

Examined and certified by:


  
Clerk of the Parliament

In the name and on behalf of Her Majesty Queen Elizabeth the Second I hereby assent to  
this Act this 6<sup>th</sup> day of December, 2013



  
Queen's Representative

### Contents

1	Title	3
2	Commencement	3
<b>Part 1</b>		
<b>Preliminary provisions</b>		
3	Interpretation	3
4	Traditional knowledge defined	5
5	Act binds the Crown	6
6	Application of Act	6
<b>Part 2</b>		
<b>Rights and restrictions applying to registered traditional knowledge</b>		
7	Rights of rights-holders of registered traditional knowledge	7
8	Dealings with registered traditional knowledge that require authorisation	7
9	Uses of registered traditional knowledge that are not restricted	8
10	Derogatory treatment of registered traditional knowledge prohibited	9
11	Application of section 10 to certain names, words, and phrases	9
12	Certain acts in relation to registered sacred knowledge or sacred-secret knowledge prohibited	9
13	Extent of rights and restrictions in relation to registered traditional knowledge	9
<b>Part 3</b>		
<b>Registration of traditional knowledge</b>		
<i>Applications</i>		
14	Who may apply	10
15	Applications by Are Korero	10
16	Application requirements	11
17	Contents of application	11
18	Help in preparing application	11
19	Applications first to be submitted to Are Korero	12
20	Verification by Are Korero	12
21	Disputes	12
22	Filing	12
<i>Examination of applications</i>		
23	Examination of applications	13

24	Multiple applications	13
	<i>Acceptance and rejection of applications</i>	
25	Acceptance of application	13
26	Notification of non-complying application	13
27	Revocation of acceptance of application	13
28	Public notification	14
	<i>Opposition to published applications</i>	
29	Opposition to published application	14
30	Applicant's counter-statements	14
31	Are Korero's determination on opposition	14
	<i>Registration of traditional knowledge</i>	
32	Circumstances in which Secretary must register	15
33	Multiple rights-holders	15
34	Registration	15
	<b>Part 4</b>	
	<b>Proceedings</b>	
	<i>Who may bring proceedings</i>	
35	Rights-holder may seek relief	16
	<i>Some matters may be considered by Are Korero</i>	
36	Reference of civil proceedings to Are Korero	16
37	Application to proceed directly to Court if not referred to Are Korero for consideration	16
38	Procedure before Are Korero	16
39	Remedies available to Are Korero	16
40	Are Korero may decline to make recommendations	17
41	Matter may proceed to Court if recommendations not followed or Are Korero declines to make recommendation	17
	<i>Remedies in civil proceedings</i>	
42	Civil relief available for breach of sections 7(3), 8(2), and 10(2)	17
43	Damages	17
	<i>Unjustified applications</i>	
44	Unjustified application	18
	<i>Offences in relation to sacred knowledge and sacred-secret knowledge</i>	
45	Penalties for offences in relation to sacred knowledge and sacred-secret knowledge	18
46	Defence	18
47	Orders for delivery up and disposal in relation to sacred knowledge or sacred-secret knowledge	18
	<i>Orders for delivery up, forfeiture, or disposal in civil actions</i>	
48	Order for delivery up	19
49	Order for disposal of infringing goods	19
50	Matters to be considered by Court	19
51	Directions for service	19
52	Rights of persons with interest in infringing goods	20
53	When order for disposal takes effect	20
54	Position if no order for disposal made	20
	<i>Court procedure relating to registered sacred knowledge or registered sacred-secret knowledge</i>	
55	Court procedure relating to registered sacred knowledge or registered sacred-secret knowledge	20

**Part 5****Administrative and miscellaneous provisions***Register of traditional knowledge*

56	Register of traditional knowledge	20
57	Form of register	21
58	Purpose of register	21
59	Contents of register	21
60	Access to register	21
61	Updating of register	21

*Traditional Knowledge Advisory Committee*

62	Traditional Knowledge Advisory Committee	21
63	Function of committee	22
64	Membership of committee	22

*Miscellaneous*

65	Regulations	22
66	Rules	22
67	Amendments to other Acts	22
68	Transitional provision	23

**Schedule****Amendments to other Acts****An Act to—**

- (a) give legal recognition to rights in the traditional knowledge of the traditional communities of the Cook Islands; and
- (b) help those communities, and the holders of those rights, to protect those rights for the benefit of the people of the Cook Islands.

**The Parliament of the Cook Islands enacts as follows—**

- 1 Title**  
This Act is the Traditional Knowledge Act 2013.
- 2 Commencement**  
This Act comes into force on the day after the day on which it receives the assent of the Queen's Representative.

