

# Technical Assistance Consultant's Report

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Project Number: TA 7646 COO

September 2011

## **Public Finance Management and Public Sector Performance Review**

### **Review of Outer Island Government: Roles and Accountability**

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## ABBREVIATIONS

ADB	Asian Development Bank
AMD	Aid Management Division
CAPEX	Capital expenditure Request
CEO	Chief Executive Officer
CIGFPPM	Cook Islands Government Financial Policies and Procedures Manual
FRT	Functional Review Team
GR	Government Representative
INTAFF	Ministry of Internal Affairs
MFEM	Ministry of Finance and Economic Management
MOID	Ministry of Outer Island Development
MOIP	Ministry of Infrastructure and Planning
MOU	Memorandum of Understanding
OMIA	Office of the Minister, Outer Islands
OPSC	Office of the Public Service Commissioner
OPM	Office of the Prime Minister
POBOC	Payment on Behalf of the Crown

## NOTES

- (i) The fiscal year (FY) of the Cook Islands Government and its agencies ends on June 30.
- (ii) In this report, "\$" refers to New Zealand dollars, unless otherwise stated.

## EXECUTIVE SUMMARY

The Cook Islands Government with the assistance of the Asian Development Bank through the Japanese Special Assistance Fund has sought assistance to undertake:

*A functional review of government in order to develop a government structure that is cost effective and aligned to national priorities. The expected outcome of the review will be the development of a set of options for priority administration reforms, made available to government.*

A component of the review as identified by government was to review Outer Islands governance, roles and administration, to improve service delivery. The Terms of Reference (ToR) for the full review are contained in appendix 1. The key ToR components of focus for the Outer Islands review are as follows:

- (i) address Outer Island Administration in terms of improving service delivery in an accountable manner;
- (ii) review Outer Island Administration, functions, and roles. With OPSC, identify a more responsive management and accountability approach.

Discussions with the Honourable Prime Minister, the Office of the Prime Minister; the Office of the Public Service Commission and the Ministry of Finance and Economic Development indicated four key issues of importance with regard to the Outer Islands:

- achieving greater empowerment of Island Mayors and Councils;
- strengthening partnerships between local and central government;
- a shift to a medium term budgeting and regional development framework;
- clarification of and recommendations on more effective roles and responsibilities, to improve partnerships and governance.

The overarching principle which emerged from the extensive discussions with Island representatives and central government was:

***Overarching Principle: 'Local Solutions for Local Problems'***: Empowerment of Mayors and Councillors to take on leadership and ownership of both issues and solutions

Other important recommendations which emerged through the discussions held during the review, particularly with the Steering Committee and the Office of the Public Service were;

1. Provide for greater empowerment and autonomy for the Mayor and Island Councils to make decisions on *core issues relevant to each island*. That is: recognition of the unique nature and requirements of each island.
2. Each Mayor and Island Council will be responsible and accountable for all monies appropriated, collected, and expended by each island in the administration of its affairs. This transfer of accountabilities must be accompanied by capacity building and phased in according to the skills and confidence of the Mayors and Councils as well as the confidence of MFEM, OPM and OPSC that the budget and financial management process can be managed in a fiscally responsible manner.
3. A new position of Clerk of Council is recommended to replace the existing Island Secretaries. The Clerk of Council will report to the Mayor and

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undertake the budget preparation in consultation with the Mayor and Council and according to priorities agreed with the Mayor and Council.

4. Good Governance and Good Employer principles will be pillars for the effective and efficient management of all employees.
5. The National Government will work in partnership with the Island Councils in the development of each island.

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<sup>1</sup> Revised May 2011 and endorsed by ADB,

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## I. INTRODUCTION

1. The purpose of this report is to review the present roles and functions of local government within the Outer Islands and to make recommendations consistent with ADB 7646 ToR component (iii): 'address Outer Islands administration in terms of improving service delivery in an accountable manner; review Outer Islands functions and roles. With OPSC, identify a more responsive management and accountability approach'<sup>2</sup>.
2. The Prime Minister has made it clear publicly, that issues concerning Outer Islands allocation of responsibilities; leadership; reporting and management are a priority for Government and Outer Islands leaders,<sup>3</sup> and that Government wishes to empower the Outer Islands to enable them to better determine their own needs, and priorities by:
  - involving the Island Leaders more fully in the planning, implementation and monitoring processes (Prime Minister's briefing with Mayors, Island Secretaries and Functional Review Team March, 2011);
  - creating a more inclusive environment where needs are addressed by those in the strongest and most effective position to do so; (Prime Minister's meeting with Mayors, Island Secretaries and Functional Review Team July, 2011)
  - shifting into a medium term budgeting and regional development framework where resources are shared and priorities are organised in regions, and planning horizons can be better matched with budget timeframes (MFEM);
  - consolidating partnership arrangements between government, the private sector and the community (ETF).
3. The requirement for empowerment of Outer Islands' leaders and communities is the key guiding principle which underlies the recommendations contained in the report. This recommendation is qualified by the understanding that each island is unique and has different capabilities and requirements. Whilst recommendations regarding roles and leadership are common to all islands the nature and pace of 'empowerment' will differ according to the skills, resources and requirements of each island. The report identifies issues concerning:
  - autonomy of Island decision-makers;
  - decentralisation or recentralisation of key services;
  - role definition and requirements at central government and local government (outer island) levels ;
  - requirements for improved business planning and budget preparation;
  - mechanisms for improved monitoring of service delivery
  - requirements for provision of appropriate, timely and effective assistance and capacity building
4. This Outer Islands report, prepared by the Functional Review Team,<sup>4</sup> presents key issues with regard to Outer Islands roles, administration and management.

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<sup>2</sup> ADB TA 7646COO: Public Financial Management and Public Sector Performance Review Inception Report

<sup>3</sup> Cook Islands News, Wednesday, 13 July 2011, p10, article 'Independence for outer islands'.

<sup>4</sup> Comprising: Lyn Yeoman International Consultant and Team Leader; Heather Webber-Aitu Counterpart and Governance Advisor; William Numunga National Consultant and Melinda Pierre, Governance Analyst.

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## II. BACKGROUND AND APPROACH

### A. BACKGROUND

5. The 11 inhabited islands (excluding Rarotonga<sup>5</sup>) in the Cook Islands commonly termed as the Outer Islands are also referred to at times as Pa Enea or Sister Islands. The application of a common title has not yet been debated in a public forum so this review will defer to the common usage as Outer Islands. These islands consist of:
- Northern Group (Apa Tokerau) includes:
    - Pukapuka (population 387)
    - Nassau (population 57<sup>6</sup>),
    - Manihiki (population 263),
    - Rakahanga (population 97),
    - Penrhyn (population 194),
  - Southern Group (Apa Tonga) includes:
    - Aitutaki (population 1508),
    - Atiu (population 426),
    - Mangaia (population 482),
    - Mauke (population 284),
    - Mitiaro (population 147)
    - Palmerston (population 47)<sup>7</sup>
6. Mechanisms for effective Outer Island administration and leadership have been debated for some years. Five key issues underlie the difficulty in resolution.
- i. There is a complex interplay between political requirements for representation on each Island and the cost and day to day value of maintaining a Government Representative.
  - ii. The Island Secretary who is appointed by the Office of the Public Service Commissioner, reports to the Commissioner but does not have a reporting relationship with the Mayor, the elected representative of Council on each Island.
  - iii. The Island Secretary has responsibility for the budget setting; prioritising of expenditure and prudent management of finance but is not an elected representative of the community.
  - iv. The requirement for 'equal access to core services throughout the Cook Islands' as a consistent government platform and constitutional right, versus the cost and availability of service provision.
  - v. The desire for autonomy on each island, versus the skills and resources of the island to plan and maintain services and standards.
7. The devolution of government functions from central government in Rarotonga, to Outer Islands local government has been a topic on political agendas for over 17 years. Four parliamentary bills calling for change have been drafted. Yet none of these bills has entered the house for debate.<sup>8</sup> Similarly, various institutional arrangements have been

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<sup>5</sup> Rarotonga has a population of 7808 (2011 Dept. of Statistics, and is the location of National (central) government..

<sup>6</sup> Nassau is generally grouped with Pukapuka but is geographically a separate Island for population statistics

2010 Population Estimates from Department of Statistics

<sup>7</sup> Traditionally Palmerston island was linked in with the Northern group Islands. However as it is geographically closer to Aitutaki and is politically linked to Rarotonga (all Island voters are registered in the Avatiu, Rarotonga electorate), it has been included in the Southern group for this review.

<sup>8</sup> *Local Government Councils Bill* Draft 10, 14 Aug 2002, *Island State Government Bill* (Hon. Teremoana Tapi Taio), May 2004, *Island State Government Bill* (Hon. Dr. Robert Woonton), April 2005, and *Island Government Bill* (Hon Kete Ioane) June 2007.

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introduced and discarded; although rationale and documentation for either introduction or discarding of the arrangement is sparse. For example:

- The Ministry of Outer Islands Development (MOID) was established in 1994 by an Act of Parliament, to coordinate the transition of empowerment to the Outer Islands.
- In 1996, during the economic reforms Cabinet directed that the budget for 1997/98 be allocated by island. This was done, but was managed centrally, by MOID.
- In 1997 MOID's organisation and administration structures were extended to include ten 'departments; (units) for the Outer Islands, thus resulting in 11 units within MOID, involving outer islands administration. This arrangement in effect centralized outer islands administration and management under MOID, headed by a Secretary in Rarotonga, with MOID officers stationed on each outer island. Under this arrangement:
  - funding decisions were controlled by MOID-Rarotonga
  - employment authority was vested in MOID-Rarotonga
  - staff payment was prepared and managed via MOID- Rarotonga
  - staff up-skilling, if occurred, was via MOID-Rarotonga
  - bulk funding was managed by MOID- Rarotonga

8. In 1997/98 all core government services (previously managed at central level) were devolved. This included Police, Justice, Health and Education. Concerns with this arrangement emerged in 1998. The Police functions, by law, could not be relinquished from the Police Commissioner to the Island Secretary as the Police service had to legally retain its statutory independence. The same applied to the Ministry of Justice where judicial impartiality was deemed essential and not possible under decentralized arrangements. Similarly, the Ministry of Health and the Ministry of Education could not relinquish their professional registration responsibilities to the Island Secretary. The Island Councils also experienced difficulty in management of the recruitment of staff, so as a consequence in 2000, these government functions were recentralized back to the Central Agencies.<sup>9</sup>

9. In 2000 under an Order in Executive Council each island administration became an independent ministry. The Office of the Minister, Outer Islands (OMIA) was formed to provide a policy, co-ordination and technical services role.

