the appropriate administrative fine set out in **Schedule 4**.
- (3) An employer who commits an offence under **subsection (1)(e) or (f)** is liable—
 - (a) on conviction to a fine not exceeding \$50,000; or
 - (b) to the appropriate administrative fine set out in **Schedule 4**.

Education providers' and internship providers' offences

226 Offences by education provider and internship providers

- (1) An education provider or internship provider commits an offence against this Act if the provider—
 - (a) allows or continues to allow any student or intern who is a person without continuing rights to study with that education provider or internship provider, unless that provider has taken reasonable steps to verify that person's entitlement under this Act to do that study; or
 - (b) fails to report a material change in circumstances of a student or an intern who is a person without continuing rights; or

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- (c) without lawful excuse, refuses or fails to provide any information requested by an immigration officer under this Act; or
 - (d) does not have a written employment contract with a student or intern without continuing rights that meets the minimum terms and conditions of the Employment Relations Act 2012; or
 - (e) allows or continues to allow any student or intern without continuing rights to study, knowing that the study is in breach of that person's conditions of permission to study; or
 - (f) allows or continues to allow any person without continuing rights to study as a student or an intern, knowing that the person is not entitled under this Act to do that study.
- (2) Subsection (1) is subject to section 171 (which provides that it is lawful to enrol any person under 19 years and who does not have the right to study in the Cook Islands in a primary or secondary school if the education provider notifies the principal immigration officer of the person's contact details as soon as practicable after the enrolment).
- (3) An education provider or internship provider who commits an offence under **subsection (1)(a), (b), (c), or (d)** is liable—
- (a) on conviction to a fine not exceeding \$10,000; or
 - (b) to the appropriate administrative fine set out in **Schedule 4**.
- (4) An education provider or intern provider who commits an offence under **subsection (1)(e) or (f)** is liable—
- (a) on conviction to a fine not exceeding \$50,000; or
 - (b) to the appropriate administrative fine set out in **Schedule 4**.

Part 18 Miscellaneous

227 Regulations

- (1) The Queen's Representative may, by Order in Executive Council, make regulations—
- (a) prescribing anything required or authorised to be prescribed under this Act; and
 - (b) for anything that is necessary or desirable for carrying this Act into effect.
- (2) Regulations made under **subsection (1)** may include, without limitation, provisions dealing with the following matters:
- (a) the classes of persons without continuing rights who are exempt from the requirement to hold—
 - (i) a visa for travelling to and entering the Cook Islands; or
 - (ii) a permit to stay in the Cook Islands:
 - (b) for permanent residence, and for each visa and permit class and type,—
 - (i) information requirements for applications to support immigration decision making:

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- (ii) the ranking of any application, or any class or type of person without continuing rights, for permanent residence or a visa or permit of a particular class or type:
 - (iii) the process for deciding applications for permanent residence, or any visa or permit of a particular class or type:
 - (iv) the lapsing of applications in respect of which, as a result of the acts or omissions of the applicant, no decision has been made within a particular time frame:
 - (v) the general or specific health and character requirements applying to an applicant for permanent residence or for any visa or permit class or type or any visa or permit waiver, and in respect of any class of person without continuing rights:
 - (vi) the general or specific conditions and requirements applying to an applicant for any visa or permit class or type or any visa or permit waiver, or to a class or type of person without continuing rights:
 - (vii) any indicators, attributes, or other relevant information or matters that may or must be considered in making a decision about the grant of permanent residence, or a visa or permit or permit waiver:
 - (viii) the criteria to be applied by the principal immigration officer or an immigration officer in deciding if any visa or permit should be cancelled:
 - (ix) the way in which an applicant's spouse or dependants, or both, are to be treated (including whether or not they may be included in the applicant's application):
 - (x) the sponsorship and bond requirements that can be imposed on applicants, employers, education providers, internship providers, and others, including any person without continuing rights who holds a visa or permit, or is subject to a visa or permit exemption or waiver, or to both:
- (c) authorising the principal immigration officer to relax or waive prescribed requirements relating to sponsorship or bonds, the amounts applicants for visas or permits are required to have access to, or fees or charges, in relation to applicants intending to live in the Pa Enea:
 - (d) prescribing fees or charges or setting out mechanisms for the calculation of fees and charges for applications or other matters under this Act or the regulations:
 - (e) providing for the waiver or refund of fees or charges (either in whole or in part).
- (3) Regulations under **subsection (1)** may include different provisions—
 - (a) in relation to Rarotonga and the Pa Enea; and
 - (b) in relation to different Islands within the Cook Islands.
 - (4) Regulations under **subsection (1)** may empower the principal immigration officer to make discretionary decisions of any kind.