**Part 1****Preliminary provisions**

- 3 Interpretation**  
In this Act, unless the context otherwise requires,—  
**applicant** means a person who applies to register traditional knowledge  
**application** means an application to register traditional knowledge

**Are Korero,—**

- (a) for powers and functions exercised and carried out under this Act in relation to traditional knowledge of a traditional community of an island of the Cook Islands other than Rarotonga and Tongareva, means the body of people authorised by the paramount chiefs of the island to exercise the powers and carry out the functions traditionally exercised and carried out by Are Korero:
- (b) for powers and functions exercised and carried out under this Act in relation to traditional knowledge of a traditional community of a Vaka of Rarotonga, means the body of people authorised by the paramount chiefs of the Vaka to exercise the powers and carry out the functions traditionally exercised and carried out by Are Korero

**copy,—**

- (a) as a verb, includes draw, photocopy, photograph, record, transcribe, or otherwise reproduce or make a copy of; and download and upload
- (b) as a noun, has a corresponding meaning

**Court** means the High Court of the Cook Islands

**creator**, in relation to particular traditional knowledge, means a person who created, developed, or inspired the knowledge in the Cook Islands, or adapted the knowledge to the Cook Islands

**customary successor**, in relation to particular traditional knowledge, means a person to whom a creator or another customary successor has, in accordance with traditional custom, passed the rights to have, use, and pass on the knowledge (whether those rights are to be exercised immediately or only upon the death of that creator or successor or the happening of some other event)

**date of registration**, in relation to traditional knowledge, means the date on which the knowledge was registered

**executive officer,—**

- (a) for any island of the Cook Islands other than Rarotonga, means the person appointed to be the executive officer of that island under section 29 of the Island Government Act 2012-13; and
- (b) for Rarotonga, means the Secretary

**infringing goods** means any goods—

- (a) whose making or acquisition was—
  - (i) a breach of section 7(1), 8(1), or 10(1); or
  - (ii) an offence against section 12(1); or
- (b) whose making involves traditional knowledge—
  - (i) that has been recorded in breach of section 7(1), 8(1), or 10(1); or
  - (ii) whose recording was an offence against section 12(1)

**Minister** means the Minister of Cultural Development

**Ministry** means the Ministry established under section 3 of the Ministry of Cultural Development Act 1990 as the Ministry of Cultural Development

**opponent**, in relation to an application, means the person who, within the prescribed time and in the prescribed manner, has given the Secretary under section 29(1) written notice of opposition to the application

**other intellectual property rights**, in relation to registered traditional knowledge, means rights granted or to be granted under any law relating to copyright, trademarks, patents, designs, or other intellectual property (whether enacted before or after the commencement of this Act)

**prescribed** means prescribed by regulations

**register**, as a noun, means the register kept under section 56(a)

**register**, as a verb, means enter in the register the prescribed information

**registered sacred knowledge** means sacred knowledge registered under this Act

**registered sacred-secret knowledge** means sacred-secret knowledge registered under this Act

**registered traditional knowledge** means traditional knowledge registered under this Act

**rights-holder**, in relation to particular traditional knowledge,—

- (a) means the creator of the knowledge; or
- (b) if the creator of the knowledge is dead or unidentifiable, means a customary successor

**sacred knowledge** means traditional knowledge that is considered by its rights-holder or rights-holders and the traditional community concerned—

- (a) to be sacred; and
- (b) to be used only by a particular person or particular people, and only for certain rituals or on certain occasions

**sacred-secret knowledge** means traditional knowledge that is considered by its rights-holder or rights-holders and the traditional community concerned—

- (a) to be absolutely sacred; and
- (b) to be used only by a particular person or particular people, and only for certain rituals or on certain occasions

**Secretary** means the Secretary of Cultural Development appointed under section 8 of the Ministry of Cultural Development Act 1990

**traditional community** means a traditional community of the Cook Islands

**traditional knowledge** has the meaning given by section 4(1)

**Traditional Knowledge Advisory Committee** means the committee appointed under section 62.

#### **4 Traditional knowledge defined**

(1) In this Act, **traditional knowledge**—

- (a) means knowledge (whether manifested in tangible or intangible form) that is, or is or was intended by its creator to be, transmitted from generation to generation and—
  - (i) originates from a traditional community; or
  - (ii) is or was created, developed, acquired, or inspired for traditional purposes; and
- (b) includes any way in which that knowledge appears or is manifested, including the following—

- (i) any chant, riddle, legend, history, song, or story (or other oral narrative) in the Cook Islands Maori or Pukapukan language (or any dialect of either of those languages):
  - (ii) any translation into a language other than the Cook Islands Maori or Pukapukan language (or any dialect of either of those languages) of any traditional knowledge of a kind described in subparagraph (i):
  - (iii) any traditional sound used with or in relation to any traditional knowledge of a kind described in subparagraph (i):
  - (iv) if traditional, any carving, clothing, canoe, drawing, drum, headwear, jewellery (or other object of personal adornment), mat or other weaving, musical instrument, needlework, painting, pottery, sculpture, shellwork, ship, tool, weapon, woodwork, or other artifact of art or craft:
  - (v) any traditional process for making, finishing, or repairing any item of a kind described in subparagraph (iv):
  - (vi) any traditional design:
  - (vii) any traditional form of costume or textile:
  - (viii) if traditional, any ceremony, conservation practice (whether used in relation to the air, animals, birds, land, fish, fresh water, insects, plants, reptiles, the sea, or 2 or more of those resources), dance, dance action, dance expression, music, ritual performance, sport, or theatrical work:
  - (ix) any cultural practice forming part of the traditional way of life of the Cook Islands people:
  - (x) any traditional process or recipe for making or preparing any drink, food, or medicine, or any substance intended to be applied to the body:
  - (xi) any traditional process used in fishing, gardening (or other cultivation of the land), or hunting:
  - (xii) any traditional form of transport (whether for people or goods):
  - (xiii) any traditional navigational knowledge or practice:
  - (xiv) any traditional religious or spiritual practice:
  - (xv) any traditional architectural form:
  - (xvi) any design, practice, process, work, or other thing that is based upon or derived from traditional knowledge of a kind described in any of subparagraphs (i) to (xv).
- (2) Subparagraphs (i) to (xvi) of paragraph (b) of subsection (1) do not limit the generality of that paragraph.

