

Version  
as at 28 October 2021



## Tokelau Act 1948

Public Act      1948 No 24  
Date of assent    29 October 1948  
Commencement    see section 1(2)

Act name: amended, on 9 December 1976, by section 2(1) of the Tokelau Amendment Act 1976 (1976 No 122).

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

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

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

Title: amended, on 9 December 1976, by section 3(1)(a) of the Tokelau Amendment Act 1976 (1976 No 122).

**Preamble**

Whereas by an Order of His Majesty in Council dated 29 February 1916 and published in the *Western Pacific High Commission Gazette* on 5 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.

Preamble: amended, on 9 December 1976, pursuant to section 3(8) of the Tokelau Amendment Act 1976 (1976 No 122).

## **1 Short Title and commencement**

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

Section 1(1): amended, on 9 December 1976, by section 2(2) of the Tokelau Amendment Act 1976 (1976 No 122).

## **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.

Section 2(1): amended, on 9 December 1976, by section 3(1)(b) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 2(1): amended, on 22 July 1969, by section 2 of the Tokelau Amendment Act 1969 (1969 No 3).

Section 2(2): inserted, on 13 November 1970, by section 13 of the Tokelau Amendment Act 1970 (1970 No 41).

Section 2(2): amended, on 1 July 1993, by section 6(1) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Section 2(3): inserted, on 1 December 1975, by section 2 of the Tokelau Amendment Act 1971 (1971 No 142).

Section 2(3) **Administrator**: amended, on 9 December 1976, by section 3(1)(b) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 2(3) **Faipule**: repealed, on 1 August 1996, by section 2(a) of the Tokelau Amendment Act 1996 (1996 No 31).

Section 2(3) **General Fono**: repealed, on 1 August 1996, by section 2(b) of the Tokelau Amendment Act 1996 (1996 No 31).

Section 2(3) **Tokelauan**: amended, on 9 December 1976, by section 3(1)(b) of the Tokelau Amendment Act 1976 (1976 No 122).

### 3 Tokelau to form part of New Zealand

Tokelau is hereby declared to form part of New Zealand.

Section 3 heading: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 3: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

#### 3A General Fono may make rules

- (1) Subject to subsection (4) and to sections 3B and 3F, 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), 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) *[Repealed]*
  - (d) the power to declare that any regulation made under section 4 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), but subject to subsection (4), 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.

Section 3A: inserted, on 1 August 1996, by section 3 of the Tokelau Amendment Act 1996 (1996 No 31).

Section 3A(2)(c): repealed, on 20 September 2007, by section 4 of the Tokelau Amendment Act 2007 (2007 No 84).

#### 3B Rules subject to other enactments and international obligations

- (1) Subject to section 8(2A), any rule made under section 3A 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 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—
- (a) shall be deemed to be inconsistent with any law referred to in subsection (1) 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).

Section 3B: inserted, on 1 August 1996, by section 3 of the Tokelau Amendment Act 1996 (1996 No 31).

### **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.

Section 3C: inserted, on 1 August 1996, by section 3 of the Tokelau Amendment Act 1996 (1996 No 31).

### **3D Availability of rules**

- (1) The General Fono shall ensure that copies of every rule made under section 3A 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 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) shall in no way affect the validity of any rule made under section 3A.

Section 3D: inserted, on 1 August 1996, by section 3 of the Tokelau Amendment Act 1996 (1996 No 31).

### **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, 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.

Section 3E: inserted, on 1 August 1996, by section 3 of the Tokelau Amendment Act 1996 (1996 No 31).

### 3F Disallowance of rules

- (1) A copy of every rule made under section 3A 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), 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).

Compare: 1989 No 143 ss 5(2), 7

Section 3F: inserted, on 1 August 1996, by section 3 of the Tokelau Amendment Act 1996 (1996 No 31).

### 3G Restoration of Acts or regulations

- (1) Where any rule or any provision of any rule, being a rule or provision that—
  - (a) *[Repealed]*

(b) declares that any regulation made under section 4 before the commencement of this section shall cease to be in force in Tokelau,—

is disallowed under section 3F, 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) takes effect on the day on which the rule disallowed or provision disallowed ceases to have effect.

Compare: 1989 No 143 s 8

Section 3G: inserted, on 1 August 1996, by section 3 of the Tokelau Amendment Act 1996 (1996 No 31).

Section 3G(1)(a): repealed, on 20 September 2007, by section 5 of the Tokelau Amendment Act 2007 (2007 No 84).