228 Regulations relating to health emergencies

- (1) The Queen's Representative may by Order in Executive Council made on the recommendation of the Minister, authorise the principal immigration officer to regulate or prohibit the entry into, or departure from, the Cook Islands or travel between different islands in the Cook Islands of 1 or more of the following:
- (a) all persons with continuing rights:
 - (b) any class of person with continuing rights specified in the Order in Council:
 - (c) any person or persons with continuing rights who the principal immigration officer suspects has or may have an illness that is spreading by an epidemic or may lead to the outbreak of an epidemic.
- (2) An Order in Executive Council made under **subsection (1)**—
- (a) may be subject to such conditions or restrictions set out in the Order; and
 - (b) may authorise the principal immigration officer to exempt any persons or group of persons from the requirements of the Order—
 - (i) if the principal immigration officer is satisfied, after consulting with the Secretary of Health, that such an exemption would not pose a risk to the safety and health of the Cook Islands or any Island in the Cook Islands; and
 - (ii) subject to any restrictions or conditions imposed on the person or the group of persons by the principal immigration officer; and
 - (c) may confer powers on the principal immigration officer or any person assisting the principal immigration officer that are reasonably necessary to implement the Order; and
 - (d) expires on the date specified in the order, or on the day that is 3 months after the date on which the Order is made, whichever is the earlier.
- (3) The Minister may not recommend the making of an order under **subsection (1)** unless the Minister is satisfied, after consulting with the Minister of Health, that the outbreak of an epidemic caused by persons suffering from an illness has happened or is likely to happen and the effect of any outbreak is likely to pose a serious risk to the health of persons living in the Cook Islands or on any Island in the Cook Islands.
- (4) **Subsection (3)** applies whether or not the outbreak is occurring in the Cook Islands or overseas.

229 Transitional and savings provisions and orderly implementation of Act and related enactments

- (1) The Queen's Representative may, by Order in Executive Council, make regulations for either or both of the following purposes:
- (a) providing that, subject to any conditions stated in the regulations, transitional or savings provisions prescribed by the regulations that relate to the implementation of the specified enactments (in addition to, or in substitution for, any other transitional provisions in **Part 19**) apply during the whole or any part of the transitional implementation period ending on the 5-year date:

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- (b) providing that, subject to any conditions stated in the regulations, specified provisions of the specified enactments (including definitions), or provisions of other enactments amended or repealed by the specified enactments, do not apply, or apply with modifications or additions, or both, during the whole or any part of the transitional implementation period ending on the 5-year date.
- (2) The Minister must not recommend the making of regulations under this section unless the Minister is satisfied that the regulations—
 - (a) are necessary or desirable for the orderly implementation of the specified enactments; and
 - (b) are consistent with the purposes of the specified enactments.
- (3) This section is repealed on the close of the 5-year date.
- (4) Any regulations made under this section that are in force on the 5-year date are revoked on the close of that day.
- (5) In this section,—
 - 5-year date** means the date that is 5 years after the date on which this section comes into force
 - specified enactments** means—
 - (a) this Act; and
 - (b) section 101A of the Judicature Act 1980–81 (as inserted by **Part 20** of this Act).

230 Immigration officer or designated officer may have Police assistance

If an immigration officer or a designated officer believes that they may be harmed while exercising powers or carrying out functions under this Act, and the officer requests the Police to provide assistance, he or she must be accompanied by a police officer while exercising those powers or carrying out those functions.

231 Immunities in relation to exercise of powers under this Act

Every person is immune from civil or criminal liability for any act done in relation to the exercise of powers or the carrying out of functions under this Act or the regulations, unless it is established that the person was acting in bad faith.

232 Repeals

The Entry, Residence and Departure Act 1971–1972 is repealed.

233 Amendments to other enactments

- (1) The Acts set out in **Schedule 1** are amended in the manner set out in that schedule.
- (2) The regulations set out in **Schedule 2** are amended in the manner set out in that schedule.

Part 19 Transitional provisions

234 Endorsement in passport to have continuing effect

- (1) Every endorsement in a passport made before the commencement of this section that a person is a Cook Islander continues in effect on and after the commencement of this section as if it had been made under **section 24(3)**.