**5 Act binds the Crown**  
This Act binds the Crown.

- 6 Application of Act**
- (1) This Act applies to all traditional knowledge, whether it existed before the commencement of this Act or was created, developed, inspired, or adapted later.

- (2) This Act does not affect—
  - (a) any intellectual property rights relating to traditional knowledge that existed, and were recognised by law, immediately before the commencement of this Act; or
  - (b) any contract, licence, or other agreement relating to the use of traditional knowledge that was entered into by a rights-holder before the commencement of this Act.
- (3) Subsection (2) overrides subsection (1).

## Part 2

### Rights and restrictions applying to registered traditional knowledge

#### 7 Rights of rights-holders of registered traditional knowledge

- (1) Only a rights-holder of registered traditional knowledge has the right to do any of the following—
  - (a) use, transmit, document, or develop the knowledge in any way (whether commercial or not);
  - (b) receive commercial returns from any use or development of the knowledge;
  - (c) authorise other persons to use the knowledge (whether unconditionally or subject to conditions);
  - (d) be acknowledged as the rights-holder whenever—
    - (i) the knowledge is published commercially, performed in public, exhibited in public, or communicated to the public; or
    - (ii) copies of a film or sound recording that includes the knowledge are issued to the public;
  - (e) exercise the rights and remedies stated in Part 4.
- (2) A person who is not a rights-holder of registered traditional knowledge must not do in relation to that knowledge any of the things stated in subsection (1).
- (3) Section 35 applies if a person other than a rights-holder of registered traditional knowledge—
  - (a) does or purports to do any thing stated in paragraph (a) or (b) of subsection (1) in relation to the knowledge; or
  - (b) purports to do any thing stated in paragraph (c) or (d) of subsection (1) in relation to the knowledge; or
  - (c) fails or refuses to acknowledge the rights-holder or rights-holders as rights-holder or rights-holders when—
    - (i) publishing the knowledge commercially, performing it in public, exhibiting it in public, or communicating it to the public; or
    - (ii) issuing to the public copies of a film or sound recording that includes the knowledge.

#### 8 Dealings with registered traditional knowledge that require authorisation

- (1) A person who is not a rights-holder of registered traditional knowledge must not do any of the following in relation to the knowledge without first obtaining the written authorisation of a rights-holder of the knowledge—

- (a) copy the knowledge:
  - (b) issue a copy of the knowledge to the public (whether by way of sale or otherwise):
  - (c) perform, play, or show, the knowledge in public:
  - (d) use the knowledge for purposes that are not strictly private (for example, commercial purposes):
  - (e) make a work that is based on or derived from the knowledge:
  - (f) use the knowledge to promote the Cook Islands, whether in the Cook Islands or overseas:
  - (g) use the knowledge as part of a programme to promote the well-being of a Cook Islands community:
  - (h) in the case of a person who is not part of the traditional community from which the knowledge originates, do any act that forms part of a demonstration of the knowledge.
- (2) Section 35 applies if a person contravenes subsection (1).
- (3) To avoid doubt, a written authorisation or other consent given by any statutory body, government department or body, or any other person is not, and must not be treated as, the written authorisation of a rights-holder of the knowledge for the purposes of this section or any other provision of this Act.

#### **9 Uses of registered traditional knowledge that are not restricted**

- (1) Any person may, in relation to any registered traditional knowledge (other than registered sacred knowledge or registered sacred-secret knowledge), take any or all of the actions described in subsection (3), whether or not the person is a rights-holder of the knowledge or has the written authorisation of a rights-holder of the knowledge.
- (2) The taking by any person, in relation to any registered traditional knowledge (other than registered sacred knowledge or registered sacred-secret knowledge), of any or all of the actions described in subsection (3) does not give rise to criminal or civil liability under this Act, whether or not the person is a rights-holder of the knowledge or has the written authorisation of a rights-holder of the knowledge.
- (3) The actions (in relation to any registered traditional knowledge) are—
- (a) the use of the knowledge—
    - (i) by members of the traditional community from which it originates; and
    - (ii) in accordance with the customary laws, practices, and rituals of that community:
  - (b) a demonstration of the knowledge by members of the traditional community from which it originates:
  - (c) any action that—
    - (i) has an educational purpose; and
    - (ii) occurs within a school, a community group, youth organisation, church, family, or sports team:



- (d) any action taken for the purpose of fundraising for a stated community initiative, where a rights-holder is satisfied that the funds generated have been used for the initiative stated.

- (4) Subsections (2) and (3) override every provision of this Act to the contrary.

#### **10 Derogatory treatment of registered traditional knowledge prohibited**

- (1) No person may treat or deal with registered traditional knowledge in a manner that is prejudicial to the honour or reputation of the rights-holder or rights-holders of the knowledge.
- (2) Section 35 applies if a person contravenes subsection (1).