#### 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, 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.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

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##### Legislation Act 2019 requirements for secondary legislation made under this section

<b>Publication</b>	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
<b>Presentation</b>	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
<b>Disallowance</b>	It may be disallowed by the House of Representatives	LA19 ss 115, 116

*This note is not part of the Act.*

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Section 4 heading: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 4(1): amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 4(2): amended, on 1 August 1996, by section 4(2) of the Tokelau Amendment Act 1996 (1996 No 31).

Section 4(2): amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 4(3): replaced, on 1 August 1986, by section 20(1) of the Tokelau Amendment Act 1986 (1986 No 31).

Section 4(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

#### **4AA Making and issuing of certain Tokelau commemorative coins validated**

- (1) The following coins are deemed to be, and always to have been, validly made and issued, and legal tender only in Tokelau:
  - (a) the Tokelau 2000 Queen Elizabeth the Queen Mother Commemorative Five Dollars:
  - (b) the Tokelau 1999 Smallest Gold Coins Commemorative Ten Dollars.
- (2) In subsection (1)(a), **Tokelau 2000 Queen Elizabeth the Queen Mother Commemorative Five Dollars** means the coin—
  - (a) the reverse impression of which shows—
    - (i) the portraits of His late Majesty King George VI standing behind a draped balcony and acknowledging the crowd, and of Her late Majesty the Queen Mother to the right, also acknowledging the crowd:
    - (ii) the expression “VE DAY CELEBRATIONS 8TH MAY” appearing immediately above the portraits:
    - (iii) the expressions “1945” and “\$5” appearing on the draped balcony immediately below the portraits:
    - (iv) the expression “1900 HM THE QUEEN MOTHER’S CENTENARY 2000” appearing in the upper part of the peripheral border of the coin, and the expression “LIMA TALA” in the lower part of the peripheral border; and
  - (b) the specifications of which are as follows:
    - (i) it is made of 925/1000 silver with an outer ring plated in 24 carat gold:
    - (ii) it weighs 28.10 grammes (with a tolerance, in excess or deficiency, of 0.25% allowed); and
    - (iii) it is circular with a diameter of 38.61 millimetres.
- (3) In subsection (1)(b), **Tokelau 1999 Smallest Gold Coins Commemorative Ten Dollars** means the coin—



- (a) the reverse impression of which shows—
  - (i) a representation of Hina, the Tokelauan maiden, pointing to her left, and being carried by the turtle, te Kea, swimming in the sea;
  - (ii) the expression “HINA MA TE KEA” appearing at the periphery of the coin, immediately above the representation; the expression “\$10” to the right of the representation; and the expression “HEFULU TALA” at the periphery of the coin, immediately below the representation; and
- (b) the specifications of which are as follows:
  - (i) it is made of 999.9/1000 gold;
  - (ii) it weighs 1.2442 grammes (with a tolerance, in excess or deficiency, of 0.025% allowed);
  - (iii) it is circular with a diameter of 13.92 millimetres.
- (4) The coins referred to in subsection (1)—
  - (a) have a reeded edge; and
  - (b) show, on the obverse impression, a portrait of Her Majesty the Queen in profile wearing a diadem; and
  - (c) bear the expression,—
    - (i) in the case of the coin referred to in subsection (1)(a), “TOKE-LAU • 2000” in the peripheral border above the portrait; and
    - (ii) in the case of the coin referred to in subsection (1)(b), “TOKE-LAU • 1999” between the border pattern and the top of the portrait.

Section 4AA: inserted, on 22 October 2003, by section 3 of the Tokelau Amendment Act 2003 (2003 No 99).

#### **4A Existing laws to continue in force**

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

Section 4A: replaced, on 1 August 1996, by section 4 of the Tokelau Amendment Act 1996 (1996 No 31).

Section 4A(2): repealed, on 20 September 2007, by section 6 of the Tokelau Amendment Act 2007 (2007 No 84).

#### **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) 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.

Section 4B: inserted, on 1 August 1996, by section 4 of the Tokelau Amendment Act 1996 (1996 No 31).

## **5 Existing laws to continue in force**

*[Repealed]*

Section 5: repealed, on 1 August 1996, by section 4 of the Tokelau Amendment Act 1996 (1996 No 31).

## **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.

Section 5A: inserted, on 22 July 1969, by section 4 of the Tokelau Amendment Act 1969 (1969 No 3).

Section 5A: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

## **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.

Section 6 heading: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 6: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

## **7 When enactment 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 enactment 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.