- (2) Every endorsement in a passport made before the commencement of this section that a person is an honorary permanent resident continues in effect on and after the commencement of this section as if it had been made under **section 30(3)**.
- (3) Every endorsement in a passport made before the commencement of this section that a person is a permanent resident continues in effect on and after the commencement of this section as if it had been made under **section 47(3)**.

235 Status of persons unlawfully in Cook Islands

- (1) A person who, immediately before the commencement of this section, was unlawfully in the Cook Islands continues, on and after the commencement of this section, to be unlawfully in the Cook Islands unless he or she is granted a permit to stay in the Cook Islands.
- (2) This section is subject to **section 236**.

236 Three-month transitional period

- (1) A person who, on the commencement of this section, is unlawfully in the Cook Islands may stay in the Cook Islands for a period of 3 months from the date of the commencement of this section.
- (2) A person to whom **subsection (1)** applies, may during the 3-month period referred to in **subsection (1)**, apply to the principal immigration officer for any kind of permit under this Act, and in accordance with the regulations made under this Act (including a permit to reside in, work in, study in, or visit the Cook Islands, or a special permit).
- (3) The principal immigration officer—
 - (a) must consider an application under **subsection (2)** in his or her absolute discretion; and
 - (b) is not obliged to grant any application under **subsection (2)** for a permit.
- (4) On the expiry of the 3-month period referred to in **subsection (1)**, every person to whom that subsection applies and who has not been granted a permit under this section continues to be unlawfully in the Cook Islands and may be—
 - (a) removed; or
 - (b) deported.

237 Pending applications for visas or permits

If, immediately before the commencement of this section, any application for a visa or permit has been lodged but not determined, the application may be determined in accordance with this Act and the regulations.

238 Existing honorary residence status unaffected

- (1) A person who was granted honorary permanent residence under the former Act continues to have that status after the commencement of this section, as if honorary permanent residence had been granted under this Act.
- (2) However, the person's status as an honorary permanent resident is not subject to any conditions under this Act.

239 Existing permanent residence status unaffected

- (1) A person who was granted permanent residence under the former Act continues to have that status after the commencement of this section, as if permanent residence had been granted under this Act.

- (2) However, the person's status as a permanent resident is not subject to any conditions under this Act.

240 Persons liable to be removed or deported under former Act

- (1) A person who was liable to be removed or deported under the former Act but had not been removed or deported immediately before the commencement of this section continues to be liable to be removed or deported under this Act.
- (2) **Subsection (1)** is subject to **sections 234 and 241**.
- (3) For the purposes of deportation and removal, the provisions of this Act apply to a person referred to in **subsection (1)**.

241 Permit holders under former Act

- (1) Every person who holds a permit that was granted under the former Act that was in force immediately before the commencement of this section becomes, on the commencement of this section, the holder of a special permit that—
- (a) expires at the same time as the permit granted under the former Act; and
 - (b) is subject to the same terms and conditions and is to the same effect as the permit granted under the former Act.
- (2) A person to whom **subsection (1)** applies may apply to the principal immigration officer to convert their special permit into a new permit of the appropriate kind that—
- (a) expires at the same time as the permit granted under the former Act; and
 - (b) is subject to the same terms and conditions and is to the same effect as the permit granted under the former Act.
- (3) A decision made under **subsection (2)** is in the absolute discretion of the principal immigration officer.

242 Existing permit holders may apply for new permit under this Act

A person who held a permit that was in force immediately before the commencement of this section may at any time on or after the commencement of this section, but while he or she is lawfully in the Cook Islands, apply for a new permit under this Act (whether of the same or a different kind from that previously held).

243 Orders for removal or deportation under former Act

- (1) An order for removal under section 29 of the former Act or a deportation order under section 30 of that Act that was in force immediately before the commencement of this section remains in force on and after the commencement of this section.
- (2) If this section applies to any person, **section 234** does not apply to that person.
- (3) For the purposes of executing the orders referred to in **subsection (1)**, the provisions of the former Act dealing with removal and deportation remain in force.

244 Persons in detention under former Act

- (1) A person who, immediately before the commencement of this section, was detained under the provisions of the former Act continues to be detained, on and after the commencement of this section, in accordance with the provisions of the former Act.