#### **11 Application of section 10 to certain names, words, and phrases**

- (1) Section 10(1) applies to any name, word, or phrase in the Cook Islands Maori or Pukapukan language (or any dialect of either of those languages) that is not traditional knowledge as if—
  - (a) it is registered traditional knowledge; and
  - (b) the people of the Cook Islands are all rights-holders of the name, word, or phrase.
- (2) The Secretary may in his or her own name act under section 35 on behalf of the people of the Cook Islands as the rights-holders of any name, word, or phrase to which section 10(1) applies by virtue of subsection (1) and, in that case, this Act applies as if—
  - (a) the name, word, or phrase is registered traditional knowledge; and
  - (b) the Secretary is its rights-holder.

#### **12 Certain acts in relation to registered sacred knowledge or sacred-secret knowledge prohibited**

- (1) A person who is not a rights-holder of registered sacred knowledge or registered sacred-secret knowledge commits an offence if he or she—
  - (a) receives commercial returns from any use or development of the knowledge;
  - (b) purports to authorise another person to use the knowledge;
  - (c) purports or attempts to exercise in relation to the knowledge any right or remedy stated in Part 4;
  - (d) without first obtaining the written authorisation of a rights-holder of the knowledge, takes in relation to the knowledge any of the actions stated in section 8(1);
  - (e) otherwise uses, transmits, documents, or develops the knowledge in any way (whether commercial or not).
- (2) On conviction, a person who commits an offence against subsection (1) is liable to the penalties stated in section 45.

#### **13 Extent of rights and restrictions in relation to registered traditional knowledge**

- (1) The rights and restrictions in this Part in relation to registered traditional knowledge—
  - (a) come into existence on the date of registration of the knowledge; and

- (b) continue in perpetuity; and
  - (c) are inalienable (otherwise than by passage in accordance with traditional custom); and
  - (d) are in addition to, and do not limit or affect, other intellectual property rights vested in the rights-holder.
- (2) The rights-holder of any registered traditional knowledge may apply for and be granted other intellectual property rights in the knowledge.
  - (3) Other intellectual property rights in registered traditional knowledge are inalienable (otherwise than by transmission to a customary successor of the knowledge).
  - (4) Subsection (3)—
    - (a) overrides section (1)(d), and every other enactment or rule of law to the contrary; but
    - (b) does not affect any rights of any person other than the rights-holder under any law relating to copyright, trademarks, patents, designs, or other intellectual property, if those rights existed immediately before the commencement of this Act.

### **Part 3**

#### **Registration of traditional knowledge**

##### *Applications*

#### **14 Who may apply**

- (1) Any rights-holder may apply to the Secretary to register traditional knowledge.
- (2) An application to register traditional knowledge of a traditional community that is made by an applicant who is not resident in the Cook Islands must not be accepted unless—
  - (a) either—
    - (i) the applicant first submits the application to the chairperson of the Are Korero of the traditional community; and
    - (ii) the Are Korero of that community gives the Secretary written notice to the effect that the applicant is a rights-holder of the knowledge; or
  - (b) the applicant authorises a person who is resident in the Cook Islands, in writing, to act on his or her behalf in relation to the application.

#### **15 Applications by Are Korero**

- (1) If the creator and every customary successor of any traditional knowledge is dead or unidentifiable, the Are Korero may at any time, on behalf of the traditional community concerned, apply to register the knowledge.
- (2) If no application to register any traditional knowledge has been filed with the Secretary within 2 years after the commencement of this Act, the Are Korero may, on behalf of the traditional community concerned, apply to register the knowledge.

- (3) The traditional community on whose behalf an application under subsection (1) or (2) was made is the rights-holder of any traditional knowledge registered as a result of the application, but—
  - (a) any person authorised by the Are Korero to do so may exercise on behalf of the community the powers of the community as rights-holder; and
  - (b) with any necessary modifications, this Act must be read as if references to a rights-holder included references to such a person.
- (4) Except as provided in subsections (1) and (2), an Are Korero cannot apply to register traditional knowledge.
- (5) Subsection (4) overrides section 14(1).

#### **16 Application requirements**

Every application must be made in accordance with this Act and on the prescribed form and in the prescribed manner.

#### **17 Contents of application**

Every application must state the following information—

- (a) the name and address of the applicant; and
- (b) all other names by which the applicant is or has been known; and
- (c) whether the applicant is—
  - (i) the creator of the traditional knowledge concerned; or
  - (ii) some other rights-holder of the knowledge; or
  - (iii) applying on behalf of the rights-holders of the knowledge; or
  - (iv) an Are Korero applying on behalf of a traditional community; and
- (d) the names and addresses of any other rights-holders of the knowledge known to the applicant; and
- (e) if the applicant is not the creator of the knowledge,—
  - (i) the name of the creator of the knowledge, if known; and
  - (ii) the applicant's relationship to the creator of the knowledge; and
- (f) the traditional community concerned; and
- (g) a brief description of the knowledge; and
- (h) whether the knowledge is sacred knowledge or sacred-secret knowledge; and
- (i) any other prescribed information.

#### **18 Help in preparing application**

The executive officer of an island other than Rarotonga must take all reasonable steps to help applicants from a traditional community of the island to prepare applications for registration of traditional knowledge, including—

- (a) providing application forms; and
- (b) helping to identify and describe the knowledge; and
- (c) helping to determine whether the knowledge is sacred knowledge or sacred-secret knowledge.

**19 Applications first to be submitted to Are Korero**

- (1) An application must first be submitted to the Are Korero.
- (2) Subsection (1) does not apply to an application made by the Are Korero.