10. The request of the Cook Islands Government, supported by ADB, to 'address Outer Islands administration in terms of improving service delivery in an accountable manner; review Outer Islands functions and roles and with OPSC, identify a more responsive management and accountability approach' presents a considerable challenge to the Functional Review Team (FRT). This is especially the case, given the changes in mechanisms applied and altered during the last 17 years.

## **B.APPROACH**

11. The review approach comprised: a review of relevant constitutional and legal mandates; extensive interviews and discussions with central and local government (both Northern and Southern Outer Island Groups)<sup>10</sup>; meetings between the Prime Minister and Outer Islands representatives at which the FRT were present; Outer Island Business Plans as well as discussions with the Economic Task Force and the Budget Appropriations Committee.

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<sup>9</sup> Interviews with Ministries and Statutory Agencies such as Police, Justice

<sup>10</sup> See appendix 4

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12. The review incorporated the position expressed by the Chairman of the Steering Committee as a result of discussions with the Prime Minister to focus on roles, leadership, structures and good governance which would enable greater empowerment and autonomy for the Outer Islands in matters relevant to each island, and an active role for the Island Councils in monitoring and evaluating the performance of employees on each island..

13. Review of the relevant components of the documents and outcomes of discussions have been incorporated into the body of the report. This includes:

- The Constitution of the Cook Islands
- Outer Island Local Government Act 1987, No. 25
- Public Services Act 2009, No 12
- House of Ariki's Act 1966, No 4
- Ministry of Finance and Economic Management Act, 1995-96
- Cook Islands Government, Financial Policies & Procedures Manual, 2002.

### **C.INFORMATION SOURCES**

14. Key sources of information that have been incorporated into the background and recommendations of this report include:

- Mayor and Island Secretaries meeting, Rarotonga, following the Commonwealth Secretariat Public Service Forum, February 2011
- Mayor and Island Secretaries meeting chaired by the Prime Minister during the Economic Task Force Meeting, March 2011
- Individual meetings and interviews on all Southern Islands by OPSC staff with Island Council members; Mayors and Secretaries by the OPSC Performance Management Team, on behalf of the Functional Review Team
- Review of all Island Business Plans
- Individual discussions with Mayors, Island Councillors, and Government Representatives from all Northern Group Islands visiting Rarotonga during Constitution Celebrations in August 2011.
- Minutes of the Outer Islands Mayors and Members of Parliament Forum Communiqué 2005, 2006 and 2008.
- Local Government Councils Bill (Draft 10), 14 August 2002
- Island State Government Draft Bill (Hon. Teremoana Tapi Taio) , 5 May 2004
- Island State Government Draft Bill (Hon. Robert Woonton) April 2005
- Island Government Draft Bill (Hon. Kete Ioane) October 2006.
- Review of 'Funding for Island Administrations', Taukea Rau (Chairperson) & Quentin Thorburn, (MFEM), April 2008.
- Outer Islands Appropriation Analysis 2011-2012' for Budget Support Group, Budget Secretariat May 2011<sup>11</sup>.

### **D.GUIDING PRINCIPLES FOR THE OUTER ISLANDS REVIEW**

15. The overall review and development of recommendations has been guided by the Guiding Principles framework.<sup>12</sup> . These guiding principles set out the parameters for the

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<sup>11</sup> Appendix 2

<sup>12</sup> See summary in appendix 3. The full set of principles and their rationale is contained in Working Paper No: 22A: Functional Review of Government Guiding Principles for the Functional Decision – Making Process; ADB TA 7646 Revised by the Functional Review Team, 27 September, 2011

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whole of government review and recommendations. Key Guiding Principles were then developed for the Outer Islands review, based on government directives for:

- greater empowerment of Island Mayors and Councils;
- strengthened partnerships between local and central government;
- a shift to a medium term development framework where resources are shared, and planning horizons can be better matched with budget timeframes;

**Overarching Principle: 'Local Solutions for Local Problems':** Empowerment of Mayors and Councillors to take on leadership and ownership of both issues and solutions

**GP1:** Provide for greater empowerment and autonomy for the Island Councils to make decisions on core issues relevant to each island.

**GP2:** Every Mayor and Island Council will be responsible and accountable for all monies appropriated, collected, and expended by each island in the administration of its affairs.

**GP3:** Financial prudence and fiscally responsible management principles shall underlie the administration and operations of Outer Island Council affairs pursuant to the MFEM Act 1995/96.

**GP4:** Good Governance and Good Employer principles will be pillars for the effective and efficient management of all employees as per the PS Act 2009

**GP5:** The Government will recognize, acknowledge and work in partnership with the Island Councils in the development of each island to:

- Strengthen partnerships
- Empower Island leaders to recognize and mobilize their priorities and needs
- Involve Island leaders in planning, implementation and monitoring processes
- Enable Island leaders to decide how to best manage their own resources

## **E. LEGAL AND CONSTITUTIONAL MANDATE**

16. The legal and constitutional framework for the Outer Islands must be consistent with the Constitution of the Cook Islands. Core constitutional requirements which apply to legal and management structures at both central and local government levels are summarised below.

- Parliament (government) may make Laws (Acts) for the peace, order and good government of the Cook Islands (Part 3.39, 80)
- Existence of 'Fundamental Human Rights' (Part 4a.64)
- Make laws recognising or giving effect to custom and usage (Part 4b, 66a (1);'Parliament shall have 'regard to traditions usages and values of indigenous people of the Cook Islands; the decision of the Aronga Mana of the Island or Vaka to which a custom, tradition, usage, or value relates shall be final and not questioned in any court of law'.
- Maintain a Cook Islands Government Account (5.67) and taxation (5.68) *by implication*
- Establish/ maintain an Audit Office (Part 5. 70.3a and 71)

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- Establish /maintain a Public Service (Part 72.1,2) and that there shall be a Public service Commissioner
  - Establish/ maintain a Public Service Board of Appeal (Part 76)
  - Establish the High; Civil; Criminal; and Land Courts(Part4.47.1;3a;3b;3c)
  - Establish/maintain a Land Court (Part 83)

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### III. CURRENT ROLES AND ACCOUNTABILITY

17. There are currently five roles and positions involved in Outer Islands leadership and management. These are:

- Government Representative
- Island Secretary
- Mayor
- Island Council
- Member of Parliament

18. These positions have mandates to act in varying capacities on behalf of government.<sup>13</sup> The responsibilities of these positions are summarized below, followed by key issues regarding the allocation and fulfillment of these responsibilities.

#### A. GOVERNMENT REPRESENTATIVE

19. The Government Representative (GR) on each Island (according to their terms of appointment), is selected by the government of the day. The GR was an appointee of the Commissioner until 5 July 2009, however, since 06 July 2009 the GR has been appointed as an employee of the Chief of Staff, within the Office of the Prime Minister. He or she is expected to:

- Represent the central government at any 'official social function of government' on the island;
- Represent central government at any other social functions that government has been invited to take part or be represented
- Represent central government at the local government monthly meetings in an ex officio capacity.
- Provide liaison services to any VIP visitors to the island and other visiting groups or parties;
- Carry out other duties as directed or instructed by the Prime Minister, Cabinet Minister or Chief of Staff as deemed necessary from time to time.<sup>14</sup>

20. There is also an expectation that the GR will observe the work of individuals representing government departments on the island and report whether or not they are performing their duties as 'expected' to the Chief of Staff and Secretary of the relevant ministry if this is not the case. However, this role does not appear to be an official component of the job description for the position. See Appendix 4: Proposed Terms of Reference for Outer Island Officials.

21. Initially the GR's position was embedded in the Cook Islands Constitution under 74BB as an exempted position.<sup>15</sup> The position then moved into the Public Service Act 1995-1996 again as an appointment to an exempted position.<sup>16</sup> However, there is no mention of the GR in the Public Service Act 2009. The Outer Islands Local Government Act 1987 has not been officially repealed and under two amendments to this act in 1993, the GR has been allocated two roles, first to run Outer Island Local Body Elections and secondly administer the Island Funds account in a separate bank account. These roles do not

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<sup>13</sup> Outer Island Forum Communiqués 2005.06,08, and interviews held with Island Government Officials July & August 2011.

<sup>14</sup> Policy for the Effective and Efficient Functioning of Outer Islands Government Representation, Office of the Prime Minister, August 1998, p.4. and Government Representative – Outer Islands Job Description, 2006.

<sup>15</sup> Cook Islands Constitution 1994-95 pp 168 & 202

<sup>16</sup> Public Service Act 1995-1996, p5.

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appear in the current job description for the GR. See Appendix 4: Proposed Terms of Reference for Outer Island Officials.

22. The role and requirement for a GR, has been debated at all levels over a number of years. Debate focuses primarily on the political expediency of maintaining a Government Representative relative to the limited requirements of the current role. The Member of Parliament has the mandate of the people to represent the island in all matters at central government and the GR position does not, in the general opinions of the Mayors and Island Secretaries interviewed appear to be adding value to Island Council's performance as a result of attending Council meetings.; especially since the GR does not provide his reports to the Mayor. Similarly, Mayors advised that whilst the meeting of official guests was part of the Job Description for the GR, the function was generally undertaken by the Mayor; although the budget for such events was allocated to the GR position.
23. Local government officials including GR's interviewed in July and August 2011 stated that they are unclear of the GR's role and responsibilities. Several GRs interviewed commented that they, themselves were unclear of their roles and questioned their value with regard to island affairs and liaison with central government.
24. Some Mayors commented that the GR role at times infringes on the leadership role of the Mayor and Council and that there were concerns that the GR may report on unverified activities and events given the lack of formal liaison between GRs and Mayors.
25. From a functional perspective, the GR's position has no clear role, no performance measures, nor accountability to the Public Service Commissioner. The post also has no capacity for independence of observation since it is always a political appointment.