- (2) However, on the first appearance of the person before the Court on or after the commencement of this section, the provisions of this Act (including the provisions dealing with detention and release on conditions) apply in respect of the person instead of the former Act.

245 Existing debts to Crown continue to be owed

- (1) A person who, immediately before the commencement of this section, owed a debt to the Crown under the former Act in respect of an immigration-related matter continues, on and after the commencement of this section, to owe that debt to the Crown.
- (2) A debt owing to the Crown under **subsection (1)** may be recovered, and the money recovered dealt with, in accordance with this Act.
- (3) However, where any person to whom **subsection (1)** applies had a right, immediately before the commencement of this section, to apply to the Court for a reduction in that debt, that person may apply to the Court for a reduction in that debt within 30 working days of the commencement of this section.
- (4) For the purposes of dealing with an application under **subsection (3)**, the former Act continues in force.

246 Offences committed under former Act may be prosecuted

- (1) An offence committed under the former Act before the commencement of this section may be prosecuted in accordance with the former Act, which remains in force for the purpose of commencing and completing any prosecution under that Act.
- (2) **Subsection (1)** does not limit section 21 of the Acts Interpretation Act 1924.

247 Principal immigration officer continues in office

The person who, immediately before the commencement of this section, held office as the principal immigration officer continues, on and after the commencement of this section, to hold office as if he or she had been appointed as the principal immigration officer under this Act and the Public Service Act 2009.

248 Immigration officers continue in office

A person who, immediately before the commencement of this section, held office as an immigration officer continues, on and after the commencement of this section, to hold office as if he or she had been appointed as an immigration officer under this Act and the Public Service Act 2009.

249 Designated officers continue to hold designation

A person who, immediately before the commencement of this section, had been designated by the principal immigration order to exercise certain powers and carry out certain functions under the former Act continues, on and after the commencement of this section, to be designated to exercise the equivalent powers and carry out the equivalent functions under this Act.

250 Existing references to former Act

- (1) Every reference in any enactment or other document to the former Act or a provision of the former Act must, on and after the commencement of this section, and unless the context otherwise requires, be read as a reference to the equivalent provision in this Act.

- (2) **Subsection (1)** does not limit section 21 of the Acts Interpretation Act 1924.

Part 20
Amendments to the Judicature Act 1980–81

251 Amendments to Judicature Act 1980–81

This Part amends the Judicature Act 1980–81.

252 Cross-heading and new section 101A inserted

After section 101, insert:

Immigration matters

“101A Rules about immigration matters

The Queen’s Representative may at any time, by Order in Executive Council, make rules for all or any of the following purposes:

- “(a) setting out rules and procedures regarding applications for a warrant of commitment under **section 137, 138, or 140** of the Immigration Act **2020**;
- “(b) setting out rules and procedures (including time limits) for the lodging and disposition of appeals against deportation brought under **section 153** of the Immigration Act **2020**;
- “(c) providing for any other matter arising under the Immigration Act **2020**, where specific provision is necessary or desirable.”

Schedule 1 Amendments to Acts

Amendment to Banking Act 2011

Replace section 3(b) with:

“(b) the Immigration Act **2020**.”

Amendment to Copyright Act 2013

In section 6(3), replace the definition of **Cook Islander** with:

“**Cook Islander** has the same meaning as in **section 21** of the Immigration Act **2020**.”

Amendment to Crimes Act 1969

In section 109L(2), replace “Entry Residence and Departure Act 1971-72 as an illegal immigrant or as an illegal resident” with “Immigration Act **2020** as a person unlawfully in the Cook Islands or a prohibited person”.

In section 109O(3), replace “commercial carrier under section 31 of the Entry Residence and Departure Act 1971–72” with “carrier under **section 126** of the Immigration Act **2020**”.

Amendment to Customs Revenue and Border Protection Act 2012

Replace section 37 with:

“**37 Completion of processing under Immigration Act 2020 and Biosecurity Act 2008**