**20 Verification by Are Korero**

- (1) As soon as practicable after an Are Korero receives an application, its chairperson must convene the Are Korero to consider the application.
- (2) The application must not be filed with the Secretary unless the Are Korero has given the Secretary a written notice to the effect that—
  - (a) the knowledge concerned is traditional knowledge; and
  - (b) the applicant—
    - (i) is the only rights-holder of the knowledge; or
    - (ii) is one of several rights-holder of the knowledge, but is acting on behalf of all rights-holders of the knowledge.
- (3) Subsections (1) and (2) do not apply to an application made by the Are Korero.

**21 Disputes**

- (1) If there is a dispute about an application between people who are all represented by the same Are Korero, the Are Korero must try to resolve the dispute.
- (2) If there is a dispute about an application between people who are represented by 2 or more Are Korero,—
  - (a) those Are Korero must try to resolve the dispute together; but
  - (b) if the dispute is not resolved, the Are Korero that received the application must determine whether a notice should be given to the Secretary under section 20(2).

**22 Filing**

- (1) The Are Korero of a traditional community of an island other than Rarotonga must give to the executive officer—
  - (a) every application in respect of which it gives to the Secretary a notice under section 20(2); and
  - (b) every application made by the Are Korero itself.
- (2) The executive officer must—
  - (a) file the application with the Secretary; and
  - (b) place on the noticeboard, or any other usual place for notices on the island he or she thinks fit, a notice—
    - (i) stating that the application has been filed and the name of the applicant or applicants; and
    - (ii) describing in general terms the knowledge to which the application relates.
- (3) The Are Korero of a Vaka of Rarotonga must file with the Secretary—
  - (a) every application in respect of which it gives to the Secretary a notice under section 20(2); and
  - (b) every application made by the Are Korero itself.

*Examination of applications***23 Examination of applications**

The Secretary must examine every application filed to determine whether it complies with the requirements of this Act.

**24 Multiple applications**

- (1) If the Secretary receives 2 or more applications that seek to register the same traditional knowledge, the Secretary must—
- (a) notify each applicant that there have been 2 or more applications; and
  - (b) give each applicant a copy of the other application or applications; and
  - (c) advise each applicant that because the applicant's application relates to traditional knowledge that is the subject of multiple applications, it will be accepted only if there is a written agreement between all applicants as to how rights and restrictions in relation to the knowledge will, if the knowledge is registered, be administered.
- (2) The Secretary must not accept any of the applications unless the applicants file an agreement with the Secretary within 6 months of being notified.
- (3) Subsection (2) does not prevent the making of further applications.

*Acceptance and rejection of applications***25 Acceptance of application**

- (1) The Secretary must accept every application that complies with the requirements of this Act.
- (2) Subsection (1) is subject to section 24(2).

**26 Notification of non-complying application**

- (1) If the Secretary considers that an application does not comply with the requirements of this Act, he or she must—
- (a) inform the applicant and the Are Korero concerned in writing; and
  - (b) give the applicant an opportunity to respond, or to amend the application by correcting the error or omission concerned, within a time stated by the Secretary.
- (2) The Secretary must reject the application if, within the time specified, the applicant has not—
- (a) persuaded the Secretary that the application complies with the requirements of this Act; or
  - (b) corrected the error or omission concerned.

**27 Revocation of acceptance of application**

- (1) The Secretary may revoke the acceptance of an application before the traditional knowledge concerned is registered if he or she is satisfied that the application was accepted because of an error or omission on his or her part.
- (2) If the Secretary revokes the acceptance of the application,—
- (a) it must be treated as if it had not been accepted; and
  - (b) section 26 applies to it again.

**28 Public notification**

- (1) The Secretary must give public notice that an application has been accepted.
- (2) The notice must—
  - (a) describe in general terms the knowledge to which the application relates; and
  - (b) state—
    - (i) where the application may be inspected; and
    - (ii) that a person may give notice of opposition to the application.

*Opposition to published applications***29 Opposition to published application**

- (1) A person may, within the prescribed time and in the prescribed manner, give the Secretary written notice of opposition to an application.
- (2) The notice of opposition must include a statement of the grounds of opposition and any prescribed matters.
- (3) The Secretary must send a copy of the notice of opposition to the applicant.

**30 Applicant's counter-statements**

- (1) An applicant to whom a notice of opposition has been sent must, within the prescribed time, send to the Secretary a counter-statement for each notice of opposition, relating to the grounds of opposition stated in the notice.
- (2) If, within the prescribed time, the applicant sends to the Secretary a counter-statement for each notice of opposition, the Secretary must send a copy of each counter-statement to the appropriate opponent.
- (3) If, within the prescribed time, the applicant does not send to the Secretary a counter-statement for each notice of opposition, the Secretary must reject the application.
- (4) Subsection (3) does not prevent the making of further applications.

