

TOKELAU ACT 1948

An Act to provide for the incorporation of Tokelau as part of New Zealand and to make provision for its government

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WHEREAS by an Order of His Majesty in Council dated the 29th day of February 1916, and published in the Western Pacific High Commission Gazette on the 5th day of May 1916, certain islands in the Pacific Ocean known as the Tokelau Islands and also known as the Union Islands (hereinafter referred to as Tokelau were annexed to His Majesty's dominions, and the boundaries of the Gilbert and Ellice Islands Colony were extended so as to include Tokelau: And whereas by an Order of His Majesty in Council cited as the Union Islands (No 1) Order in Council 1925 the boundaries of the Gilbert and Ellice Islands Colony were altered so as to exclude Tokelau: And whereas by an Order of His Majesty in Council cited as the Union Islands (No 2) Order in Council 1925 the Governor-General of New Zealand was appointed Governor of Tokelau: And whereas by an Order of the Governor-General in Council cited as the Union Islands (No 1 of New Zealand) Order 1926, as amended by subsection (3) of section 3 of the Samoa Amendment Act 1947, the powers and authority of the Governor-General under the Union Islands (No 2) Order in Council 1925 were delegated to the High Commissioner of Western Samoa: And whereas it has been agreed between His Majesty's Government in the United Kingdom and His Majesty's Government in New Zealand that it is expedient that Tokelau should become part of New Zealand: And whereas by an Order in Council of His Majesty cited as the Union Islands (Revocation) Order in Council 1948 provision has been made for the revocation of the Union Islands (No 2) Order in Council 1925 to take effect on a date to be fixed by Proclamation by the High

Commissioner of Western Samoa after he is satisfied that legislation has been enacted by the Parliament of New Zealand providing for the incorporation of Tokelau with New Zealand:

1 Short Title

- (1) This Act may be cited as the Tokelau Act 1948.
- (2) This Act shall come into force on the 1st day of January 1949.

2 Interpretation

- (1) For the purposes of this Act the expression Tokelau means the islands of Fakaofu, Nukunonu, and Atafu, together with all small islands, islets, rocks, and reefs depending on them.
- (2) In this Act, unless the context otherwise requires, the term enactment includes any Act, Ordinance, regulation, rules, Order in Council, Proclamation, or Warrant of the Minister of Foreign Affairs and Trade.
- (3) In this Act, unless the context otherwise requires—
Administrator means the Administrator of Tokelau:
Elder means the head of a Tokelauan family:
Tokelauan means a person belonging to the Polynesian race of Tokelau
and includes a person descended from a Tokelauan.

3 Tokelau to form part of New Zealand

Tokelau is hereby declared to form part of New Zealand.

3A General Fono may make rules

- (1) Subject to subsection (4) of this section and to sections 3B and 3F of this Act, the General Fono may from time to time make such rules as it thinks necessary for the peace, order, and good government of Tokelau.
- (2) Without limiting the generality of subsection (1) of this section, the power conferred by that subsection includes—
 - (a) The power to impose tolls, rates, dues, fines, taxes, and other charges:
 - (b) The power to prescribe criminal offences in respect of the contravention of, or non-compliance with, any rules made under

this section, and to prescribe penalties that may be imposed in respect of any such offence:

- (c) —
 - (d) The power to declare that any regulation made under section 4 of this Act before the commencement of this section shall cease to be in force in Tokelau:
 - (e) The power to provide for the making and issuing of commemorative coins to be legal tender only in Tokelau.
- (3) Without limiting the generality of subsection (1) of this section, but subject to subsection (4) of this section, any rule made under this section may apply generally to Tokelau, or may apply within any specified part or parts of Tokelau.
- (4) No rule made under this section shall apply or have effect outside Tokelau.
- (5) The General Fono may from time to time make rules amending or revoking any rule made under this section.