## **B.ISLAND SECRETARY**

26. The Island Secretary is appointed by the Public Service Commissioner to:
  - Carry out functions and duties including management and implementation of government policies;
  - Provide advice to the responsible Minister and other Ministers of the Crown on any matters which they may wish to raise;
  - Comply with the obligations under the Ministry of Finance and Economic Management Act 1995–96; the Public Service Act 2009 and the Public Expenditure Review Committee and Audit Act 1995/96 and other relevant legislation; Administer legislation that applies to the Island Administration.<sup>1718</sup>
27. As a Head of Ministry under the PS Act, the Island Secretaries are also responsible to the Minister for the Outer Islands as outlined under the PS Act 2009.
28. The Island Secretary is currently accountable, as above, to the Public Service Commissioner and is appointed to the position with no recruitment input from the Island Mayor or Council. The lack of input from the Island, into the Island Secretary recruitment process does not facilitate the creation of a 'team' approach to management and decision-making, between the Mayor and the Island Secretary since the Mayor is not involved in the appointment.

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<sup>17</sup> Island Secretaries Job Description, Office of the Public Service Commissioner, August 2009.

<sup>18</sup> A new job description was provided to the FRT in September 2011 and was used to recruit the new Island Secretary for Mauke- the most recent recruit. All other Island Secretaries have been recruited according to the JD above.

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29. Whilst there is a need to separate the appointment process of elected (Mayor and Council) and appointed (Island Secretary) officials, the lack of involvement of the Mayor in the selection process of his/her Secretary differentiates this process from that of similar and applicable models. For example: the appointment of the CEO to a Crown Agency, or a SOE where the Chairman of the Board of Directors has a role in the selection of the CEO.
  30. The Job Description for the Island Secretary is very broad and is more focused on values and code of conduct than specific outputs. See Appendix 4: Proposed Terms of Reference for Outer Island Officials.
  31. Effective monitoring of an Island Secretary's performance by central government is therefore compounded by: a very broad job description; the lack of capacity for OPSC to observe performance except for occasional visits to the Island and six monthly interviews; and the lack of involvement of the Mayor in performance monitoring. The Mayor and Island Council have no formal relationship with the Office of the Public Service Commission, who appoint the Island Secretary.
  32. The Island Secretary manages the Island budget. However, there are no legal budget reporting requirements to the Island Mayor or Council. In addition there is no requirement for the Island Secretary to disclose to the Mayor and Council the amount of budget has been appropriated and consequently disclosure does not occur, as reported by Mayors. As a result Mayor and Council cannot plan and prioritise against a known budget for the island.<sup>19</sup> Conflict between Island Secretary and Mayor has become a common occurrence on many islands with clashes occurring when the Island Secretary makes decisions, especially regarding budget and priorities, without involving the Island Council. This system clearly does not empower the Mayor and Council to take leadership and set development priorities since they neither know budget appropriation amounts, nor have formal input into budget or expenditure.
  33. Project proposals, reports and business plans are often submitted by the Island Secretary in isolation and without prior consultation with the Mayor and Council. Often, Mayors stated, these plans do not reflect the needs of the Island as perceived by the elected representatives – Mayor and Council, and those who 'know' the Island.

### **C.MAYOR AND ISLAND COUNCIL**

34. The Island Mayor and Council are elected by the Island community and their functions are outlined in the OI Local Government Act, 1987. These have been interpreted in various ways.
  - To effect and administer ordinances and by-laws of the island;
  - To co-ordinate economic and social development activities on the Island;
  - To assist the Government of the Cook Islands in the good rule and government of the Island;
  - To advise on, or determine any matter, question or dispute referred to it by any person or organisation.<sup>20</sup>
35. Currently, the Mayor and Island Council are unable to lead and co-ordinate development activities because they have no input into budgetary processes or to planning and priority setting in consultation with the Island Secretary; or without involvement in recruitment

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<sup>19</sup> Outer Island Interviews with Southern Group through July 2011 & Northern Group August 2011

<sup>20</sup> Palmerston Island Local Government Act, No 2, 1993, p.4., and Local Government Act, 1987.

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and appointment procedures for the Island Secretary, Whilst the Island Council may be involved in making ordinances with regard for example, to lagoon fishing or promotion of local business initiatives they appear not to be involved with central government in larger scale projects related to infrastructure projects (airports, ports, schools, hospitals etc) which determine the economic and social base of the island.

#### **D.MEMBER OF PARLIAMENT**

36. There does not appear to be a job description for a Member of Parliament. Members of Parliament (M.Ps) are elected, represent their respective island in Parliament, are an ex Officio Member of the Island Council and act as a liaison between their electorate (local government), and national government, as is required of all M.Ps.
37. Most Outer Island MP's reside in Rarotonga and so do not attend every Island Council meeting in their ex officio capacity. There is a no formal communication channel between MP and the Mayor.
38. It is unclear whether the Mayor receives minutes of Council meetings if he or she does not attend and concerns were expressed about the capacity of the Mayor to address the needs of the community, with infrequent visits to the Island.
39. Whilst geography limits the ease of communication it does not appear that mechanisms for regular briefings or discussion on development priorities have been established. Regular scheduled phone calls between the Mayor and the MP may be a useful and simple arrangement.

#### **E.ARONGA MANA**

40. The Aronga Mana representative on each Island Council is elected from among the title holders,<sup>21</sup> and is an ex officio member of the Island Council representing land, social and culture interests of the island. In the Outer Islands, as in Rarotonga land issues are a common source of involvement of the Aronga Mana, who will advise, adjudicate, mediate, and resolve, such issues, where necessary. He or she may also represent the island as a member of the House of Ariki.<sup>22</sup>
41. Several Mayors recommended that the Aronga Mana representative should be entitled to a vote on Island Council rather than remaining ex officio.<sup>23</sup> However there was an alternative anti-voting position taken whereby Aronga Mana should not be brought into day to day council duties but retain their traditional roles regarding stewardship of the land, language and traditions. The latter position has been recommended by the Functional Review Team. That is; to retain the status quo in the absence of any compelling argument for change.

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<sup>21</sup> Outer Islands Local Government Act 1987, Part 1: Sections 5 and 8.

<sup>22</sup> House of Ariki Act .1966 No 4, page3

<sup>23</sup> Minister Teariki Heather's presentation to Outer Island officials Mon 08 August 2011 Auditorium, Rarotonga, & Outer Island Officials interviews.

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## **IV. FINANCIAL ACCOUNTABILITY**

### **A. BUDGET**

42. As noted earlier, the current financial management arrangements whereby the Island Secretary is in charge of the budget preparation, management and monitoring does not serve to empower the Mayor and Council or to engender a sense of responsibility for prudent fiscal management, since the Mayor and Council are not involved in the setting of budget.
43. Several Mayors indicated that the Island Secretary did not disclose the amount of the budget appropriation or report on expenditure against a plan. The perceived lack of transparency on budget matters has led to concerns being raised with the FRT by Island Councils that budget allocations and prioritising may have no relation to needs as determined by Councils and their constituents. This reflects their perception of isolation from planning and budget allocation.
44. The Outer Island Appropriation Analysis 2011-12 Report<sup>24</sup> also raised past difficulties in the access and use of the four types of Outer Island funding from government's budget appropriation.<sup>25</sup> These funds are:
- Output Funding (running cost of administration and its deliverables determined by a funding formula), total \$9.0 million;
  - Outer Islands Capital fund (managed by MOIP for prioritised infrastructure & machinery purchases), total \$1.8 million;
  - Outer Islands Small Capital fund (managed by MFEM for office equipment, allocated by island), total \$0.1million;
  - Outer Island Equipment Repairs for Unanticipated Breakdowns (POBOC under MOIP), total \$0.2 million<sup>26</sup>;
45. MFEM has indicated that some islands consistently under spend against some funds. The basis for under spending was deemed to be lack of knowledge or understanding of funding formula applications and cumbersome forms. Other concerns raised by MFEM and OPSC staff were: observation of transfer of operational costs to personnel after appropriations were set; continuing occurrence of 'qualified' accounts.

### **B. MFEM PAYMENT PROCEDURES**

46. Currently, MFEM Act (section 29) requires all payments to be made to a person that is either mandated or recognized under the MFEM legislation (i.e. government officials or instruments of government). This does not enable the Mayor and Council to be in receipt of the budget appropriation. A key outcome of the review of outer islands governance and roles is the empowerment of local government through the Mayor and Council. The capacity for empowerment and growing autonomy of decision making is substantially weakened if the Mayor does not have direct control over the budget appropriation and expenditure priorities.
47. Risk factors raised by OPSC and MFEM related largely to lack of financial management skills available within most Island Councils; and to difficulties of MFEM and OPSC to hold the Mayor directly responsible for misappropriation of funds. That is; the difficulty in

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<sup>24</sup> Budget Secretariat, (May 2011), Outer Island Appropriation Analysis 2011-12 for Budget Support Group.

<sup>25</sup> Ibid p.2

<sup>26</sup> Ibid p.3

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application of legal proceedings over an elected body, relative to that of the current procedure where the Island Secretary receives and accounts for appropriated budget and as an employee under the Public Service Act 2009 can be held accountable.

48. The key issue is: how to empower the Mayor and Island Council whilst maintaining financial and legal accountability for public funds. The recommendations of this review are that in the short- medium term (1-2 years) that this is addressed by:
- changing the role of the Island Secretary to that of a Clerk of Council;
  - changing the reporting relationships such that the Clerk of Council reports directly to Mayor and Council, has responsibility for budget management and technical input according to priorities nominated by Council
  - provision of significant capacity building for the Mayor and Council through OPSC, to enable the Island Council to contribute to the setting of budget priorities and to critique the reports presented to Council by the Clerk of Council.

### **C.CAPITAL EXPENDITURE REQUESTS (CAPEX)**

49. When a government CAPEX request is received from an applicant, the Ministry of Infrastructure and Planning (MOIP) undertakes project assessment, stakeholder consultation and produces a project brief which goes to the Infrastructure Committee, who screen the project brief and approves or disapproves.<sup>27</sup> If the Infrastructure Committee approves, the project goes to Cabinet for discussion to confirm and allocate an approval value. The project then goes back to MOIP to carry out the tender process and to oversee the implementation of the project. Consultation on the relevance of the project to the Infrastructure Master Plan (IFMP) is not mandatory before sign off or before the project goes to the Infrastructure Committee. By not consulting the IFMP and linking the project with the Plan and donor priorities the applicant's opportunity to access donor funding is limited.
50. The application process appears unduly complicated and comments received from Outer Islands representatives interviewed indicated the cumbersome process is acting as an obstacle to preparation of CAPEX requests. The information on such processes appears to be passed through 'word of mouth' rather than being part of a procedures manual. It is recommended that a procedures manual for preparation of budget is prepared by MFEM in conjunction with OPSC and that training on its use given to both Council and the Clerk of Council to ensure greater capacity and confidence of Council and more direct involvement in assessment of budget and priority setting.