**31 Are Korero's determination on opposition**

- (1) If an applicant sends a counter-statement (or the required number of counter-statements) to the Secretary within the prescribed time,—
  - (a) the Secretary must arrange for the Are Korero concerned to consider the evidence of the contending parties; and
  - (b) the Are Korero must—
    - (i) decide whether, and, if so, subject to what conditions (if any), the traditional knowledge concerned is to be registered; and
    - (ii) notify the Secretary in writing of its decision; and
  - (c) the Secretary must accept or reject the application accordingly.
- (2) If the opponent (or 1 or more of several opponents) believes that the traditional knowledge concerned is knowledge of a traditional community in relation to which an Are Korero, other than the Are Korero that originally considered the application, exercises and carries out powers and functions,—
  - (a) the Secretary must arrange for both or all the Are Korero to consider the evidence of the contending parties in consultation with each other; and

- (b) all the Are Korero must consider whether, and, if so, subject to what conditions (if any), the knowledge should be registered; and must either—
  - (i) give the Secretary written notice that they have all agreed that the knowledge should be registered; or
  - (ii) give the Secretary written notice that the knowledge should not be registered because they have not all agreed that the knowledge should be registered (or because all the Are Korero have agreed that the knowledge should not be registered).
- (3) Written notice given to the Secretary that all the Are Korero have agreed that the knowledge should be registered must state any conditions subject to which they have agreed it should be registered.
- (4) If the Secretary is given written notice that all the Are Korero have agreed that the knowledge should be registered, he or she must accept the application (but register the knowledge subject to all the conditions (if any) stated in the notice).
- (5) If the Secretary is given written notice that the knowledge should not be registered, he or she must reject the application.
- (6) Subsections (2) to (5) override subsection (1).

*Registration of traditional knowledge*

**32 Circumstances in which Secretary must register**

- (1) The Secretary must register traditional knowledge if the Secretary has accepted an application to register the knowledge and—
  - (a) either—
    - (i) no notice of opposition is given in accordance with section 29; or
    - (ii) all opposition proceedings are withdrawn or decided in favour of allowing registration of the traditional knowledge; and
  - (b) the Secretary does not intend to revoke the acceptance of the application under section 27.
- (2) The Secretary must not register traditional knowledge until 6 months after the date of public notification under section 28.

**33 Multiple rights-holders**

If multiple applicants have filed with the Secretary a written agreement between all applicants as to how rights and restrictions in relation to the traditional knowledge concerned will, if the knowledge is registered, be administered, the Secretary must record multiple rights-holders in the register, together with details of how it has been agreed that rights and restrictions in relation to the knowledge will be administered.

**34 Registration**

The Secretary registers traditional knowledge by recording in the register—

- (a) the prescribed information about the knowledge; and
- (b) any information required to be recorded by section 33; and
- (c) the date on which the information was recorded.

## Part 4 Proceedings

### *Who may bring proceedings*

#### **35 Rights-holder may seek relief**

- (1) If this section applies (*see* 7(3), 8(2), and 10(2)), a rights-holder may—
  - (a) apply to the Court for relief; or
  - (b) ask the Attorney-General (in writing) to apply to the Court for relief on behalf of the rights-holder.
- (2) If the Attorney-General is satisfied that a request under subsection (1)(b) is reasonable, he or she must institute and conduct civil or criminal proceedings under this Act on behalf of the rights-holder.

### *Some matters may be considered by Are Korero*

#### **36 Reference of civil proceedings to Are Korero**

Where a rights-holder has applied to the Court for relief under section 35(1), the Court—

- (a) may refer the application to the Are Korero concerned for consideration if the Court is satisfied that it relates to matters of a kind suitable for consideration by an Are Korero, and—
  - (i) it is not an application for an order for delivery up or disposal; and
  - (ii) it does not relate to matters of a kind prescribed as unsuitable for consideration by an Are Korero; and
- (b) must refer the application to the Are Korero concerned for consideration if it relates to matters of a kind prescribed as suitable for consideration by an Are Korero.

#### **37 Application to proceed directly to Court if not referred to Are Korero for consideration**

An application to the Court for relief under section 35(1) that has not been referred to an Are Korero for consideration must be dealt with by the Court in the usual way.

#### **38 Procedure before Are Korero**

In considering an application for relief referred to it under section 36 for consideration, an Are Korero—

- (a) must proceed in accordance with any rules in force under this Act providing for the consideration of such applications by the Are Korero; but
- (b) may otherwise adopt any reasonable procedure (not inconsistent with any such rules in force) that the Are Korero thinks fit.

#### **39 Remedies available to Are Korero**

- (1) In considering an application for relief referred to an Are Korero under section 36 for consideration, the Are Korero—
  - (a) may make recommendations only; or



- (b) may do 1 or more of the following things—
  - (i) make recommendations, on any terms it thinks fit, that if mandatory would be in the nature of injunctions:
  - (ii) recommend the payment of damages or an account of profits:
  - (iii) recommend the making of apologies.
- (2) Section 43 applies to recommendations for the payment of damages as if the Are Korero were the Court.
- (3) The recommendations must be made in writing.

**40 Are Korero may decline to make recommendations**

An Are Korero may decline to make recommendations on an application for relief referred to it under section 36 for consideration, but in that case it must give the applicant a written notice stating that it has declined to make recommendations.

**41 Matter may proceed to Court if recommendations not followed or Are Korero declines to make recommendation**

- (1) An application to the Court for relief under section 35(1) must be dealt with by the Court in the usual way if the Court is satisfied that the application has been referred to the Are Korero concerned for consideration but—
  - (a) the Are Korero has declined to make recommendations; or
  - (b) any recommendation made by the Are Korero—
    - (i) has not been followed within the time stated by the Are Korero for following the recommendation; or
    - (ii) if no time has been stated by the Are Korero for following the recommendation, within a reasonable time after the Are Korero made it.