Section 7 heading: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 7 heading: amended, on 13 November 1970, by section 14 of the Tokelau Amendment Act 1970 (1970 No 41).

Section 7: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 7: amended, on 13 November 1970, by section 14 of the Tokelau Amendment Act 1970 (1970 No 41).

## **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.

Section 7A: inserted, on 13 November 1970, by section 15 of the Tokelau Amendment Act 1970 (1970 No 41).

Section 7A heading: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 7A: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

## **8 Acts Interpretation Act in force in Tokelau**

- (1) The Acts Interpretation Act 1924, 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 Acts Interpretation Act 1924, 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, and no law (however described) made under the authority of any such rule or under the authority of any regulations made under section 4, shall be invalid solely on the ground that it is inconsistent with the Acts Interpretation Act 1924 as that Act applies in Tokelau.
- (3) *Amendment(s) incorporated in the Act(s).*

Section 8 heading: amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 8(1): amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 8(2): amended, on 9 December 1976, by section 3(1)(c) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 8(2A): inserted, on 1 August 1996, by section 5 of the Tokelau Amendment Act 1996 (1996 No 31).

**8A Ordinances of Gilbert and Ellice Islands Colony to cease to apply in Tokelau**

- (1) After the commencement of this section, no Ordinance of the Gilbert and Ellice Islands Colony shall be in force in Tokelau.
- (2) Where any Ordinance of the Gilbert and Ellice Islands Colony ceases, on the commencement of this section, to be in force in Tokelau, the provisions of sections 20, 20A, and 21 of the Acts Interpretation Act 1924 shall apply with respect to the Ordinance as if that Ordinance were an Act of the Parliament of New Zealand that has been repealed by subsection (1).

Section 8A: inserted, on 1 August 1996, by section 6 of the Tokelau Amendment Act 1996 (1996 No 31).

**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.

Section 9: replaced, on 1 July 1993, by section 6(1) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

## Tokelau Amendment Act 1963

Public Act	1963 No 15
Date of assent	2 October 1963
Commencement	2 October 1963

### 1 Short Title

This Act may be cited as the Tokelau Amendment Act 1963, and shall be read together with and deemed part of the Tokelau Act 1948.

Section 1: amended, on 9 December 1976, by section 2(1) of the Tokelau Amendment Act 1976 (1976 No 122).

Section 1: amended, on 9 December 1976, by section 2(2)(a) of the Tokelau Amendment Act 1976 (1976 No 122).

### 2 Vesting of portion of the islet of Fenuafala in the native inhabitants of Fakaofu

Whereas that portion of the islet of Fenuafala (which islet forms part of the atoll of Fakaofu in Tokelau), containing 53 acres and 1 rood more or less, which is more particularly delineated on a series of plans of the islet of Fenuafala made on 28 June 1962, and lodged in the office of the Administrator of Tokelau at Apia, Western Samoa, as Tokelau plans numbers 2 to 6, and thereon coloured in outline red (hereinafter referred to as the **said land**) was purchased by the Crown from money subscribed in part by the native inhabitants of the atoll of Fakaofu and in part by the Crown for the purpose of providing a village area for those inhabitants:

And whereas it is expedient that the said land be vested in those inhabitants for that purpose:

Be it therefore enacted as follows:

Notwithstanding anything in any other enactment, the whole of the said land excluding only the several parts thereof set apart for public use (as shown on the said plans and thereon coloured in outline blue) is hereby vested in the native inhabitants of the atoll of Fakaofu as a village area, to be held by them and their descendants according to their native customs and usages.

Section 2: amended, on 9 December 1976, pursuant to section 3(8) of the Tokelau Amendment Act 1976 (1976 No 122).

# Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977

Public Act	1977 No 125
Date of assent	23 December 1977
Commencement	see section 1

## 1 Short Title and commencement

- (1) This Act may be cited as the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977, and shall be read together with and deemed part of the Tokelau Act 1948.
- (2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.
- (3) For the purposes of subsection (2), 1 or more Orders in Council may be made—
  - (a) bringing different provisions of this Act into force on different dates; and
  - (b) bringing provisions of this Act into force on different dates in respect of specified parts of Tokelau.

Section 1(2): this Act brought into force, on 1 April 1980, by the Tokelau (Territorial Sea and Exclusive Economic Zone) Act Commencement Order 1980 (SR 1980/64).