### **D.DONOR FUNDING: ACCESS; PRIORITY SETTING AND PROJECT ACCOUNTABILITIES**

51. Currently there is no finalized National Sustainable Development Plan and only a first draft for 2011-2016 is available. The draft does not contain a focus on Outer Islands development planning principles or priorities for development and a significant amount of time and input will be required before a further draft of the NSDP is available to be used as a tool for planning and attracting donor interest, especially for the Outer Islands. The new and recently approved Infrastructure Master Plan has not been widely circulated; neither have implications for outer islands infrastructure been prioritized and agreed, so the linking of Outer Island needs to central and local government infrastructure priorities to enable access to donor resources is not possible.

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<sup>27</sup> Cook Islands Government Financial Policies and Procedures, Version May 2009, Apart B, Section 13 – Outer Islands Capital & Major Infrastructure Expenditure, p.3.

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52. The process for Outer Islands access to donor funds appears to be unfamiliar to Mayors and many Secretaries and without direct and ongoing planning involvement in project design and sustainability assessment from Island representatives. This has resulted in examples of projects that are: inappropriate to requirements; poorly implemented; under (or inappropriately) funded and unsustainable. This was consistently stated by Outer Island representatives as largely due to lack of a long term maintenance budget provision, lack of adequate training provision in conjunction with provision of equipment or a lack of budget transparency in term. Examples include:

- Projects commenced but not completed: wind turbine and hydroponics projects in Manihiki remain uncompleted.
- Projects not suited to the needs of the Outer Islands. Example: Manihiki generators that are oversized for Island requirements that are now going to be taken off island during 2011.
- Projects are well received (Hydroponic gardening in the northern group), but fail because the project has been under resourced. Example: Hydroponic gardening in the Northern group had no ongoing budget for seeds or shade cloth material to ensure sustainability.
- Project implementation failure through lack of training on the use of donor supplied equipment. Example: a solar power grid remains uncompleted in Rakahanga even though the land has been allocated; wind farms on Mangaia that have fallen into disrepair through lack of skills required for maintenance.
- Money is allocated for development of a project but not its continuing maintenance. Example: the Aitutaki Waste Management project took three years to complete, and the donor allocation excluded equipment maintenance and training, such that when the pump broke down no one knew how to fix it.
- There is no quality assurance to ensure projects are up to acceptable standard when completed. Example: Atiu Hospital opened before completion and design compliance sign off and while still needing curtain and rails around patient beds, and appropriate draining at the front of the hospital to allow dry access on wet days. Linoleum that was earmarked for the dental clinic was taken off island and sent elsewhere, so the dental clinic remains unfinished.

53. Capacity building assistance is required to give Mayors and Councils the skills and confidence to insist on greater involvement in project selection and design and in using the skills of the Island Secretary to ensure project design and implementation is thoroughly planned, appropriate and inclusive of training and maintenance. There appears to be a need for greater levels of quality assurance processes and skills as well as project design review, within MOIP given the significant number of project failures or lack of sustainability of funded projects, within the Outer Islands.

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## V. OUTER ISLAND SKILL DEVELOPMENT AND PERFORMANCE MANAGEMENT

54. There is a lack of specialised skills and expertise on Outer Islands, across the roles of: Mayors; Councillors; and Island Secretaries. Particularly in:
- accounting and financial management
  - budget administration and support
  - business planning and development
  - leadership and human resource management
  - monitoring and reporting
  - procurement and project design, contracting and supervision
55. The job description for Island Secretaries is very general and does not lend itself to careful recruitment against a clear set of skill requirements; both professional and practical skills. No Island Secretary is likely to have the full set of skill requirements for such a diverse position. Some skill upgrading in essential areas where a Secretary (or any similar position) is weak could usefully be built into OPSC training need analysis and provision, as well as into the performance assessment of Secretaries. A clearer definition of performance and outputs is also needed, if performance assessments are to become a meaningful tool in improving performance. Island Secretaries (or Clerks of Council) require specific and time- bound performance measures.
56. There is little inter-island dialogue to enable sharing of common problems and learning together to devise suitable solutions. Historically, the Mayoral forums gave the Island Mayors a vehicle to determine capital project priorities for both donor and capital expenditure funding on a northern and southern island regional basis. The last such forum was in 2008. A suggestion to re-instate these forums was enthusiastically welcomed by all Island representatives interviewed.
57. It is suggested that a similar forum for Island Secretaries (or its replacement position) would also provide a useful opportunity for skill development and addressing of common problems. At present this is only happening in an ad hoc manner, as opportunities present themselves.

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## VI. DECENTRALISATION AND RECENTRALISATION OPTIONS

58. There are three options when considering the allocation of functions and responsibilities between central government and Local government:

- Full Centralisation
- Full Decentralisation
- Partial Decentralisation

59. Full Centralisation would involve central government taking back all responsibility for all service provision and budget management. This would mean that all budget responsibilities are concentrated in Rarotonga. Central Ministries would also become responsible at a detailed level for the planning and delivery of services. An alternative approach would be to re-activate the previous approach toward Outer Island management with the equivalent of a MOIP becoming responsible for all Outer Island services through offices located in each island.

60. Full Centralisation creates significant problems in a country of dispersed islands where physical distance makes effective central control impractical. The MOID involvement previously was also wasteful of resources with every island having a MOID office. Importantly, full centralisation does not conform to the overarching guiding principle for this review –*local solutions for local problems*; nor to guiding principle 1 regarding greater empowerment and autonomy for local councils

### ***Full Centralisation option rejected***

61. Full Decentralisation of all functions would involve Island government assuming responsibility for all service provision including quality of delivery. This would entail full budget devolution and accountability. There is no current example in the world of a fully decentralised society or governance structure. Perhaps the closest example is the Swiss system of cantons. However, even in that scenario central government retains ownership of key functions such as defence, police and fiscal management. Full decentralisation is also the most costly approach due to 'dis-economies' of scale. That is, the requirement to budget for services that are very costly per capita, when the service is only being delivered to a small number of people

### ***Full Decentralisation option rejected.***

62. Partial Decentralisation is in use now. This includes Councils, through the Island Secretaries taking responsibility for planning and setting of priorities. However, as identified earlier current operations present problems:

- Responsibilities and accountabilities between elected and appointed roles are confused.
- Budgets and budget setting are not transparent to the local community or to the Island Council since the responsibility has rested with the Island Secretary. MPs then pass the budget in Parliament without involvement of Councils in many cases.
- Management and monitoring of public servants' performance on island is minimal, either with regard to the Island Secretary or for 'centralised' services on each island.

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- Management skills are not being developed at local level.
  - Core service delivery is still centralised with regard to health, education police, infrastructure (particularly large projects), infrastructure, agriculture, marine and women's development is decentralised.

63. We conclude that the most appropriate option for the Outer Islands is a:

- Partially decentralised model, with
- Responsibilities devolved to local communities in accordance with the capacity of individual Island Councils to take on the function (as determined by Council in consultation with MFEM and OPSC, and with input from MOIP).
- Discipline in terms of performance and overall financial reporting retained at central level with regard to input of Island Officials

64. Functions that have registration requirements (such as education and health) or legal powers (such as policing and justice) or a strong regulatory focus (such as some aspects of agriculture and marine) will need to be retained at a central level- or certainly until regulatory controls can be effectively discharged on the Island.

65. **Partial Decentralisation is recommended** but with greater empowerment and growing autonomy consistent with the increasing capacity of an island to manage its own affairs. Centralised functions as above should be retained as under national government control in the short- medium term (2-3 years). Centralised functions such as women's development should be decentralised on an island by island basis providing skills to manage the function are available and guidance and capacity building can be provided.

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## VII. OPTIONS AND RECOMMENDATIONS

66. The Guiding Principles which have been adopted by the Functional Review Team and the Steering Committee were presented earlier. These guiding principles must form the basis for the review recommendations. These are presented below:

**Overarching Principle: ‘Local Solutions for Local Problems’:** Empowerment of Mayors and Councillors to take on leadership and ownership of both issues and solutions

**GP1:** *Provide for greater empowerment and autonomy for the Island Councils to make decisions on core issues relevant to each island.*

### A. RECOMMENDATIONS FOR SELECTION OF CANDIDATES

67. Develop clear information and management guidelines on the roles and responsibility of the Mayor and Council to enable existing and prospective candidates to better consider requirements and commitments, and voters to better understand the role of the Mayor and Island Council.
68. Eliminate the separate voting process for the position of Mayor. This process is considered by most island representatives as divisive, and there are examples cited of where the Mayor has chosen to ignore the wishes of Council since she or he was not elected by Council.
69. Introduce the practise of the Council being elected first and selecting the Mayor from within the group of elected Councillors. This not only means that the Mayor is elected by a majority of his or her peers and more likely to both have their respect (and vice versa); it also means that Council has the capacity to re-elect a new Mayor from within, in the event of a death or a vote of no confidence. The abuse of the latter can be managed through the specification of requirements for the tabling of a vote of no confidence.

### B. RECOMMENDATIONS FOR ROLE CHANGES

70. Eliminate the position of Island Secretary and replace it with a position for a Clerk of Council and amalgamate the position into the Island Council Administration
71. Transfer the Island Administration duties to the Mayor and Island Council
72. The Clerk of Council will be appointed by a panel comprising of the Mayor or delegated Island Authority, OPSC, OPM, MFEM
73. The Clerk of Council reports directly to the Mayor and Council
74. A Memorandum of Understanding will be drawn up between the Mayor and Council and OPSC, MFEM and OPM to undertake performance, financial and planning assessments against the ToR for the Clerk of Council
75. The Clerk of Council will report directly to the Mayor on a regular basis and reports will be submitted for discussion and verification of activities to Council before submission to OPSC, MFEM and OPM
76. Remuneration for the Clerk of Council will be on a negotiated basis against a Job sizing band width and managed by Council with input from OPSC, MFEM and OPM.
77. Legal mandate for the Clerk of Council to act and manage will initially be provided via the PSC Act, MFEM Act and Planning Guidelines from OPM but will eventually be transferred when new legislation for Outer Islands Governance is in place.