*Remedies in civil proceedings*

**42 Civil relief available for breach of sections 7(3), 8(2), and 10(2)**

- (1) On an application to the Court for relief under section 37, the relief that the Court may grant is all or any of the following—
  - (a) an injunction on any terms the Court thinks fit;
  - (b) either damages or an account of profits under section 43;
  - (c) an order for delivery up under section 48;
  - (d) an order for disposal under section 49.
- (2) The Court may also make any ancillary order it thinks desirable.

**43 Damages**

- (1) On an application for relief under section 35, the Court may award any damages the justice of the case requires, having regard to—
  - (a) all the circumstances of the case; and
  - (b) the flagrancy of the breach concerned; and
  - (c) any benefit accruing to the defendant by reason of the breach.

- (2) If it is proved or admitted that at the time of the breach the defendant did not know, and had no reason to believe, that the traditional knowledge to which the application relates was registered, the applicant—
- (a) is not entitled to damages; but
  - (b) without prejudice to the award of any other relief, is entitled to an account of any profits.

*Unjustified applications*

**44 Unjustified application**

On an application for relief under section 35, the Court may, on the application of any person against whom relief is sought,—

- (a) make a declaration that the making of the application is unjustified; and
- (b) if it thinks fit, make an order for the payment of damages for any loss suffered by the person in respect of whose actions the application was made.

*Offences in relation to sacred knowledge and sacred-secret knowledge*

**45 Penalties for offences in relation to sacred knowledge and sacred-secret knowledge**

- (1) Every individual who is convicted of an offence against section 12 is liable on conviction,—
  - (a) if the offence relates to registered sacred knowledge, a fine not exceeding \$25,000;
  - (b) if the offence relates to registered sacred-secret knowledge or registered sacred knowledge and registered sacred-secret knowledge, a fine not exceeding \$50,000.
- (2) Every body corporate that is convicted of an offence against section 12 is liable on conviction,—
  - (a) if the offence relates to registered sacred knowledge, a fine not exceeding \$250,000;
  - (b) if the offence relates to registered sacred-secret knowledge or registered sacred knowledge and registered sacred-secret knowledge, a fine not exceeding \$500,000.

**46 Defence**

A person charged with an offence against section 12 who proves that an action taken in respect of registered sacred knowledge or sacred-secret knowledge was taken with the authority of a rights-holder proves that the action was not prejudicial to the honour or reputation of the rights-holders of the knowledge.

**47 Orders for delivery up and disposal in relation to sacred knowledge or sacred-secret knowledge**

- (1) If proceedings are brought against a person for an offence against section 12, the Court may—
  - (a) make an order for delivery up of any offending material as if the material were infringing goods—

- (i) of the Court's own motion or on the application of the prosecution; and
  - (ii) regardless of whether the person is convicted of an offence against section 12:
- (b) make an order for the disposal of any offending material as if the material were infringing goods.
- (2) Before making any order, the Court—
- (a) may seek the views of the Are Korero concerned as to whether an order should be made and, if so, which kind of order should be made; and
  - (b) may (but does not have to) take those views into account in coming to a decision.

*Orders for delivery up, forfeiture, or disposal in civil actions*

**48 Order for delivery up**

- (1) Where the Court makes, or it appears to the Court that there are grounds for making, an order under section 49 for the forfeiture or disposal of any infringing goods, the Court may order that the person in whose possession the goods are deliver them up to a rights-holder or to any other person the Court thinks fit.
- (2) A person to whom any infringing goods are delivered up under an order made under subsection (1) must, if an order has not been made under section 49, retain the goods pending—
- (a) the making of an order under that section; or
  - (b) a decision not to make an order under that section.

**49 Order for disposal of infringing goods**

- An application may be made to the Court for an order that the infringing goods delivered up under an order made under section 48 must be—
- (a) forfeited to a rights-holder or any other person that the Court thinks fit; or
  - (b) destroyed or otherwise dealt with as the Court thinks fit.

**50 Matters to be considered by Court**

- In considering what order, if any, should be made under section 49, the Court must consider—
- (a) whether other available remedies would be adequate to compensate, or protect the interests of, the rights-holder or rights-holders; and
  - (b) the need to ensure that no infringing goods are disposed of in a manner that would adversely affect the rights-holder or rights-holders.

**51 Directions for service**

The Court must issue directions for the service of notice on persons who have an interest in the infringing goods to which an application under section 49 relates.

**52 Rights of persons with interest in infringing goods**

Every person who has an interest in the infringing goods to which an application under section 49 relates is entitled to—

- (a) appear (in person or by a lawyer) in proceedings for an order under that section, whether or not the person is served with notice; and
- (b) appeal against any order made, whether or not the person appears in the proceedings.

**53 When order for disposal takes effect**

An order made under section 49 takes effect either—

- (a) at the end of the period within which notice of an appeal may be given; or
- (b) on the final determination (in favour of the applicant) or abandonment of appeal proceedings.

**54 Position if no order for disposal made**

If the Court decides that no order should be made under section 49, the person in whose possession, custody, or control the infringing goods were before being delivered up is entitled to their return.