## 2 Interpretation

In this Act, unless the context otherwise requires,—

**court** means the High Court of New Zealand exercising the jurisdiction conferred on it by section 3 of the Tokelau Amendment Act 1986

**exclusive economic zone** and **zone** mean the exclusive economic zone of Tokelau described in section 7

**fish** means every kind of marine animal and its young, fry, eggs, or spawn; and includes shellfish, crustaceans, sponge, holothurian (bêche-de-mer), and turtle

**fishing** means—

- (a) taking any fish; or
- (b) engaging in any activity relating to the taking of any fish, including (inter alia) any activity involving the preparation, supply, storage, refrigeration, transportation, or processing of any fish; or
- (c) engaging in any activity relating to the provision of any services to any fishing craft to enable or assist that craft to engage in fishing

**fishing craft** means any vessel, aircraft, hovercraft, submersible craft, or other craft, of whatever size, that is capable of being used for fishing

**foreign fishing craft** means any fishing craft that is not a Tokelauan fishing craft

**foreshore** means all land lying between the high-water line and the low-water line

**master**, in relation to a fishing craft, means the person for the time being having command or charge of the craft

**median line**, as between Tokelau and any country, means a line every point of which is equidistant from the nearest points of the baseline of the territorial sea of Tokelau and the corresponding baseline of that country

**nautical mile** means the international nautical mile of 1 852 metres

**owner**, in relation to a fishing craft, includes any body of persons, whether incorporated or not, by whom the craft is owned, and any charterer, subcharterer, lessee, or sublessee of the craft

**take** includes—

- (a) to take, catch, kill, attract, or pursue by any means or device; and
- (b) to attempt to do any act specified in paragraph (a)

**territorial sea** means the territorial sea of Tokelau defined by section 3

**Tokelauan fishing craft** means a fishing craft in which no person who is not a Tokelauan has any legal or equitable interest (except by way of security only for any advance made by him to the owner).

Compare: 1976 No 140 s 2

Section 2 **court**: replaced, on 1 August 1986, by section 12 of the Tokelau Amendment Act 1986 (1986 No 31).

### *The territorial sea of Tokelau*

#### **3 The territorial sea**

The territorial sea of Tokelau comprises those areas of the sea having, as their inner limits, the baseline described in section 5 and, as their outer limits, a line measured seaward from that baseline, every point of which is distant 12 nautical miles from the nearest point of that baseline.

Compare: 1976 No 140 ss 4, 7

#### **4 Internal waters**

The internal waters of Tokelau include any areas of the sea that are on the landward side of the baseline of the territorial sea.

Compare: 1976 No 140 s 3

#### **5 Baseline of territorial sea**

The baseline from which the breadth of the territorial sea is measured shall be the low-water line along the seaward edge of the reef, except that where there is a break or passage through or over the reef, the baseline shall be a straight line joining the entrance points of that break or passage.

Compare: 1976 No 140 s 5

**6 Prohibition of foreign fishing in territorial sea**

- (1) No foreign fishing craft shall be used for fishing within the territorial sea.
- (2) Where any foreign fishing craft is used in contravention of subsection (1), each of them the owner, the master, and every crew member of the craft commits an offence against this Act and is liable on conviction—
  - (a) in the case of the owner or master, to a fine not exceeding \$100,000; and
  - (b) in the case of any other crew member, to a fine not exceeding \$5,000.
- (3) The court, on the conviction of any person of an offence under this section, may order in addition to any penalty that it may impose—
  - (a) the immediate forfeiture to the Crown of the foreign fishing craft in respect of which the offence was committed, and of any equipment on board or used by the craft, and of any fish on board the craft; or
  - (b) the detention for a specified period of the foreign fishing craft and of any such equipment and fish, and the forfeiture to the Crown of the craft, equipment, and fish if any fine or fines imposed in respect of the offence are not paid within that specified period.

Compare: 1976 No 140 s 8(1), (2), (3), (4)

*The exclusive economic zone of Tokelau***7 The exclusive economic zone**

- (1) The exclusive economic zone of Tokelau comprises those areas of the sea, seabed, and subsoil that are beyond and adjacent to the territorial sea, having as their outer limits a line measured seaward from the baseline described in section 5, every point of which line is distant 200 nautical miles from the nearest point of the baseline.
- (2) Notwithstanding subsection (1), where—
  - (a) any part of the median line between Tokelau and any country is less than 200 nautical miles from the nearest part of the baseline of the territorial sea of Tokelau; and
  - (b) no other outer limit of the exclusive economic zone is for the time being determined by an Order in Council made under subsection (3)—that part of the median line shall be an outer limit of the zone.
- (3) For the purposes of implementing any international agreement, or the arbitral award of any international body, or the judgment of any international court, or for any other purpose in accordance with international law, the Governor-General may from time to time, by Order in Council, declare that the exclusive economic zone shall not extend to any specified area of the sea, seabed, or subsoil, that would otherwise be included within the zone by virtue of this section.