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**GP2:** *Every Mayor and Island Council will be responsible and accountable for all monies appropriated, collected, and expended by each island in the administration of its affairs, and;*

**GP3:** *Financial prudence and fiscally responsible management principles shall underlie the administration and operations of Outer Island Council affairs*

### **C. RECOMMENDATIONS FOR PHASED IMPLEMENTATION OF ROLE CHANGE**

78. To be consistent with the desires of Government and the Outer Islands for greater empowerment and strengthened partnerships, a phased implementation approach is recommended to allow each island administration the time to build capacity while being guided by central government agencies such as OPSC, MFEM and OPM.
79. Guidelines for performance management from OPSC, financial management from MFEM and policy and planning management from OPM is required to strengthen the planning, development and decision making processes that each island administration will be required to manage.
80. Capturing and embedding these guidelines into the Outer Islands management and development processes ensures that the links between central and local government are established and maintained, relevant priorities are recognized, resources are allocated to support implementation and the shift to greater autonomy for each island is achieved.

### **D. RECOMMENDATIONS FOR SKILL UPGRADING AND CAPACITY BUILDING**

81. Training needs analysis to be conducted by OPSC, MFEM and OPM across all Councils. OPSC, MFEM and OPM will make available, either on-island or through a collective forum for Mayors and Councillors, skill training in planning and priority setting, budget management, monitoring and reporting – together with any other skills deemed necessary.

### **E. RECOMMENDATIONS FOR FISCAL MANAGEMENT, OPERATIONS AND ACCOUNTABILITY**

82. A MoU between Council and MFEM is required to stipulate fiscal management guidelines, responsibilities and reporting requirements from the Clerk of Council, to Mayor and Council and to MFEM
83. The Clerk of Council will seek the advice of the Mayor and Council on budget preparation and priorities. The Clerk of Council will prepare a Business Plan and set of priorities for funding in consultation with Council and will report to Council on annual; quarterly and monthly expenditure against the Business Plan and appropriation.
84. The Clerk of Council will liaise directly with MFEM and other relevant agencies for the purchase of supplies, and equipment against budget. All receipts will be copied to MFEM who will prepare the financial accounts on behalf of the Clerk and Council.
85. The Clerk of Council will be responsible and accountable for prudent management against budget.
86. In the medium to long term (3-5 years), and once the budget planning process has become an accepted responsibility of Council; the budget appropriation will be fully divested to the Mayor and Council.

**GP4:** *Good Governance and Good Employer principles will be pillars for the effective and efficient management of all employees*

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## **F.RECOMMENDATIONS FOR GOOD GOVERNANCE AND GOOD EMPLOYER STANDARDS**

87. Council will practice good governance and operate under the values and code of conduct, and 'Good Employer' standards as laid down in the Public Service Act Part 4, in all its dealings and in all matters pertaining to contracting of staff as well in their dealings with the Clerk of Council, as general principles of good governance.
88. Principles and guidelines in the PSC Act will be captured in the MoU between OPSC and Council to ensure performance management guidelines are followed as part of Council's assessment requirements for the Clerk of Council
89. The Clerk of Council will, as an appointed officer be legally bound by the Public Service Act 2009 until such time when a new Outer Islands Governance legislation is enacted. The appointment of the Clerk of Council will then transfer to the new legislation will then be legally appointed by the Mayor and Council.

*GP5: The Government will recognize, acknowledge and work in partnership with the Island Councils in the development of each island*

## **G.RECOMMENDATIONS FOR PARTNERSHIPS**

90. Government will seek to empower the Island Councils through enabling their involvement in a wide range of policy and planning debates and decision-making. This will include seeking their input, through the OPM, into the priorities for the NSDP especially but not only with regard to Outer Islands; but also in any affairs that may impinge on outer islands.
91. The Island Councils though skill and capacity building assistance, including assistance from the Clerk of Council, will ensure that their business plans and priorities are clearly stated and costed, and circulated at national level, including but not limited to OPSC, OPM and MFEM to consolidate partnerships and relations.
92. Central agencies and line ministries will ensure Outer Islands planning priorities are included in funding discussions with donors, and reconfirmed with Outer Islands before final signoff of project.
93. Greater dialogue between the Mayor and the MP as elected positions, will be encouraged and formalized into practical arrangements for dialogue, to ensure national and island issues and priorities are shared and acted upon in the interests of both levels of government.

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## VIII. PROPOSED ROLE CHANGES AND ACCOUNTABILITY

### A. GOVERNMENT REPRESENTATIVE

94. From a *functional* perspective, the GR's position has no clear role, nor performance measures, or accountability to the Public Service.
95. If the GR's role is a purely political appointment without clear outputs, it should be funded, if required, by the interested political party and not legitimised as if it is a component of the Public Service, but without role, outputs or tasks. If the role cannot be clearly defined and objectively justified it should be abolished and the contesting political parties be allowed to establish, justify and fund the GR position through a Ministerial allocation.
96. An analysis of the Government Representative's current job description indicates that all GR functions can be better undertaken via other roles or via telecommunications. See Table 1 below.

**Table 1: Government Representative Responsibilities**

	<b>GR current Responsibilities</b>	<b>Reallocation of Responsibilities</b>
1.	Represent the central government at any function of Government on the island.	Member of Parliament or Island Mayor and Council responsibility
2.	Represent central government at any other functions that government has been invited to take part or be represented.	Member of Parliament or Island Mayor and Council responsibility
3.	Represent central government at the local government monthly meetings putting forward government advice, proposals or policy statements	Government advice, proposals and policy statements can now be sent via the internet or fax, for discussion at monthly meetings and government can receive an electronic acknowledged response after discussions.
4.	To observe and report over the progress of the work of individual government departments on the island whether or not they are carrying out the policies and are performing their duties as expected, and to report to the Outer Islands Coordinator, Chief of Staff and Secretary of the relevant Ministry if such is not the case.	New Clerk of Council to have oversight and provide monthly monitoring and reporting to the relevant ministries, with input from and advice to, the Mayor and Council. Clerk to report on basic day to day procedures (punctuality, attendance etc). Technical performance monitoring to be undertaken by core ministries at central level.
5.	Provide liaison services to any VIP visitors to the island and other visiting groups or parties	Mayor, Councillors and Aronga Mana roles.
6.	Carry out other duties as directed or instructed by the Prime Minister, Cabinet Minister or Chief of Staff.	'Other duties' is not a core output "other duties" can be allocated by the Mayor as appropriate.

### Recommendations

97. Discontinue the Government Representative's role as the position has no clear legal mandate to exist, no clear role, nor performance measures nor accountability to the Public Service.

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98. Redistribute responsibilities as in Table 1.

## **B. ISLAND SECRETARY**

99. The Guiding Principles indicate a clear requirement to move toward greater empowerment and autonomy of Island Councils.

100. Island Councils will need capacity building together with ongoing assistance from an appointed official; but with reporting lines to the Mayor as. This will enable empowerment of Council and the Mayor but with access to skills, particularly assistance with business plan preparation and priority setting.

101. The MFEM Act (Section 29) requires that government funds can only be distributed via a government appointed employee or instrument of government. Whilst the Act could be amended if there are compelling reasons to do so, there are inherent risks associated with an elected position (the Mayor) undertaking direct responsibility for budget, especially in the early stage of the empowerment process.

### **Recommendations**

102. Abolish the position of Island Secretary

103. Establish the position of Clerk of Council reporting to the Mayor on a regular basis but appointed under the Public Service Act and with reporting responsibilities to the Mayor, OPSC, MFEM and OPM. Outer Island administration under the position of Clerk of Council requires a set of practical “common sense” skills. Skills would include basic financial management knowledge, good inclusive people skills, and the ability to record meetings accurately. With clear role definition and job description the Clerk of Council position would eliminate the need for an Island Secretary; empower the Mayor and Island Council with the responsibility to lead island development but with access to a Clerk supporting and reporting to the Mayor and who can assist with the development of business plans and budget priorities without detracting from the leadership role of the Mayor. Reallocation of responsibilities is shown in Table 2 below.

**Table 2: Island Secretary**

	<b>Island Secretary Responsibilities</b>	<b>Reallocation of Responsibilities</b>
a.	Carry out the functions and duties of the departments, including management and implementation of government policies.	Mayor, through use of the Clerk of Council responsible for basic monitoring of line ministries. Clerk, with assistance from relevant central ministries to interpret policies and advise Council on implementation. This can be done through establishing a new position under the PS Act
b.	Provide advice to the responsible Minister and other Ministers of the Crown on any matters which they may wish to raise.	Mayor & Member of Parliament
c.	Administer legislation that applies to the Island Administration	Clerk of Council under the PS Act and other legislation as required to assist the Mayor and Council
d.	Comply with the obligations under the Ministry of Finance and Economic Management Act 1995–96; the Public Service Act 2009 and the Public Expenditure Review Committee and Audit Act 1995/96	Clerk of Council with oversight from Central Agencies, MFEM, OPSC and OPM under the relevant Acts

	and other relevant legislations.	
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### C.MAYOR AND ISLAND COUNCIL

104. As noted earlier in the report, the Mayor and Island Council have generally been excluded from budget and business planning processes and provided with little information on expenditure against priorities since there are no direct reporting lines for the Island Secretary to the Mayor and Council. Whilst their responsibilities under the Outer Island Local Govt Act 1987 differ from the current Island Administration responsibilities under the Public Service Act the changing of current reporting lines to include day to day reporting of the Clerk to the Mayor as well as to OPSC will enable the Clerk to provide capacity building to Council to enable it to better deliver according to its legal mandate without overriding the leadership role of the Mayor and Council. If this is presented to the Is Councils now, they will see right through it as “tokenism” without any serious effort to truly empower them. I am not necessarily against the structural concept.
105. Consistent with the Guiding Principles, the priority change resulting from the change in report lines (93) is to elevate the role of Mayor, as the elected representative of the Island, and give the position the decision-making capacity and budget to both lead the management of Island Affairs and host visiting dignitaries. This empowerment must be commensurate with the skill and capacity of the Mayor and Council. A staged approach is recommended such that transfer of responsibilities occurs as Council and Government demonstrate willingness and capacity to shoulder increasing responsibilities.
106. The Mayor will lead all official engagements on the Island. The Mayor with the Aronga Mana organises functions, and receives a hosting budget to undertake these duties. Table 3 below identifies the changes required.

