

COOK ISLANDS

LEASES RESTRICTIONS AMENDMENT ACT

2002, No. 5

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2002, No. 5

An Act to amend the Leases Restrictions Act 1976

(9 May 2002)

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

1. Short title and commencement - (1) This Act may be cited as the Leases Restrictions Amendment Act 2002 and shall be read together with and deemed part of the Leases Restrictions Act 1976 ("the principal Act").

(2) This Act comes into force on the date it is assented to by the Queen's Representative.

2. Interpretation - Section 2 of the principal Act is amended by adding the following definition:

""Tribunal" means the Leases Approval Tribunal established under section 4 of this Act."

3. New section 3 substituted - Section 3 of the principal Act is repealed, and the following section substituted:

"3. Approval of Leases Approval Tribunal required -

(1) Notwithstanding any other provision in any Act, no lease, assignment of lease, or sublease executed after the coming into force of this Act shall be valid and of any effect unless the approval of the Tribunal has been obtained to that lease, assignment of lease, or sublease, as the case may be.

(2) The Tribunal shall approve any lease, assignment of lease or sublease to give effect to any order made by the High Court or Court of Appeal pursuant to this or any other Act.

(3) Notwithstanding any provision in the Cook Islands Act 1915, no lease, assignment of lease, or sublease shall be confirmed by the High Court unless the approval of the Tribunal to the lease, assignment of lease or sublease has been first obtained.

(4) Notwithstanding any provision in the Land (Facilitation of Dealings) Act 1970, no resolution of any meeting of assembled owners to lease any land shall be confirmed by the High Court unless the approval of the Tribunal has been first obtained."

4. New section 4 substituted - (1) Section 4 of the principal Act is repealed, and the following section substituted:

"4. Leases Approval Tribunal - For the purposes of this Act, there shall be established a Leases Approval Tribunal of not less than two nor more than five members all of whom shall be appointed for a term of three years by the Minister responsible for Justice with the concurrence of Cabinet."

(2) The principal Act is amended by deleting the word "Committee" wherever it may appear and substituting the word "Tribunal".

5. Policy directives to the Leases Approval Tribunal - Section 6 of the principal Act is amended by deleting the words "have regard to" and substituting the words "apply the".

6. New section 9A inserted - The principal Act is amended by inserting, after section 9, the following section:

"9A. Leases not executed by all parties - (1) The Tribunal may consider an application to approve a lease that has not been executed by every party to the lease only if the Registrar of the High Court notifies the Tribunal in writing that he or she believes that the lease should be approved.

(2) In determining whether to make the notification, the Registrar of the High Court shall apply -

(a) The policy directives referred to in section 6; and

(b) The criteria and other matters referred to in section 11."

7. Further information - Section 10 of the principal Act is amended by -

(a) Deleting from the sixth line the words "taken into account", and substituting the word "applied"; and

(b) Adding the following subsection:

"(2) In the event of any dispute or issue arising from any application before it, the Tribunal may, upon such terms and conditions it deems necessary, direct that a meeting of the landowners be held to resolve the dispute or issue."

8. Criteria to be applied by Tribunal - Section 11 of the principal Act is amended by -

(a) Deleting the words "have regard to", and substituting the word "apply"; and

(b) Deleting the words "taken into account", and substituting the word "applied".

9. New section 14 inserted - The principal Act is amended by inserting, after section 13, the following section:

"14. Effect of Development Investment Act 1995-96 - Nothing in the Development Investment Act 1995-96 affects this Act."

10. Consequential repeal - Paragraph (f) of section 3(1) of the Development Investment Act 1995-96 is repealed.

11. Transitional and savings - (1) The Leases Approval Tribunal is the same body as the body formerly known as the Leases Approval Committee ("the Committee").

(2) Unless the context otherwise requires, every reference to the Committee in any enactment, document, or agreement (whether in writing or not), in force immediately before the coming into force of this Act, is, on the coming into force of this Act, a reference to the Tribunal.

(3) Every person who was a member of the Committee immediately before the coming into force of this Act, shall, on the coming into force of this Act, continue as a member of the Tribunal (on the terms and conditions of his or her appointment to the Committee) until such time as the members of the Tribunal are formally appointed under section 4 of the principal Act.

(4) Nothing in section 3(1), (3), or (4) of the principal Act applies to any lease, assignment of lease, or sublease that was -

(a) Executed before the coming into force of this Act; and

(b) Made pursuant to -

(i) A right of renewal, or right or option of purchase or assignment, contained in any lease or sublease executed before the coming into force of the principal Act; or

(ii) Any agreement executed before the coming into force of the principal Act to lease, sublease, or assign a lease or sublease.

This Act is administered in the Ministry of Justice.