*Court procedure relating to registered sacred knowledge or registered sacred-secret knowledge*

**55 Court procedure relating to registered sacred knowledge or registered sacred-secret knowledge**

- (1) This section applies to any proceedings before the Court relating to registered sacred knowledge or registered sacred-secret knowledge.
- (2) The Court may, on its own initiative, or at the request of a rights-holder or the Attorney-General (acting on behalf of the rights-holder), make an order described in subsection (3) if it is satisfied that—
  - (a) the order is necessary to protect the knowledge; and
  - (b) in the circumstances of the particular case, the importance of protecting the knowledge outweighs the public interest in making the knowledge available.
- (3) An order may—
  - (a) require that the whole or a part of the proceedings at which the knowledge is likely to be referred to must be held with the public excluded;
  - (b) prohibit or restrict the publication or communication of any knowledge supplied to or obtained by the Court in the course of the proceedings.

**Part 5****Administrative and miscellaneous provisions**

*Register of traditional knowledge*

**56 Register of traditional knowledge**

The Secretary—

- (a) must establish and keep a register of traditional knowledge; and
- (b) must establish and keep within it all prescribed sub-registers; and
- (c) may establish and keep any other registers that he or she considers necessary for the purposes of this Act.

**57 Form of register**

The register may be kept as a book, or in any other manner the Secretary thinks fit.

**58 Purpose of register**

The purpose of the register is to—

- (a) provide a record of registered traditional knowledge; and
- (b) enable members of the public to know who the rights-holders of registered traditional knowledge are.

**59 Contents of register**

(1) There must be recorded in the register, in relation to any registered traditional knowledge, the following—

- (a) a general description of the knowledge;
- (b) all names and addresses of rights-holders supplied with the original application;
- (c) the name of the traditional community from which the knowledge originates;
- (d) a general description of how each item of knowledge is used;
- (e) whether the knowledge is sacred knowledge or sacred-secret knowledge;
- (f) the date of application and the date of registration;
- (g) any other matters required by or under this Act to be entered in the register.

(2) The register may also contain any other information that the Secretary considers necessary or desirable.

**60 Access to register**

(1) A person may access the register for inspection at the offices of the Ministry during business hours on a working day.

(2) The Secretary may refuse access to the register at any time if the Secretary considers that it is not practical to provide access to the register at that time.

(3) Subsection (2) overrides subsection (1).

**61 Updating of register**

The register must be updated every year.

*Traditional Knowledge Advisory Committee*

**62 Traditional Knowledge Advisory Committee**

The Minister must appoint an advisory committee to be known as the Traditional Knowledge Advisory Committee.

**63 Function of committee**

The function of the Traditional Knowledge Advisory Committee is to advise the Minister and Cabinet on the operation of the Ministry in achieving traditionally based outcomes under this Act.

**64 Membership of committee**

The Traditional Knowledge Advisory Committee will comprise 1 member appointed by each Are Korero.

*Miscellaneous***65 Regulations**

(1) The Queen's Representative may, by Order in Executive Council, make regulations for all or any of the following purposes—

- (a) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of the registration of traditional knowledge:
- (b) prescribing matters in which fees are payable in respect of any matter under this Act and the amounts of those fees:
- (c) prescribing forms for the purposes of this Act:
- (d) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of proceedings under this Act:
- (e) prescribing procedures, requirements, and other matters in respect of the register and its operation, including matters relating to access to the register:
- (f) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

(2) Regulations stating that matters of any kind are matters suitable or unsuitable for consideration by an Are Korero may be made only on the recommendation of the Traditional Knowledge Advisory Committee.

**66 Rules**

The Chairperson of an Are Korero may make rules for all or any of the following purposes—

- (a) prescribing procedures, requirements, and other matters in respect of the classification of sacred knowledge and sacred-secret knowledge for the purposes of this Act:
- (b) prescribing procedures, requirements, and other matters, not inconsistent with this Act, in respect of proceedings under this Act, including but not limited to dispute resolution:
- (c) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.

**67 Amendments to other Acts**

The Acts specified in the Schedule are amended in the manner indicated in that schedule.

**68 Transitional provision**

For a period of 120 days starting on the day on which any traditional knowledge is registered, this Act applies to a person who, at any time in the 90 days before that day, was making a commercial use of any kind of the knowledge as if the person has the authorisation of the rights-holder to make that use of the knowledge.

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## Schedule Amendments to other Acts

**Ministry of Marine Resources Act 1984 (1984 No 15)**

In section 4(1)(f), after “Cook Islands”, insert “; and”.

Insert in section 4(1), after paragraph (f),—

- “(g) to promote the continued use of traditional practices for the conservation of marine resources; and
- “(h) to work in partnership with the Aronga Mana to support Raui practices in designated marine areas in the Cook Islands.”

**Ministry of Cultural Development Act 1990 (1990 No 7)**

Repeal paragraph (a) in section 4(1), and substitute—

- “(a) preserve, protect, and enhance the Cooks Islands cultural heritage, including traditional knowledge, in order to uphold tradition and develop an appreciation for this important national resource; and”.

Repeal paragraphs (a) and (b) in section 4(2), and substitute—

- “(a) encourage, promote, support, and develop the practice and appreciation of the Cooks Islands arts and culture, and other arts; and
- “(b) assist traditional knowledge holders, traditional knowledge owners, and traditional communities of the Cook Islands to protect their rights in relation to their traditional knowledge for the benefit of the people of the Cook Islands; and”.

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