**Table 3: Mayor and Island Council**

	<b>Mayor and Council</b>	<b>Reallocation of Responsibilities</b>
a.	To effect and administer ordinances and by-laws of the island	No change
b.	Co-ordinate economic and social development activities on the Island	Plan, direct and manage island development priorities and finances as approved within annual business plan
c.	Assist the government of the Cook Islands in the good governance of the Island	Through Clerk of Council, to monitor performance of ‘centralised’ functions on-island
d.	To advise on, or determine any matter, question or dispute referred to it by any person or organisation	No change

### D. MEMBER OF PARLIAMENT

107. There is a stated need (by many Island representatives interviewed) to improve communications and planning between the Member of Parliament and the Mayor and Island Council. Table 4 below outlines these suggested improvements.

**Table 4: Member of Parliament**

	<b>Member of Parliament</b>	<b>Reallocation of Responsibilities</b>
a.	Ex officio member of the Island Council	No change - minutes of the Island Council meeting to be sent to the MP every month

b.	Liaison between local government and national government	A report outlining national priorities and key issues requiring attention from the Island Council, is received by the Clerk of Council from the MP on a quarterly basis and presented at the next council meeting
c.	Involved in the planning, decision making and at times the implementation of policies, projects, and initiatives	Monthly tele-conference to be set up between MP and Mayor.

### **E.ARONGA MANA**

108. The Aronga Mana has a legislated mandate to advise and rule in land matters, culture and language. This role is unique and should be preserved.

109. Aronga Mana by retaining their ex officio status at Council Meetings will sustain their 'mana' and position in relation to culture, language and land matters, since they will not be subjected to a Council vote. Aronga Mana will continue to retain a voice on day to day matters in Council.

#### **Recommendation**

110. Aronga Mana to retain their ex officio position on Council and in so doing, maintain the status quo.

### **F.ENHANCED LEGAL MANDATES FOR EMPOWERMENT AND ACCOUNTABILITY**

111. The current Local Government Act 1987 and amendments will require updating to best support changes in the roles and responsibilities and the shift toward greater empowerment of the Mayor and Island Council.

112. It is recommended that a new Local Government or Outer Islands Governance Act be drafted and should incorporate recommendations accepted by government from the above report. Provisions for the management of island affairs, recruitment of a Clerk of Council, and reporting requirements between the Clerk, Council and central agencies will need to be stipulated in the new Act.

113. The MFEM Act will also require review and amendment. Responsibility for the budget appropriation is to be divested fully to the Mayor after capacity building and training is undertaken. As an elected body and in its current form, the Mayor and Island Council do not have the legal authority to accept responsibility and full accountability for the budget and financial management process.

114. MoU's between Council and OPSC, MFEM and OPM is required to allow a proper transfer of authority and responsibilities while strengthening reporting requirements. The MoU's will provide clear guidelines for Council to manage performance, financial and planning requirements while ensuring Council priorities and needs are recognised at the national level

### **G. SUGGESTED IMPLEMENTATION ARRANGEMENTS**

115. The process of empowerment and increasing autonomy of Mayors and Island Councils regarding management of their own affairs will require a staged approach to divestment from central controls. Implementation arrangements are the focus of stage 2 of the

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Functional Review. However, MFEM is keen to implement many of the agreed recommendations during the next budget cycle commencing in July 2012. The Prime Minister has also endorsed this requirement.

116. Suggestions regarding the empowerment of Island Councils including a proposed new business plan format linked with a revised budget cycle will need to be planned for commencement during the next cycle.
117. A staged approach is suggested to ensure Mayors and Island Councils are not 'set up for failure' through the divestment of responsibilities without effective capacity building and empowerment.

### **Stage 1: July 2012- June 2013**

118. A MoU relating to the provision of employment, performance and reporting will be prepared between OPSC and the Mayor and Island Council. The recruitment and accountability requirements of the Clerk of Council will be stipulated in the MoU.
119. A MoU relating to the provision of planning, policy development and reporting will be prepared between OPM and the Mayor and Island Council. Planning at the national level needs to incorporate priorities identified and recognised at the island level.
120. A MoU relating to the provision of financial reporting will be prepared between MFEM and the Mayor and Island Council. Reporting requirements will need to be organised to ensure that all income received and expenditure incurred is accounted for.
121. The Clerk of Council is appointed by the Mayor and Council. The Mayor is fully involved in the recruitment process together with the OPSC, OPM and MFEM
122. The Clerk of Council reports directly to the Mayor but is required to report to MFEM for financial obligations, and liaise with OPM for planning requirements. OPSC will provide performance monitoring through a MOU with the Mayor and according to the Job description prepared by OPSC in consultation with the Mayor. The job description may differ from Island to Island although the fundamental components will be similar
123. The Business Plan priorities are determined by the Mayor and Council and the plan prepared by the Clerk according to island priorities with links to national priorities and the NSDP. The Clerk will manage expenditure according to the Business Plan and report monthly to Council and MFEM on expenditure including any adjustments required for approval by the Mayor and Council.
124. All financial accounts are prepared centrally by MFEM on the basis of receipts provided by the Clerk or against purchases supplied or managed by other relevant agencies and financed through an exchange of receipts or journal entries (as determined by MFEM). Any misadventure will be investigated by MFEM and reported to OPSC for action against the Clerk of Council as administrator of the budget.
125. Core service delivery of Health, Education, Police, Justice and other relevant government functions continue to be undertaken by central government with monitoring being provided centrally and day to day operations and reporting being managed by the Clerk in consultation with the Island Council.

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## **Stage 2: July 2013- June 2014**

126. A needs analysis is required for each island to ensure that relevant priorities and requirements are recognised and incorporated into capacity building and institutional strengthening programs.
127. MoU's between Council and central agencies will need to be reviewed to ensure that relevant provisions are transferred accordingly to proposed Outer Islands or Local Government legislation which must be developed no later than the commencement of Stage 2.
128. The MFEM Act is amended to allow the receipt of and accountability for government funds to be vested with the Island Mayor and Council, together with full financial accountability requirements including audit under an arrangement similar to that operated by Central Agencies.
129. The discretionary component of the budget is appropriated according to a Service Contract between the Mayor and MFEM, and against an approved Business Plan. This includes a contract for the provision of any agreed Social Obligations. MFEM continue to monitor the discretionary component of the Island budget against monthly financial statements prepared by the Clerk of Council
130. Provision for the appointment of the Clerk of Council is included in a new Local Government or Outer Islands Governance legislation, together with policies and procedures for the appointment, management, monitoring and termination
131. Centralised services remain under central government management and technical performance reporting.

## **Stage 3: July 2014- June 2016**

132. Each island administration or council will be required to develop their own business and project proposal that outlines short, medium and long term aspirations. These aspirations will have to be costed; time lined and incorporated into the budget and development framework hence the reason for the MoU's between Council and central agencies.
133. Project priorities for all islands will need to be organised at the regional level to capture and identify any complementary links between projects. This gives Government and individual councils the opportunity to identify and organise proper implementation programs while identifying which projects are prioritized and implemented.
134. A shift to a medium term budgeting framework at the national level will then allow resource allocation to be managed not only by sectors but also and the regional level. Individual island priorities identified in project proposals are then linked at the regional level to ensure that projects are prioritised, financed, implemented and phased over time and across their respective regions.

## **H. FUNCTIONAL AND ORGANIZATIONAL DIAGRAMS**

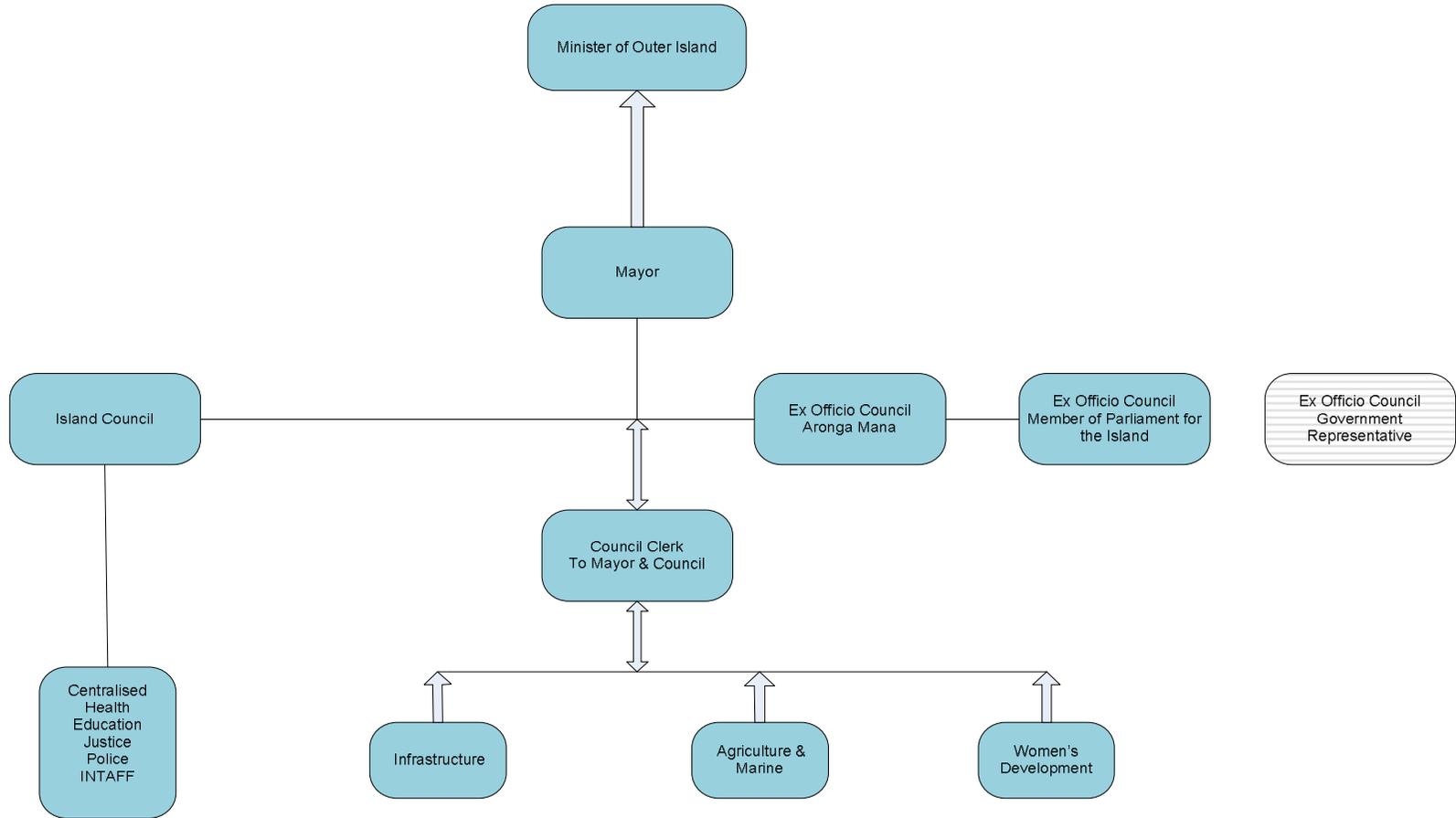
135. Organisational relationships resulting from recommendations above are shown as Diagram 1 below. Functional relationships and processes across roles are shown as Diagram 2 below.