## **8 Control of foreign fishing in zone**

- (1) The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
  - (a) providing for the determination of the total allowable catch for any species of fish (other than marine mammals) within the exclusive economic zone, the determination of the portion that Tokelauan fishing craft have the capacity to harvest, and the apportionment of any surplus otherwise than among Tokelauan craft:
  - (b) prohibiting fishing within the zone by foreign fishing craft that are not licensed pursuant to regulations made under this section:
  - (c) appointing or establishing a licensing authority for the purposes of regulations made under this section:
  - (d) providing for the licensing of foreign fishing craft for the purposes of fishing in the zone:
  - (e) providing separate licensing procedures for marine mammals:
  - (f) prescribing conditions that shall be deemed to be implied in licences, and empowering the licensing authority to impose any other conditions in granting licences:
  - (g) prescribing the fees payable to the Administrator of Tokelau for the issue of licences, and for their renewal:
  - (h) providing for the suspension or cancellation of a licence—
    - (i) where the licensing authority is satisfied that the foreign fishing craft in respect of which the licence has been granted has been used for fishing within the zone in contravention of any condition of the licence or of any law relating to fishing within the zone:
    - (ii) where the licensee or master or any crew member of the foreign fishing craft in respect of which the licence has been granted has been convicted of any offence against this Act, or against any regulations made under this section, or against any other law relating to fishing within the zone:
  - (i) providing for the suspension or cancellation of any licence or licences, or class or classes of licence, where the licensing authority, with the concurrence of the Minister of Foreign Affairs and Trade, is satisfied that it is necessary or expedient for the proper regulation of fishing in the zone to do so:
  - (j) providing for such other measures as are necessary or expedient to ensure that foreign fishing craft are used for fishing within the zone only in accordance with the terms and conditions of their licences:

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- (k) providing that a breach of any regulation made under this section shall be a criminal offence, and imposing penalties by way of fine for any such offences, not exceeding—
- (i) in the case of the owner or master of an unlicensed foreign fishing craft, \$100,000; and
  - (ii) in the case of any other crew member of an unlicensed foreign fishing craft, \$5,000; and
  - (iii) in the case of the licensee or master of a licensed foreign fishing craft, \$25,000; and
  - (iv) in the case of any other crew member of a licensed foreign fishing craft, \$1,500:
- (l) providing that—
- (i) on the conviction of any licensee, owner, or master of a foreign fishing craft for any offence against this Act, or against any regulations made under this section, or against any other law relating to fishing within the zone, the court may, in addition to any penalty that it may impose, exercise in respect of the craft or any equipment on board or used by the craft any of the powers specified in section 6(3); and
  - (ii) on the conviction of any licensee, owner, master, or other crew member of a foreign fishing craft for any offence referred to in subparagraph (i), the court may, in addition to any penalty that it may impose, exercise in respect of any fish on board the craft any of the powers specified in section 6(3):
- (m) providing for the release of a foreign fishing craft, and any equipment on board or used by the craft, and any fish on board the craft, pending the determination of any proceedings which may result in the forfeiture of the craft or such equipment or fish, on the provision of adequate security for its surrender to the Crown in the event that it is ordered to be forfeited:
- (n) providing that a breach of any regulation made under this section may be dealt with by way of a civil penalty, not exceeding one-third of the applicable maximum monetary penalty specified in paragraph (k).
- (2) No exercise by the licensing authority of any power conferred on him or it pursuant to any regulation made under subsection (1)(i), or concurrence by the Minister of Foreign Affairs and Trade in the exercise of that power by the licensing authority, shall be liable to be challenged, reviewed, quashed, or called into question in any court of law on the ground that the conditions for the exercise of the power, or for that concurrence, had not arisen or had ceased.

Section 8(1)(i): amended, on 1 July 1993, by section 6(1) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

Section 8(1)(n): inserted, on 1 May 2001, by section 2 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Amendment Act 1999 (1999 No 106).

Section 8(2): amended, on 1 July 1993, by section 6(1) of the Foreign Affairs Amendment Act 1993 (1993 No 48).