- “(1) This section applies to a person in a designated place who has arrived in the Cook Islands or who departs, or attempts to depart, from the Cook Islands.
- “(2) The person must remain in the designated place until the processing, under the Immigration Act **2020** and, if applicable, the Biosecurity Act 2008, in respect of that person’s arrival in, or departure from, the Cook Islands, is completed.
- “(3) A Customs officer may direct the person to comply with the person’s obligation under **subsection (2)**.
- “(4) For the purpose of **subsection (2)**, the processing referred to in that subsection is **completed** when—
- “(a) the person has complied with all obligations imposed on the person, in respect of that person’s arrival in, or departure from, the Cook Islands, under the Immigration Act **2020** and, if applicable, the Biosecurity Act 2008; and
- “(b) the powers and duties under those Acts that are, in relation to the person, required to be exercised or performed in the designated place have, so far as practicable, been exercised or performed in that place.
- “(5) In this section,—
- authorised officer** means an officer authorised under the Immigration Act **2020** or the Biosecurity Act 2008
- designated place** means—
- “(a) a Customs controlled area; or

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- “(b) a Customs place; or
- “(c) a place approved by the Comptroller for the purposes of—
 - “(i) the arrival of a craft in the Cook Islands; or
 - “(ii) the departure of a craft from the Cook Islands; or
- “(d) a Police station to which a person reports under section 30(1) **processing** includes—
 - “(a) consideration by any authorised officer as to the applicability of powers and duties under the Immigration Act **2020** or the Biosecurity Act 2008; and
 - “(b) reconsideration by any authorised officer, in the light of any information, of a previous exercise or performance of a power or duty under the Immigration Act **2020** or the Biosecurity Act 2008; and
 - “(c) any reasonable time after a request by a Customs officer that an authorised officer who is not present at the designated place exercise or perform a particular power or duty under the Immigration Act **2020** or the Biosecurity Act 2008 that—
 - “(i) may, in the opinion of the Customs officer, be applicable to the person; and
 - “(ii) may not be exercised or performed by an authorised officer present at the designated place at the time of the request; but
 - “(iii) may be exercised or performed by the authorised officer to whom that request is made.”

Amendment to Development Investment Act 1995-96

Replace section 3(1)(b) with “Immigration Act **2020**”.

Amendment to Education Act 2012

In section 4, definition of **permanent resident**, replace “Entry, Residence and Departure Act 1971–72” with “Immigration Act **2020**”.

Amendment to Employment Relations Act 2012

In section 3, definition of **Cook Islander**, replace “the Entry, Residence, and Departure Act 1970–71” with “**section 21** of the Immigration Act **2020**.”

In section 3, definition of **permanent resident**, replace “the Entry, Residence and Departure Act 1971–72” with **section 34** of the Immigration Act **2020**”.

Amendment to Extradition Act 2003

In section 4, definition of national of the Cook Islands, replace “as defined in section 2 of the Entry, Residence and Departure Act 1971–72” with “as defined in **section 21** of the Immigration Act **2020**”.

Amendment to Island Government Act 2012-13

In section 4(1)(a), definition of **Cook Islander**, replace “has been granted the status of a permanent resident pursuant to section 5 of the Entry Residence and Departure Act 1971-72” with “is a permanent resident under **section 34** of the Immigration Act **2020**”
In section 4(1)(b), definition of **Cook Islander**, replace “section 5A of that Act” with “**section 21** of the Immigration Act **2020**.”

Amendment to Juries Act 1968

In section 4(a), replace “the Entry Residence and Departure Act 1971–72” with “the Immigration Act 2020”.

Amendment to Law Practitioners Act 1993–94

In section 2, definition of **permanent resident**, replace “, pursuant to the provisions of the Entry, Residence and Departure Act 1971–72” with “under **section 34** of the Immigration Act 2020”.

Replace section 12(3)(a) with:

“(a) holds the necessary visas and permits under the Immigration Act 2020 entitling that person to reside in and work in the Cook Islands as a practitioner; or”.

In section 13, replace “Entry Residence and Departure Act 1971–72” with “Immigration Act 2020”.

Amendment to Marae Moana Act 2017

In section 4, definition of **Cook Islander**, replace “the Entry Residence and Departure Act 1971–72” with “the Immigration Act 2020”.

Amendment to Marine Resources Act 2005

In section 2, definition of **Cook Islander**, replace “as defined in the Entry, Residence and Departure Act 1971–72” with “as defined in **section 21** of the Immigration Act 2020”.

Amendment to Official Information Act 2008

In section 2, definition of **permanent resident**, replace “has been granted the status of a permanent resident pursuant to section 5 of the Entry Residence and Departure Act 1971–72 and includes a person who has been granted the status of an honorary residence pursuant to section 5A of that Act” with “is a permanent resident under **section 34** of the Immigration Act 2020 or is an honorary permanent resident under **section 27** of the Immigration Act 2020”.