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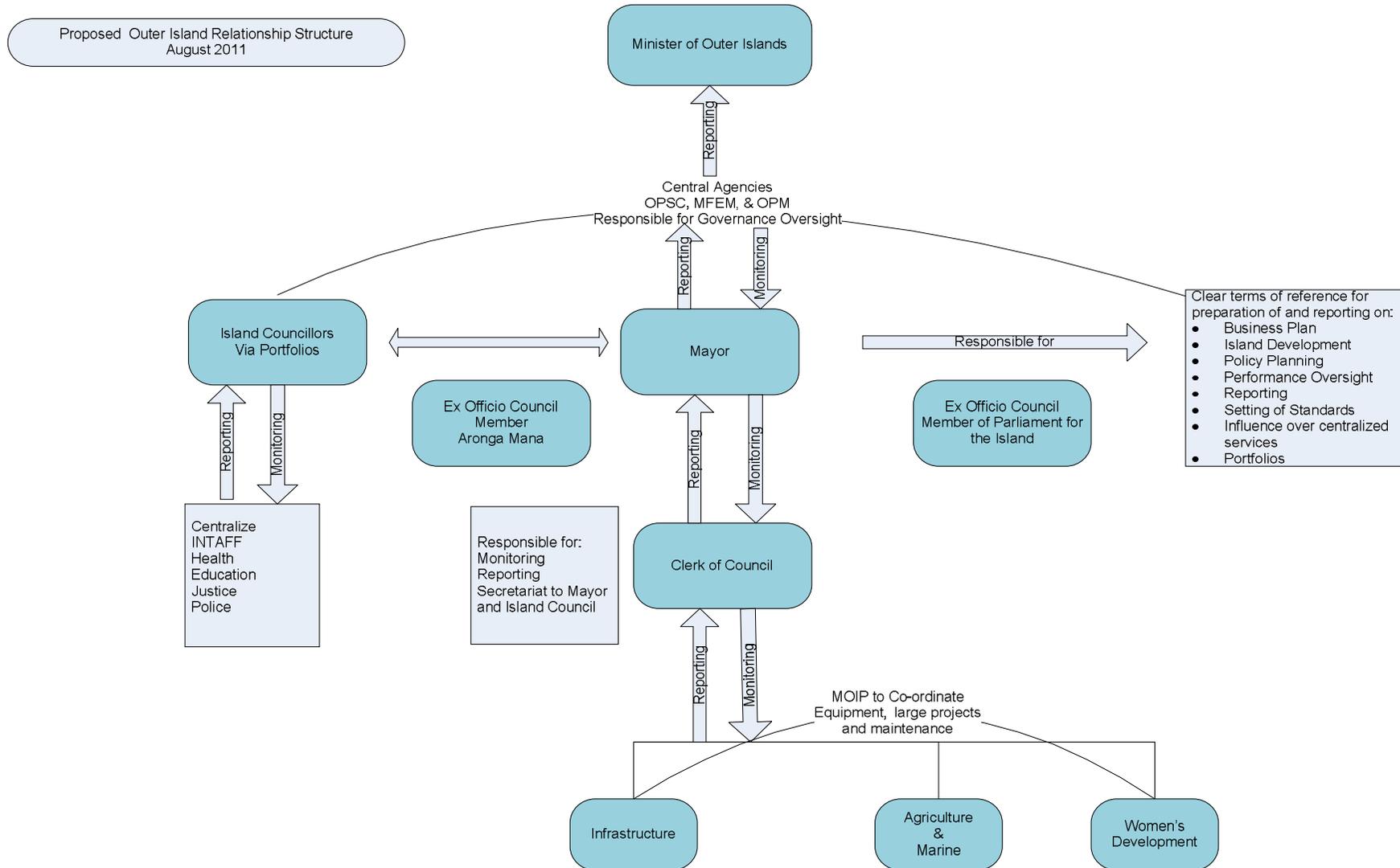
136. It should be noted that current roles regarding infrastructure, agriculture and marine will require separation into role components that are developmental and can be wholly or partially undertaken at local government level, and regulatory components that will need to be undertaken by central government in the medium term. The role of Woman's Development, currently provided through the Ministry of Internal Affairs, should be undertaken by local government with capacity building support and monitoring facilitated through central government or NGOs. A summary list of proposed Terms of Reference for each position is shown in Appendix 4.

# Diagram 1: Recommended Outer Islands Structure

Recommended Outer Island Structure  
August 2011



**Diagram 2: Proposed Outer Islands Relationships Structure**



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## **IX. CONCLUSION**

137. The management of Outer Islands affairs has been a contentious issue for many years. This is partly due to the lack of role and function clarity between Mayors and Island Secretaries; the powers placed with the Secretary and the mixing of political expediencies with functional requirements.
138. The guiding principles focus on local solutions for local issues. Recommendations have been made for roles which empower the Mayor and Council yet provide the Mayor with technical support through the position of a Clerk of Council. Lines of reporting have been clarified and performance and financial monitoring systems designed in a manner that empowers the Mayor and Council but skills must be strengthened, including improved budgeting planning and reporting quality through common sense, and practical capacity building.
139. A staged approach to empowerment and increasing autonomy is recommended; together with mechanisms for the appointment of centralised financial management during stages 1 and 2 and the powers to intervene as appropriate, including the appointment through MFEM, of an Administrator to manage Island Affairs should misappropriation or other performance misdemeanours as outlined in a new Outer Island Act, require such intervention.

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## APPENDIX 1: REVISED TERMS OF REFERENCE FOR THE FUNCTIONAL REVIEW <sup>28</sup>

**Project TA - 7646 (COO):** Public Finance Management and Public Sector Performance Review

### **Objective/Purpose of the Assignment:**

The expected impact of the policy and advisory TA will be a government structure that is cost-effective and aligned to national priorities. The expected outcome will be a set of options for priority administration reforms made available to the government.

### **Scope of Work:**

The policy and advisory technical assistance (TA) will

- (iii) conduct a government-wide functional analysis to redefine Government's size and scope;
- (iv) review whether to include Crown Agencies under the performance elements of the Public Service Commissioner (PS) Act, 2009;
- (v) address Outer Island Administration in terms of improving service delivery in an accountable manner;
- (vi) Recommend mechanisms to improve performance management so there is more collaboration between Ministries and Agencies and a simplified planning and monitoring process in line with the annual budget and eventually the medium term budget framework and linked to the National Sustainable Development Plan;
- (vii) Facilitate the development of a Public Service Policies, Standards, and Guidelines Manual. It will support the adjustments OPSC is making to achieve its mandate and the regulatory framework, processes and procedures in place to advance public sector management and performance.

### **Detailed Tasks:**

- (i) Assess the size, cost, and personnel allocations of the various Ministries/departments and Crown Agencies by first determining the necessary functions of respective departments and/or sectors.
- (ii) Identify areas where duplication of effort can be eliminated and consolidation, streamlining and contracting out can occur to achieve cost efficiencies and improve Public Service effectiveness.
- (iii) Review Outer Island Administration, functions, and roles. With OPSC, identify a more responsive management and accountability approach.
- (iv) Realign Government Ministries and Agencies into a more efficient structure and identify organizational structures, functions, personnel, and other needs, at a high level only.
- (v) Review the PS Act 2009 to determine approaches to include crown agencies under the PS Act, especially related to accountability sections. Advise on ways to adjust the PS Act, as deemed appropriate.
- (vi) Present findings and recommendations to the National Sustainable Development Committee.
- (vii) Manage team and liaise with the OPSC and other government stakeholders for the entire project.
- (viii) Conduct information gathering and presentation workshops with Public Service Personnel and other relevant stakeholders.

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<sup>28</sup> Revised May 2011 and endorsed by ADB,

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**APPENDIX 2: OUTER ISLAND BUDGET APPROPRIATION**

<b>Island</b>	<b>Population</b>	<b>Net Operating Appropriation 2010-2011</b>	<b>Net Operating Appropriation 2011-2012</b>
Aitutaki	1508	1,535,746	1,367,243
Aitutaki Power		210,540	349,040
Atiu	426	921,184	929,695
Mangaia	482	1,109,047	1,169,047
Manihiki	263	705,011	702,712
Mauke	284	778,331	790,331
Mitiaro	147	533,121	511,382
Palmerston	47	305,495	308,786
Penrhyn	194	550,672	517,122
Pukapuka	387	876,816	917,216
Nassau	57		
Rakahanga	97	426,268	421,125
Outer Island Capital Fund held by (MFEM)		13,750	13,750
Outer Island Capital fund held by(MOIP)		0	0
<b>Total</b>		<b>7,965,981</b>	<b>7,997,499</b>

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## APPENDIX 3: GUIDING PRINCIPLES FRAMEWORK

### Working Paper No: 22A Functional Review of Government

#### Guiding Principles for the Functional Decision – Making Process

##### ADB TA 7646: Revised by the Functional Review Team, 27 September, 2011

The Government has indicated from the outset that it is committed to reviewing the machinery of government- particularly reviewing the public service and crown agencies toward better defining what it 'should' and 'should' not do, and what is best left to the private sector. The overall outcome of the review is to improve the performance of government and to enable government to focus on what it must and should do- and do it more effectively and efficiently.