## **9 Offences in zone deemed to have been committed in Tokelau**

Any offence against this Act, or against any regulations made under this Act, that is committed within the exclusive economic zone shall be deemed to have been committed in Tokelau.

### *General provisions*

## **10 Foreshore, bed, and subsoil vested in Crown**

The foreshore of Tokelau, and the seabed and subsoil of the submarine areas of its internal waters, territorial sea, and exclusive economic zone, shall be deemed to be and always to have been vested in the Crown.

Compare: 1976 No 140 s 6

## **11 General regulations**

Where no other provision is for the time being made by any other enactment for any such purposes, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) regulating the conduct of scientific research within the territorial sea and the exclusive economic zone:
- (b) prescribing measures for the protection and preservation of the marine environment of the territorial sea and the zone:
- (c) regulating the construction, operation, and use of artificial islands (whether permanent or temporary), and other installations and structures within the territorial sea or the exclusive economic zone, including the establishment of safety zones around such islands, installations, and structures:
- (d) regulating the exploration and exploitation of the territorial sea and the exclusive economic zone for the production of energy from the water, currents, and winds, and for any other economic purposes:
- (e) providing for the designation or appointment of authorised officers for the purposes of this Act:
- (f) providing for the conservation and management of fisheries resources within the territorial sea and the zone:
- (g) providing for such other matters as are necessary or expedient for giving full effect to sovereignty in respect of Tokelau in relation to the territorial sea, and to the sovereign rights of Tokelau in relation to the zone:

- (h) providing that a breach of any regulations made under this section shall be a criminal offence, and imposing penalties by way of fine not exceeding \$10,000 for any such offences:
- (i) providing for such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration:
- (j) regulating the use of Tokelauan fishing craft to take fish outside the exclusive economic zone of Tokelau.

Section 11(j): inserted, on 1 May 2001, by section 3 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Amendment Act 1999 (1999 No 106).

## 12 General provisions as to enforcement

- (1) Any constable or authorised officer may at any time (with or without a warrant) stop, board, inspect, and search any foreign fishing craft within the internal waters, territorial sea, or exclusive economic zone of Tokelau, and any equipment on board or used by the craft, and any fish on board the craft.
- (2) Where any constable or authorised officer has reasonable cause to believe that any offence against this Act, or against any regulations made under this Act, or against any other law relating to fishing within the internal waters, territorial sea, or exclusive economic zone of Tokelau, has been committed in respect of any foreign fishing craft, he may (with or without a warrant)—
  - (a) seize and detain all fish on board the craft; and
  - (b) apprehend and detain any person whom he has reasonable cause to believe has committed any such offence; and
  - (c) if he has reasonable cause to believe that any such offence has been committed by the licensee, owner, or master of the craft, seize and detain the craft, and any equipment on board or used by the craft—to be dealt with in accordance with law.
- (3) Any constable or authorised officer may exercise the powers conferred on him by subsections (1) and (2) with the aid of such assistants as he considers to be necessary for the purpose.
- (4) Where any foreign fishing craft, equipment, or fish is ordered to be forfeited to the Crown pursuant to this Act or to any regulations made under this Act, that craft, equipment, or fish shall be deemed to be forfeited accordingly, and shall be disposed of in such manner as the Administrator of Tokelau thinks fit.

Compare: 1976 No 140 s 8(5)

## 13 Onus of proof in respect of offences

In any criminal proceedings under this Act, where a defendant is charged with having committed an offence against any provision in regulations made under this Act under which a licence is required for the doing of any act, the onus

shall be on the defendant to prove that, at the time to which the charge relates, the requisite licence was duly held.

**14 Repeal**

The Tokelau (Territorial Sea and Fishing Zone) Act 1976 is hereby repealed.

Compare: 1976 No 140 s 9

## Tokelau Amendment Act 1986

Public Act	1986 No 31
Date of assent	10 July 1986
Commencement	see section 1(2)

### 1 Short Title and commencement

- (1) This Act may be cited as the Tokelau Amendment Act 1986, and shall be read together with and deemed part of the Tokelau Act 1948 (hereinafter referred to as “the principal Act”).
- (2) This Act shall come into force on 1 August 1986.

## Part 1 Civil and criminal jurisdiction

### 2 Interpretation

In this Part, unless the context otherwise requires, **Commissioner** means the Commissioner for Atafu or for Fakaofu or for Nukunonu appointed under section 5.