3B Rules subject to other enactments and international obligations

- (1) Subject to section 8(2A) of this Act, any rule made under section 3A of this Act that is inconsistent with—
- (a) Any Act of the Parliament of New Zealand that is in force in Tokelau; or
 - (b) Any regulation made under section 4 of this Act after the commencement of this section; or
 - (c) Any international obligation of Tokelau or applying in respect of Tokelau—
- shall, to the extent of the inconsistency, be of no effect.
- (2) No rule and no provision of any rule made under section 3A of this Act—
- (a) Shall be deemed to be inconsistent with any law referred to in subsection (1) of this section solely on the ground that it deals with a matter already dealt with by any such law; or
 - (b) Shall be invalid solely on the ground that it is repugnant to the law in force in Tokelau by virtue of section 4B(1) of this Act.

3C Procedure for making rules

Subject to this Act, the General Fono may determine its own procedures for making, amending, and revoking rules under section 3A of this Act.

3D Availability of rules

(1) The General Fono shall ensure that copies of every rule made under section 3A of this Act are printed in Tokelauan and in English as soon as practicable after the rule is made.

(2) A copy of every rule made under section 3A of this Act shall—

(a) Be available at all reasonable times—

(i) For public inspection, without fee; and

(ii) For purchase, on payment of such amount (if any) as the Taupulega of the relevant village from time to time determines,—

at the Administration Office of each village of Tokelau; and

(b) Be available at all reasonable times—

(i) For public inspection, without fee; and

(ii) For purchase, on payment of such amount (if any) as the Administrator from time to time determines—

at the office of the Administrator at Wellington.

(3) Failure to comply with subsection (1) or subsection (2) of this section shall in no way affect the validity of any rule made under section 3A of this Act.

3E Proof of rules

(1) In any proceedings, the production of any document purporting to be a copy of any rule made under section 3A of this Act, and which is endorsed with a certificate signed by the Administrator or by a person authorised for that purpose by the Administrator certifying—

(a) That the document is a true copy of the rule; and

(b) The date on which the rule came into force—

shall, until the contrary is proved, be sufficient evidence that the rule was duly made and is then in force.

- (2) Until the contrary is proved, it shall be presumed that every certificate purporting to have been given under this section has been given by the Administrator or by a person authorised by the Administrator to give certificates under this section.

3F Disallowance of rules

- (1) A copy of every rule made under section 3A of this Act shall, as soon as practicable after it is made, be sent to the Administrator.
- (2) Within 30 days after the Administrator receives a copy of any rule in accordance with subsection (1) of this section, the Administrator may, by notice published in the Gazette, disallow the rule or any provision of the rule.
- (3) Where the Administrator, by notice, disallows any rule or any provision of a rule, the rule or provision so disallowed shall cease to have effect on the later of—
 - (a) The date of the publication of the notice in the Gazette; or
 - (b) Any date specified in the notice as the date on which the rule or provision ceases to have effect.
- (4) Where any rule or any provision of any rule is disallowed under this section, the disallowance of the rule or provision shall have the same effect as a revocation of that rule or provision, but the disallowance shall not affect the validity of anything already done under the rule or provision so disallowed.
- (5) As soon as practicable after disallowing any rule or any provision of a rule under this section, the Administrator shall—
 - (a) Notify that disallowance to the Chairperson of the General Fono; and
 - (b) By written notice, inform the General Fono of the reasons for the disallowance.
- (6) The Administrator shall not delegate to any other person the power of disallowance conferred on the Administrator by subsection (2) of this section.

3G Restoration of Acts or regulations

- (1) Where any rule or any provision of any rule, being a rule or provision that—
 - (a) —
 - (b) Declares that any regulation made under section 4 of this Act before the commencement of this section shall cease to be in force in Tokelau—is disallowed under section 3F of this Act, the disallowance of the rule or provision has the effect of restoring the Act or regulation in force in Tokelau, as the Act or regulation was immediately before it was declared to cease to be in force in Tokelau, as if the rule disallowed or provision disallowed had not been made.
- (2) The restoration of an Act or regulation pursuant to subsection (1) of this section takes effect on the day on which the rule disallowed or provision disallowed ceases to have effect.