Amendment to Race Relations Act 1972

In section 23, replace “Entry, Residence and Departure Act 1971–72” with “Immigration Act 2020”.

Amendments to Terrorism Suppression Act 2004

In section 3, definition of **Cook Islander**, replace “section 2 of the Entry, Residence and Departure Act 1971–72” with “**section 21** of the Immigration Act 2020”.

In section 3, definition of **permanent resident**, replace “section 2 of the Entry, Residence and Departure Act 1971–72” with **section 34** of the Immigration Act 2020”.

In section 3, definition of **Principal Immigration Officer**, replace “section 2 of the Entry, Residence and Departure Act 1971–72” with “**section 201** of the Immigration Act 2020”.

Schedule 2
Amendments to regulations

Leases Restrictions (Amendment) Regulations 2006

In regulation 2, definition of **permanent resident**, replace “pursuant to section 5 of the Entry Residence and Departure Act 1971–72” with “under **section 34** of the Immigration Act **2020**”.

Marine Resources (Aitutaki and Manuae Bonefish Fishery) Regulations 2010

In regulation 4, definition of **Cook Islander**, replace “Entry Residence and Departure Act 1971–72” with “Immigration Act **2020**”.

Schedule 3

Administrative provisions relating to reviews

1 Application form for review

An application for a review under **Part 12** must include the following information and the appropriate prescribed fee [if any]:

- (a) the applicant's surname or given name:
- (b) the applicant's date of birth:
- (c) the applicant's Cook Islands address:
- (d) the applicant's Cook Islands telephone number:
- (e) the applicant's email address:
- (f) contact information in the country in which the applicant ordinarily resides.
- (g) the full names of the spouse or dependent child of the applicant (if those persons have also sought a review and wish to have their case considered at the same time):
- (h) a copy of the decision the applicant is seeking to have reviewed:
- (i) the date on which the applicant received the decision:
- (j) a description of the applicant's grounds for review:
- (k) any other information that the applicant considers should or could be considered by the reviewer.

2 Address for service

An applicant for a review under **Part 12** of a decision must—

- (a) provide to the reviewer or the Minister (as the case requires) a contact address and an address for service:
- (b) notify the reviewer and the Minister as soon as practicable of any change in either address.

3 Responsibilities of applicant

In an application for a review under **Part 12**,—

- (a) the applicant must establish, on the balance of probabilities, that the decision under review was erroneous; and
- (b) the applicant must ensure that all information, evidence, and submissions that he or she wishes to have considered in support of the review are provided to the reviewer or Minister, as the case requires, before the reviewer or the Minister makes a decision.

4 Reviewer or Minister may require information to be provided

- (1) The reviewer or Minister, as the case requires, may request the applicant for review to supply biometric information about himself or herself.
- (2) The reviewer or Minister, as the case requires, may require the following persons to provide any specified information:
 - (a) the applicant:
 - (b) the immigration officer or other person who made the decision being reviewed.

5 Reviewer or Minister may rely on certain previous determinations

- (1) The reviewer or Minister, as the case requires, may rely on any finding—
- (a) made on a question of fact by an immigration officer, or other person making a decision under this Act, that is accepted by the applicant;
 - (b) made by a court (whether in the Cook Islands or overseas) as part of any civil or criminal proceedings.
- (2) An applicant may not as part of any review challenge any finding of fact or credibility to which **subclause (1)** applies.

6 Rights of applicant not affected by detention under sentence of imprisonment

The rights of an applicant to seek a review and to have the review completed in accordance with any timetable specified by this Act are not affected by—

- (a) the detention of the applicant under a sentence of imprisonment; or
- (b) any other form of detention of the applicant.

7 Who is party to review

If an application for a review is made by a dissatisfied applicant, the other parties to the review are—

- (a) the Minister; and
- (b) the principal immigration officer.

Schedule 4
Administrative fines

Offence	Administrative fine
Section 222	\$500 plus an additional fine of \$500 for each day on which the offence continues
Section 223(1)	\$1,000
Section 224(1)	\$5,000
Section 225(1)(a), (b), (c), or (d)	\$1,000
Section 225(1)(e) or (f)	\$5,000
Section 226(1)(a), (b), (c), or (d)	\$1,000
Section 226(1)(e) or (f)	\$5,000

This Act is administered by the Ministry of Foreign Affairs and Immigration.
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