### 3 High Court of New Zealand to be a court of law for Tokelau

- (1) The High Court of New Zealand shall have all jurisdiction which may be necessary to administer the law of Tokelau in the same manner in all respects as if that jurisdiction had been conferred upon that court as a separate court of justice in and for Tokelau.
- (2) The jurisdiction conferred on the High Court by subsection (1) may, subject to the provisions of any regulations made under the principal Act and to the provisions of any rules made by the General Fono, be exercised in the same manner in all respects as if Tokelau was for all purposes part of New Zealand.
- (3) In the exercise of the jurisdiction conferred on it by subsection (1), the High Court may sit either in Tokelau or in New Zealand, or in such other appropriate place as the Chief Justice may direct.

Section 3(2): amended, on 1 August 1996, by section 7 of the Tokelau Amendment Act 1996 (1996 No 31).

### 4 Appeals to Court of Appeal of New Zealand

- (1) An appeal shall lie to the Court of Appeal of New Zealand from any judgment, decree, or order of the High Court of New Zealand exercising the jurisdiction conferred on it by section 3 in the same manner as from any judgment, decree, or order of the High Court exercising its jurisdiction in respect of New Zealand.

- (2) The decision of the Court of Appeal on any appeal under this section shall be final.

## **5 Appointment of Commissioners**

- (1) The Governor-General, on the recommendation of the Minister of Foreign Affairs made after consultation by that Minister with the Elders of the island concerned, may appoint any Tokelauan to be—
- (a) Commissioner for Atafu:
  - (b) Commissioner for Fakaofu:
  - (c) Commissioner for Nukunonu.
- (2) Subject to subsections (4) and (5), every Commissioner shall hold office for a term of 3 years.
- (3) Every Commissioner shall be eligible for reappointment from time to time.
- (4) The Governor-General may, if the Governor-General thinks fit, remove a Commissioner for inability or misbehaviour.
- (5) A Commissioner may resign the office of Commissioner by notice in writing addressed to the Administrator of Tokelau.
- (6) Every Commissioner may be paid out of the Tokelau General Account such salary or allowance and other allowances as may be fixed by the Administrator of Tokelau.

Section 5(2): replaced, on 1 August 1996, by section 8 of the Tokelau Amendment Act 1996 (1996 No 31).

Section 5(3): replaced, on 1 August 1996, by section 8 of the Tokelau Amendment Act 1996 (1996 No 31).

## **6 Incapacity or absence of Commissioner**

- (1) If at any time a Commissioner is incapable by reason of sickness or otherwise of performing the office of Commissioner or is absent from the island for which that person is Commissioner, or where there is a vacancy in the office of Commissioner, any person performing in that island the functions of a Faipule may, without further authority or appointment, exercise any function, duty, or power of the Commissioner during that incapacity, absence, or vacancy.
- (2) The fact that any person performing the functions of a Faipule exercises any function, duty, or power of a Commissioner shall be conclusive evidence of that person's authority to do so.

## **7 Jurisdiction of Commissioners**

- (1) A Commissioner shall have jurisdiction—
- (a) in actions for the recovery of any debt or damages not exceeding \$1,000 in amount:
  - (b) in actions for the recovery of chattels not exceeding \$1,000 in value:

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- (c) in criminal proceedings for any offence punishable by fine only:
  - (d) in criminal proceedings for any offence punishable by imprisonment for not more than 1 year.
- (2) Subject to the provisions of any regulations made under the principal Act, a Commissioner shall, in the exercise of that Commissioner's criminal jurisdiction, have power to do any 1 or more of the following things:
- (a) to impose a term of imprisonment not exceeding 3 months:
  - (b) to impose a fine not exceeding \$150:
  - (c) to order the performance of community work:
  - (d) to place an offender under Police supervision:
  - (e) to give a public reprimand:
  - (f) to order the payment of compensation, not exceeding \$1,000 in amount, for the loss of or damage to any property of the victim of the offence:
  - (g) to order the restitution of any property to the victim of the offence.
- (3) Subject to subsection 3A, to any regulations made under the principal Act, and to any rules made by the General Fono under section 3A of the principal Act, a Commissioner shall have jurisdiction only in respect of—
- (a) the island for which that Commissioner is appointed; and
  - (b) the territorial sea of Tokelau that surrounds that island.
- (3A) Notwithstanding anything in subsection (3), but subject to subsection (1), any Commissioner may exercise jurisdiction in respect of the following offences:
- (a) any offence to which section 9 of the Tokelau (Territorial Sea and Exclusive Economic Zone) Act 1977 applies:
  - (b) any offence against the law of Tokelau that is committed on board any vessel or aircraft, in any case where, at the time of the commission of the offence, the vessel or aircraft—
    - (i) is in the service of Tokelau; and
    - (ii) is travelling to or from Tokelau or between any of the islands of Tokelau.
- (4) In any criminal proceedings, a Commissioner may, at any time during those proceedings, discuss the case, in the presence of the prosecutor, the defendant, and the defendant's counsel (if any), with the Taupulega of the island for which that Commissioner is appointed.
- (5) Where any such discussion is held, the Commissioner shall give—
- (a) the prosecutor; and
  - (b) the defendant or the defendant's counsel (if any)—
- the opportunity to be heard and to tender evidence on any matter raised in that discussion.