4 Regulations for the peace, order, and good government of Tokelau

- (1) In addition to all special powers of making regulations that may be conferred upon the Governor-General by any Act, the Governor-General may from time to time, by Order in Council, make all such regulations as he thinks necessary for the peace, order, and good government of Tokelau.
- (2) No regulation made under this section shall be of any force or effect so far as it is repugnant to this or any other Act of the Parliament of New Zealand in force in Tokelau, but no such regulation shall be deemed to be repugnant to this Act because it is repugnant to the law as established in Tokelau by section 4A of this Act, or because it deals with a matter already dealt with by this or any other Act; and every such regulation shall have effect according to its tenor, except so far as it is inconsistent with any such Act in force in Tokelau.
- (3) Regulations made under this section may—
 - (a) Impose, or empower any specified authority or person to impose tolls, rates, dues, fees, fines, taxes, and other charges:
 - (b) Provide for the making and issuing of commemorative coins to be a legal tender only in Tokelau.

4A Existing laws to continue in force

- (1) Subject to sections 4B and 8A of this Act, all laws in force in Tokelau immediately before the commencement of this section shall continue in force.
- (2) —

4B Application of common law of England

- (1) After the commencement of this section, English common law (including the principles and rules of equity) for the time being shall be in force in Tokelau, except to the extent—
 - (a) That it is excluded by any other enactment in force in Tokelau; or
 - (b) That it is inapplicable to the circumstances of Tokelau.
- (2) The law referred to in subsection (1) of this section shall have effect in Tokelau in place of the common law (including the principles and rules of equity) that applied in Tokelau immediately before the commencement of this section, but nothing in this section shall affect—
 - (a) The validity, invalidity, effect, or consequences of anything done or suffered before the date of the commencement of this section; or
 - (b) Any status or capacity existing immediately before that date; or
 - (c) Any right, interest, or title acquired, accrued, or established before that date, or any remedy or proceeding in respect of any such matter.

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5A Common law and equity to be administered concurrently

Every Court having jurisdiction in Tokelau shall within the limits of its jurisdiction administer common law and equity concurrently, and in all cases in which there is a conflict between common law and equity with reference to the same matter the rules of equity shall prevail.

6 Statute law of New Zealand not applicable to Tokelau

Except as otherwise expressly provided, the statute law of New Zealand, whether enacted before or after the commencement of this Act, shall not be in force in Tokelau.

7 When Act in force in Tokelau, amendments and regulations to be in force also

When any enactment of the Parliament of New Zealand is in force in Tokelau, every existing or future amendment of that enactment and all existing or future regulations, rules, Orders in Council, and other acts of authority in force under any such enactment, and every Act passed in substitution for any such enactment shall, so far as applicable and with all necessary modifications, be or become also in force therein, except where otherwise expressly provided.

7A Other enactments in force in Tokelau to be read subject to principal Act

Except where otherwise expressly provided, every enactment of the Parliament of New Zealand which by virtue of this Act or any other enactment is in force in Tokelau, and all regulations, rules, Orders in Council, and other acts of authority under that enactment that are in force in Tokelau, shall, in their application to Tokelau, be read subject to the provisions of this Act, and subject also to all modifications necessary for such application.

8 Interpretation Act 1999 in force in Tokelau

(1) The Interpretation Act 1999, so far as it is applicable, shall extend to and be in force in Tokelau, and shall apply to Orders in Council and to regulations in the same manner as to Acts of Parliament.

(2) Notwithstanding anything to the contrary in the Interpretation Act 1999, the term “New Zealand” as used in any Act, whether now in force in New Zealand or hereafter to be passed, shall not include Tokelau, except where a contrary intention appears.

(2A) No rule and no provision of any rule made under section 3A of this Act, and no law (however described) made under the authority of any such rule or under the authority of any regulations made under section 4 of this Act, shall be invalid solely on the ground that it is inconsistent with the Interpretation Act 1999 as that Act applies in Tokelau.

9 Act to be administered by Minister of Foreign Affairs and Trade

The Minister of Foreign Affairs and Trade shall be charged with the administration of this Act.