This means that improved performance toward defined outcomes 'drives' the skill requirement of the public service. The number and type of staff required is determined by the outputs set by government.

Improving the performance of the public service by re-defining its role and scope and the manner by which it conducts its business requires a robust methodology. It requires a set of ' Guiding Principles' directed toward achieving a public sector that undertakes an agreed set of functions and with staff who understand and are committed to outputs and quality performance.

Assessing the current Public Service functions:

- What government *must do* (as defined in the Constitution, Legislation and binding bilateral and international Treaties);
- What government *should do* (as required in key strategic statements such as the National Strategic Development Plan, and as suggested by reviews such as that conducted by the Economic Task Force);
- What government *should not do*, using decision trees and other tools to determine what is not the core business of government and should be: left to the private sector; contracted out or simply, stopped.

**Guiding Principle 1:** Government must do what *only* Government can do; based on the overarching directive that 'The role of Parliament (Government) is to make laws for peace, order and good governance' (Part3.39.80).

**Guiding Principle 2:** Government 'should' *perform or facilitate the provision of services* required for planned development, whether economic, social or environmental.

**Guiding Principle 3:** Government 'should', in the interests of human rights and equality of access to services, finance agreed Social Obligations which enable equitable or essential delivery of services and which the private sector and NGOs choose not to undertake.

**Guiding Principle 4:** Government should not compete with the private sector or undertake functions that can be done by a functioning market, to service standards determined by Government.

**Guiding Principle 5:** Ensure vertical layers and functions are clearly linked to scope of government (horizontal).

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**Guiding Principle 6:** Ensure Sector Ministry reviews focus on identification of:

- Core functions, linked to agreed scope
- Non-core functions that must 'stay' since they are:  
essential; or  
cannot be better placed anywhere else.

**Guiding Principle 7:** Assessment of non- core functions which are 'non-essential' and could be placed somewhere else to determine whether to:

- do nothing; but ' ring-fence' for further action;
- integrate and consolidate within another internal function;
- split the function to retain the core component;
- transfer out;
- contract out;
- privatize;
- stop.

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## **APPENDIX 4: PROPOSED TERMS OF REFERENCE FOR OUTER ISLAND OFFICIALS**

### **Terms of Reference for Member of Parliament**

- Represent the island in Parliament
- Is an ex officio member of the Island Council
- Acts as liaison between local government and national government
- Represent the central government at any function of government on the island
- Represent central government at any other functions that government has been invited to take part or be represented at off Island.
- Provide advice to the responsible Outer Island Minister and other Ministers of the Crown on any matters which they may wish to raise.

### **Terms of Reference for Mayor**

- Chairman of the Island Council and shall preside at every meeting of the Island Council
- Shall have a deliberative vote and in the case of equality of votes shall have a casting vote.
- Responsible with Council for setting annual business plan priorities including medium term budgeting
- Responsible for signing off of budget and holds overall responsibility for ensuring prudent management and accountability of the Island budget appropriation, through overseeing the performance of the Island Clerk of Council
- Effect and administer, the provision of Ordinances and By-laws that may be applicable to the Island
- Set policy relevant to the economic and social development of the Island
- Assist the Government of the Cook Islands in the good rule and government of the Island through co- ordination, management and implementation of government policies.
- Advise on or determine any matter, question or dispute referred to the Council by any person or organization.
- Provide liaison and hosting services to any VIP visitors to the island and other visiting groups or parties
- Provide advice to the responsible Minister and other Ministers of the Crown on any matters which they may wish to raise.
- Enter into consultation (directly or through a request to the Clerk of Council) with Heads of Ministries on any proposed changes to staffing, workforce development, employment opportunities and intended performance management timetabling and any proposed visits or upgrading of facilities. Note that Central Agencies have oversight of Outer Island Human Resource Management, and provision of Financial Accounting services
- Monitor the performance of the Clerk of Council; review monthly reports presented by the Clerk of Council to the Mayor and to OPSC and report to OPSC any matters of concern regarding performance or timeliness of reports

### **Terms of Reference for Island Council**

- Carry out in consultation with the Mayor, implementation and administration of Ordinances and By-laws that may be applicable to the Island.

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- Assist the Government of the Cook Islands in the good rule and government of the Island by implementing policy.
  - Assist in formulating the Island Budget and Business Plan
  - Monitor Line Ministries, (Police, Justice, Health, Education), in the execution of duties through a Memorandum of Understanding between the OPSC and the Mayor to guide monitoring practice with regard to, attendance, punctuality, appropriate use of government vehicles & equipment, cleanliness of work areas, and building maintenance issues.

### **Terms of Reference for Clerk of Council**

- Report to the Mayor on all day to day matters
- Undertake performance reviews every six months, by OPSC and report month to OPSC and to the Mayor
- Provide timely and accurate financial information to the Mayor and to MFEM on a monthly basis to enable MFEM to prepare accurate financial statements and the Mayor to enable full financial disclosure to Mayor and Council
- Act as Secretariat to the Mayor and Island Council and responsible for preparation of business plan in consultation with and for approval by Mayor and Council
- Responsible for preparation of island budget; provision of best practice business advice to the Mayor and Council and obtaining Mayoral sign off for the budget after agreement with the Mayor
- Maintain a monitoring oversight of 'centralised' ministries (Infrastructure, Women's Development, Agriculture & Marine) and their activities on island and report monthly to the Mayor and Council on those activities, according to a basic checklist provided by OPSC (arrives on time; maintains office building and grounds etc). Technical performance monitoring to remain the responsibility of the line ministry
- Administer legislation that applies to the Island Administration
- Comply with the obligations under the Ministry of Finance and Economic Management Act 1995–96; the Public Service Act 2009 and the Public Expenditure Review Committee and Audit Act 1995/96 and other relevant legislations and Island Administration and ordinance requirements
- Present budget versus actual report at every Council meeting
- Ensure the Island Financial Report and receipts go directly to MFEM on a monthly basis

### **Terms of Reference for Aronga Mana**

- Shall consider such matters relative to the welfare of the people of the Cook Islands as may be submitted to Council for its consideration, and shall express and opinion and make recommendations.
- Make recommendations upon any question affecting the customs or traditions of the Cook Islands.
- Any recommendations shall be accompanied where applicable by an explanatory note of the rationale for the recommendation.
- Shall not deliberate on any matter or bill or part thereof which concerns the imposition of taxes, or the appropriation or expenditure of the funds of the Government of the Cook Islands unless requested to do so by the Legislative assembly.<sup>29</sup>

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<sup>29</sup> House of Ariki Act 1966 p.8

## APPENDIX 5: LIST OF PEOPLE CONSULTED

No	Island	Person	Position
1	Tongoreva / Penrhyn	Mr Jacob Ivirangi	Deputy Mayor
2		Mr Rio Teika	Island Council
3		Mr Able William	Island Council
4	Manihiki	Mrs Ngamata Napara	Mayoress
5		Mr John McLeod	Island Council
8		Mr Tangi Toka	Assistant GR Tahunu
7	Manihiki	Mr Kora Kora	Former Mayor
8	Pukapuka	Mr Tingika Elikana	Island Representative
9		Tekii Lazoro	Member of Parliament
10		Pakitonga Ariki	Island Council ex Officio
11		Teopenga Junior Teopenka	Island Council
12		Tutai Ravarua	Demo Candidate for Pukapuka
13	Rakahanga	Mr Neti Tarau	Mayor
14		Mr Aporo Piho	Deputy Mayor
15		Mr Temu Hagai	GR
16		Mr Iakimo Temu	Policeman
17	Atiu	Mr Taoro Brown	Mayor
18		Mr Teremoana Windy	Mapumai Island Council
19		Mr Teura Kea	Ngatiarua Island Council & Manager for Atiu Energy – Power House
20		Mr Vaine Paretoa	Teenui Island Council & Operator for Infrastructure
21		Mr Teariki Teiotu	Tengatangi Island Council
22		Papa Tangata Vainepoto	Deputy Registrar
23		Rongomatane Ariki Mrs Ada Nicholls	Aronga Mana Rep ex Officio Council
24		Ina Mokoroa	Island Secretary
25		Mr Roger Malcolm	Former Mayor 1998-2001
26		Papa Nikau Tangaroa	Justice of the Peace and former CEO of Justice
27		Ngamaru Ariki Henry M Kea	Ui Ariki also works for agriculture.
28		Mr Kore Samuel	Areora Island Council and Supervisor for Beautification
29	Atiu	Mrs Piri Touna	GR
30		Mr Maara Tairi	HOD of Agriculture & former Island Council Member
31	Mangaia	Mr Ngametua Tuara	Former Island Secretary
32		Teremoana Ata Ariki	Mayor of Mangaia
33		Need names	Island Council
34		Jill Vaiimene	
35		Ngatamaine ivaiti	Deputy Mayor & Island Council for Keia
36		Mrs Tuaine Tuara	Former Island Secretary
37	Mauke	Mr George Samuela	Mayor
38		Mr Johnstone Dyer Tamaka	Government Representative
39		Mr Teariki Rongo	Island Secretary
40		Mr Tutai Tura	Member of Parliament
41		Mr Tutai Mapu Taia	Former Member of Parliament
42		Mr Marae Turaki	Teauariki Ariki
43		Mrs Ngatuakana Oti	Aronga Mana
44	Mitiaro	Nane Hudson	Aronga Mana
45		Makara Murare	Island Council
46		Maara Kimiora	Island Council

<b>No</b>	<b>Island</b>	<b>Person</b>	<b>Position</b>
47		Fredrick Tereva	Mayor
48		Po Tetava	Island Council
49		Tai Topa	Island Secretary
50	MOIP	Donye Numa	Acting Secretary of MOIP
51	MOIP	Otheniel Tangianau	Outer Islands Director
52	MFEM	Dallas Young	Budget and Economic Policy Manager
53	MFEM	Richard Neves	Financial Secretary & Steering Committee Member
54	PSC	Navy Epati	Public Sevice Commissioner
55	Crownlaw	Tingika Elikana	Steering Committee Member
56	OPM	Mac Mokoroa	Steering Committee Member
57	OPSC	Priscilla Maruariki	Steering Committee Member
58	MFEM Treasury	Dallas Young	Working Group Member
59	OPM Policy Division	Elizabeth Koteka	Working Group Member