Section 7(3): replaced, on 1 August 1996, by section 9 of the Tokelau Amendment Act 1996 (1996 No 31).

Section 7(3A): inserted, on 1 August 1996, by section 9 of the Tokelau Amendment Act 1996 (1996 No 31).

## **8 Extension of jurisdiction of Commissioners by agreement between the parties**

If, but for the amount or value of the subject matter claimed or in issue, a Commissioner would have jurisdiction under section 7(1)(a) or (b), and the parties, by memorandum signed by them or by their respective agents, agree that a Commissioner shall have jurisdiction to hear and determine the proceedings, that Commissioner shall, notwithstanding anything in any enactment, have jurisdiction to hear and determine the proceedings.

Compare: 1947 No 16 s 37

## **9 Abandonment of part of claim to give Commissioner jurisdiction**

- (1) Where a plaintiff has a cause of action for more than \$1,000 in respect of which a Commissioner would have jurisdiction if the amount were not more than \$1,000, the plaintiff may abandon the excess, and thereupon a Commissioner shall have jurisdiction to hear and determine the action.
- (2) Where any action, in which the plaintiff has abandoned part of the plaintiff's claim under this section, is heard by a Commissioner, the plaintiff shall not recover an amount exceeding \$1,000 together with costs thereon, and the judgment of the Commissioner in the action shall be in full discharge of all demands in respect of the cause of action, and judgment shall be entered accordingly.

Compare: 1947 No 16 s 36

## **10 Appeal from Commissioners**

- (1) Subject to subsections (2) and (3), any party to any proceedings, whether civil or criminal, before a Commissioner may appeal from the judgment of the Commissioner to the High Court of New Zealand in the exercise of the jurisdiction conferred on it by section 3—
  - (a) subject to any other enactment, as if that judgment were a decision of a District Court in New Zealand; and
  - (b) in accordance with such procedures as a Judge of the High Court determines are appropriate to the circumstances.
- (2) Any person who wishes to appeal pursuant to subsection (1) shall, within 28 days after the date of the judgment of the Commissioner, give notice in writing to the Administrator of that person's intention to appeal.
- (3) No appeal shall lie pursuant to subsection (1) in respect of any judgment of a Commissioner in any proceedings for any offence punishable by imprisonment for not more than 3 months or any offence punishable only by a fine of not

more than \$150, but any party to any such proceedings may appeal from the judgment of the Commissioner to such body, and in accordance with such procedures, as are prescribed by regulations made under the principal Act.

**11 Validation of things done under Part 1 of Tokelau Amendment Act 1970**

Nothing done before the passing of this Act by any Judge of the High Court of Niue in the purported exercise of the jurisdiction purportedly conferred by Part 1 of the Tokelau Amendment Act 1970, and nothing done by any person pursuant to or in reliance on anything so done, shall be held to be a nullity or otherwise invalid merely because, at the time it was done, that Judge had no jurisdiction under that Part of that Act because it was not then in force in Niue.

## Notes

### **1**    *General*

This is a consolidation of the Tokelau Act 1948 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2**    *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3**    *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4**    *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

Tokelau Amendment Act 2007 (2007 No 84)

Tokelau Amendment Act 2003 (2003 No 99)

Tokelau Amendment Act 1996 (1996 No 31)

Foreign Affairs Amendment Act 1993 (1993 No 48): section 6(1)

Tokelau Amendment Act 1986 (1986 No 31)

Tokelau Amendment Act 1976 (1976 No 122)

Tokelau Amendment Act 1971 (1971 No 142)

Tokelau Amendment Act 1970 (1970 No 41)

Tokelau Amendment Act 1969 (1969 No 3)